Minority Report of the Donor Confidentiality Committee

By Mary J. Ruwart, Ph.D.

Executive Summary

The Donor Confidentiality Committee was formed to propose policy to protect the confidentiality of donor information and to prevent further instances of the negligence which resulted in Mr. Wrights' donor information being posted on public blogs. This Committee has not fulfilled its mission primarily because of the conflicts of interest that continue to drive it. As a result, the LNC has opened itself up to the possibility of legal liability should future incidents occur.

Why Donor Confidentiality Is Crucial

In July 2009, I proposed a motion to protect donor confidentiality at the LNC meeting in St. Louis (i.e., "except as required by law, all donor records will be treated as private and confidential"). The motion was inspired by Mr. Starr's failure to label his memo of April 21, 2009 to the LNC concerning Mr. Wrights' donor information as "confidential." In the absence of such labeling, material posted to the LNC-Discuss list was routinely finding its way to public blogs. Indeed, Mr. Starr's memo appeared on Independent Political Review (IPR) less than 18 minutes after it was sent to the LNC.

It is possible that this nine page memo, with its small type, was read by an LNC member, sent to someone at IPR who read it, wrote the 3-4 paragraph introduction to the posting, and uploaded it. However, with the tight time window, it is more likely that someone already had Mr. Starr's memo and was ready to upload it as soon as it was sent to the LNC.

In the industry I work in, failure to label proprietary information as "confidential" and to take adequate security measures to protect it, is a firing offense. While Mr. Starr routinely labels even his draft budgets as "confidential," he neglected to do so for Mr. Wrights' private donor information.

Mr. Starr's memo makes a number of claims that have not been substantiated, including the assertion that Mr. Wrights dues' payment for 2008, made through Sean Haugh, was an "illegal contribution." Mr. Starr also claims that HQ records indicate that Mr. Wrights' dues lapsed in February 2004 and that he did not renew his membership until January 2005. Mr. Wrights has repeatedly stated that his February 2004 dues were paid by his wife, who was credited with a membership by mistake. He has also asserted that HQ was directed to correct his records prior to his election as Vice Chair in 2004.

Mr. Dixon, who served as Chair during the time that Mr. Wrights was Vice Chair, recently wrote Chairman Redpath confirming that Mr. Wrights' records were indeed in disarray during the time he

served. In a telephone conversation with me, Mr. Redpath said that he found Mr. Dixon's information vague and unconvincing. He pointed out that if Mr. Wrights had indeed paid dues in January 2004, UMP records should testify to that fact. Encouraged by his suggestion, and with Mr. Wrights' permission, I investigated further.

Excerpts from UMP records from November and December of 2004 list Mr. Wrights with an expiration date of 2/24/2005. These reports would contain this information only if, at the time of their generation, Mr. Wrights' last dues payment was listed in his records as 2/24/2004.

A December 2004 listing of national LP members broken down by state includes Mr. Wrights as well. Although this record does not list expiration dates, the inclusion of Mr. Wrights indicates that he was indeed a member in good standing when the list was generated.

Thus, the preponderance of the evidence (Mr. Dixon's statement, UMP records from 2004, lists of national members by state from 2004) support Mr. Wrights' contention that his 2004 dues had been paid and that he was indeed properly elected as LNC Vice Chair in that year. Evidently, his records at one time registered a dues payment on 2/24/2004, a notation which appears to have been removed at some later date either by accident or by design.

Unfortunately, Mr. Wrights' record snafu is not unusual. After reviewing this material with me, Mr. Benedict stated, "I have lots of emails back from 2004 about lots of people having problems with their memberships when the conversion to the new Raiser's Edge database occurred. Even before then, I have lots of email about problems keeping membership records straight. I will keep working to improve our database and record keeping."

Now, dear colleagues, you can appreciate that we have a major public relations issue on our hands. Although Mr. Starr meticulously labels many things sent to the LNC as "confidential," he neglected to take this standard precaution with his memo containing private donor information with which he was entrusted as Treasurer of this body. Clearly, we need a policy that mandates at least this minimal protection for contributions by our donors. We demand it of our mailing houses and other vendors when we give them donor information so that they can execute their duties. Surely we should hold our Treasurer and ourselves to the same standard.

If you have doubts about the importance of such a policy, consider the consequences of Mr. Starr's negligence to both Mr. Wrights and to the Party. Let us first consider Mr. Wrights. If he stands for re-election to the LNC in 2010, he will have to counter false and derogatory statements made by Mr. Starr in his blogged memo. To appreciate their impact fully, imagine as you read them that they are said about your election to the LNC and about your membership status, lifetime or otherwise:

Page 7: *"Neither Mr. Wrights, nor anyone else on his behalf, paid his dues during the twelve months leading up to the 2004 convention, when it was believed that he was elected to the position of national Vice Chair for the 2004-2006 term."*

"While we all had believed that R. Lee Wrights had been elected to the board as the Vice Chair in May 2004, he was not elected Vice Chair because he was clearly not eligible due to his last gift date being February 24, 2003."

"I do not know whether R. Lee Wrights knew that he was not eligible at the time of the 2004 convention, but he clearly was not."

Page 8: *"Because R. Lee Wrights was not a dues paying member at the time he ran for the Vice Chair position in May 2004, he was not elected Vice Chair and we did not have a legitimately qualified Vice Chair during that term."*

"R. Lee Wrights served as an at-large representative during the 2002-2004 LNC term; he failed to maintain eligibility to serve during the term, due to a lapse in his status as a current dues-paying member as of February 24, 2004."

"R. Lee Wrights served as Vice Chair during the 2004-2006 term; he was ineligible to be elected to the position, and waited until nearly eight months into the term before taking action to become eligible."

Please note that there is no equivocation in these statements; they are made as if they were facts. Mr. Starr did not check with Mr. Wrights for verification prior to making these remarks. Had he done so, he would have saved himself and the Libertarian Party a great deal of embarrassment.

Mr. Wrights has told me that every attorney he has checked with assures him that Mr. Starr's words would likely allow him to prevail in a libel suit. Mr. Starr, who has criticized other members of this Board for using words that *might* create liability, has actually put this Board and the Party at risk. If we do not put policies in place to keep such things from happening again, we are setting ourselves and the Party up for future liability suits.

As our Treasurer, Mr. Starr's failure to protect confidential donor information adequately and failure to verify it prior to making such strong, derogatory statements reflects badly on the Party itself. If this is how our Treasurer treats fellow Board members, what can the average donor expect from us? How can they be sure that our Treasurer or someone else with access to their records won't use their contribution history to lambaste them rather than laud them?

How can we expect donors to send us money if we take no steps to protect their privacy? How can they expect us to keep accurate records if we can't do so for At-Large representatives? If a Board member can't get his records straightened out and is targeted with libel as a result, how can the average rank-and-file donor expect to be treated?

Our fiduciary responsibility to the Party requires that we take action to insure that private donor information will, in the future, be treated in a manner befitting its confidential status. It should be shared only with authorized personnel willing to take precautions to keep it confidential, except perhaps for publically honoring---not dishonoring---donors.

Why the Donor Confidentiality Committee Is Ineffective

When I presented my motion at our July meeting in St. Louis in an attempt to insure that private donor information would, in the future, be treated as confidential, Ms. Matteson suggested that a 5-person committee be formed, presumably to study the issue and craft a better solution than the one I had proposed. After the meeting, Chairman Redpath assigned Mr. Hinkle, Mr. Flood, Mr. Carling, Mr. Starr and myself to the Committee.

In my e-mail of August 7, 2009 to LNC-Discuss, I pointed out that Mr. Starr had a clear conflict of interest and should not be sitting on the Committee (hereafter referred to as the DCC). I asked the Chair to remove Mr. Carling as well. Mr. Carling is not a voting member of the LNC and is a close, long-term associate of Mr. Starr's who might have difficulty being objective in this matter.

Mr. Redpath responded that he had placed Mr. Starr on the DCC because he was the Treasurer; Mr. Carling was appointed because he was Chair of the Audit Committee. Mr. Redpath thus felt justified in letting these appointments stand, and neither Mr. Carling nor Mr. Starr offered to step down. The conflict of interest represented by these appointments has, in my opinion, driven the agenda of this Committee from its inception.

For example, on August 7, Mr. Starr issued a memo to the DCC to direct its activities. Since Mr. Starr was acting as if he had been appointed chair, I asked Mr. Redpath if he had made the appointment. He said he had not and appointed Mr. Hinkle as Chair on August 13.

I heard nothing further about this committee until Mr. Hinkle called me on Sunday, November 29, a little after 2pm CST. Mr. Hinkle informed me that a committee report, crafted by Mr. Starr and Mr. Carling, and vetted by Mr. Flood, had been sent to him the night before. Mr. Hinkle told me he felt "excluded," since all this had taken place without his knowledge or participation.

I told Mr. Hinkle that I felt even more excluded, since no one on the DCC, including its chair, had bothered to send me the document. Since Mr. Hinkle did not immediately offer to forward it to me, I asked that he do so; to his credit, he immediately complied.

Mr. Hinkle went on to say that the document expanded member access to all details of Board Member donations, which would have retroactively whitewashed Mr. Starr's failure to treat Mr. Wrights' donor information as confidential. Mr. Hinkle told me that this was a deal breaker for him and that he intended to have it reversed in the conference call of the DCC which was at 3pm CST, approximately 20 minutes away.

When I told Mr. Hinkle that I was available for the meeting, he told me that I could not participate because Mr. Starr had specifically asked that I be excluded until the document was "finalized." When I pointed out that he, as Committee Chair, could overrule Mr. Starr's request, Mr. Hinkle said he was unwilling to do so because he felt beholden to Mr. Starr for preparing the report. Although Mr. Hinkle did not appreciate being excluded from earlier meetings, he was quite willing to continue to exclude me.

Around 4pm CST, Mr. Hinkle called again to tell me that the Mr. Starr had agreed to reverse the expanded member access to Board Member donation details. He said that the DCC wanted to meet with me in 10 minutes and get my approval so that it could be sent to HQ to be inserted in the binders for the upcoming meeting (the deadline for such submission was Monday morning, November 30). Since I had not yet been given the revised document, I told Mr. Hinkle that I would need time to review it.

Mr. Hinkle immediately sent me the revisions. As I perused the document, I realized that it needed more work and that time was necessary to consider its ramifications. Mr. Hinkle notified the DCC at 6:48 pm CST by e-mail that I would need approximately 24 hours to review and revise it.

At 6:53 pm CST, Mr. Carling sent an e-mail to the committee, indicating that he was willing to send the document to HQ without my input if two other members supported this idea. I responded that I would submit a minority report if my input continued to be excluded. The other members of the committee elected to hear my comments.

The DCC met by phone to consider my revisions Monday night, November 30 at approximately 10pm CST. As I attempted to walk the DCC through my proposed changes, Mr. Starr continuously interrupted with patronizing diatribes. Our Treasurer, who has regularly championed "decorum" this term, was a poor example that night. Indeed, Mr. Hinkle complimented me the next day on my professionalism in this meeting, as he had expected me to "explode" in response to the repeated rudeness exhibited by Mr. Starr during the two hour meeting.

Mr. Starr's reaction was understandable, since I was trying to implement policy that would indirectly imply that his handling of private donor data was negligent. Mr. Starr had no way to appropriately manage his conflicts of interests on the DCC and appeared to be trying to manipulate the committee's outcome, by, among other things, limiting my input. By trying to send the DCC's report to the LNC without giving me time for a response, Mr. Carling may have been supporting his close friend in this endeavor.

My chief complaint about the document prepared by other DCC members was that it only specified who had access to donor information without addressing how it should be handled. Thus, it completely ignored the basis of my original motion.

As a remedy, Mr. Flood suggested that his Confidential Disclosure Agreement (CDA) might be amended to address my concerns. He and I agreed to work on this document the next day. Although the CDA now instructs contractors in the handling of confidential donor data, we did not have the time to appropriately adapt it for the LNC; thus, it does nothing to prevent a repeat performance by our Treasurer. My original concerns regarding how the LNC and HQ handle private donor information have still not been addressed. Consequently---and perhaps more importantly---the liability concerns also remain.

The Reason for My Minority Report

Although I was prepared to make this report at the last LNC meeting, it appeared unnecessary since it became quickly evident that the LNC would not accept the DCC's proposed Policy Manual changes. Since Dan Karlan moved to postpone matters until Austin, I assumed the DCC would have time to reconvene and present something to the LNC which would address the concerns outlined above. However, after time was up on this matter, Mr. Starr claimed that the business of the committee was finished, in spite of my objections to the contrary. He continues to do so over my objections on LNC-Discuss.

Since it now appears that the DCC will not be addressing the concerns which led to its formation, I feel compelled to submit this minority report in order to advise the LNC of:

1. The serious nature of the still-existing problem;
2. The need for action beyond what the DCC has proposed;
3. The conflicts of interest which would make further deliberations of the DCC unproductive.

In the near future, I will be proposing motions to deal with these problems since the DCC has not done so.