FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2074

Date Filmed 5-7-86 Camera No. --- 2

Cameraman GPC

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MUR 2094

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

Mr. Robert Abrams
Attorney General - State of New York
2 World Trade Center
New York, New York 10047

Dear Mr. Abrams:

On August 19, 1985, the Federal Election Commission received a complaint that raised a question whether the State of New York had violated 2 U.S.C. § 441a. A copy of the complaint is enclosed.

The Commission, on December 17, 1985, considered the complaint, but there were insufficient votes to find reason to believe the State of New York violated 2 U.S.C. § 441a. Accordingly, on December 27, 1985, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

1/10/86
Date

BY: Kenneth A Gross (ZLZ)
Kenneth A. Gross
Associate General Counsel

Enclosure

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6093

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

Laura E. Drager, Esquire
Office of the District Attorney,
Kings County
210 Joralemon Street
Brooklyn, New York 11201

RE: MUR 2074

Dear Ms. Drager:

The Federal Election Commission has reviewed the allegations contained in your complaint dated August 16, 1985. The Commission considered your complaint on December 17, 1985, and voted to take no action against Charles E. Schumer at this time. There were insufficient votes to find reason to believe the State of New York violated 2 U.S.C. § 441a. The Commission was equally divided on the question whether to find reason to believe that the Re-Elect Congressman Chuck Schumer Committee and Steven D. Goldenkranz as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Should further information come to your attention which you believe establishes the violation of the Act, please contact Charles Snyder, the attorney assigned to this matter at (202) 376-5690.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A Gross (LJZ)

By: Kenneth A. Gross
Associate General Counsel

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6094

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

Arthur L. Liman, Esquire
Paul, Weiss, Rifkind,
Wharton & Garrison
345 Park Avenue
New York, New York 10154

RE: MUR 2074

Dear Mr. Liman:

On August 28, 1985, the Commission notified you of a complaint alleging that your clients, Charles E. Schumer, the Re-Elect Congressman Chuck Schumer Committee, and Stephen P. Goldenkranz, as treasurer, had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on December 17, 1985, considered the complaint and voted to take no action against Charles E. Schumer at this time. The Commission was equally divided on the question of whether to find reason to believe a violation of 2 U.S.C. §§ 434 and 441a(f) was committed by the Re-Elect Congressman Chuck Schumer Committee and Stephen P. Goldenkranz as treasurer. Accordingly, on December 17, 1985, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

Kenneth A Gross (FJ)

By: Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

January 13, 1986

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Attorney General - State of New York
2 World Trade Center
New York, New York 10047

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Sincerely,

Charles N. Steele
General Counsel

BY: _____
Kenneth A. Gross
Associate General Counsel

_____
Date

Enclosure

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

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Office of the District Attorney,
Kings County
210 Joralemon Street
Brooklyn, New York 11201

RE: MUR 2074

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Accordingly, the Commission has decided to close the file in this matter. The Federal Election Campaign Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

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The Commission, on December 17, 1985, considered the complaint and voted to take no action against Charles E. Schumer at this time. The Commission was equally divided on the question of whether to find reason to believe a violation of 2 U.S.C. §§ 434 and 441a(f) was committed by the Re-Elect Congressman Chuck Schumer Committee and Stephen P. Goldenkranz as treasurer. Accordingly, on December 17, 1985, the Commission closed its file in this matter. This matter will become a part of the public record within 30 days.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

FEDERAL ELECTION COMMISSION
COMPLAINT PURSUANT TO 2 U.S.C.§ 437g

Name of Complainant: LAURA E. DRAGER

Address of Complainant: Office of the District Attorney
Kings County
210 Joralemon Street
Brooklyn, New York 11201

Name of Respondents: Representative Charles E. Schumer
Schumer for Congress

Laura E. Drager deposes and says:

1. I am an Assistant District Attorney and Chief of the Rackets Bureau in the Office the the District Attorney, Kings County, State of New York. I submit this complaint to the Federal Election Commission for review pursuant to the authority conferred on the Commission by 2 U.S.C. §437(g)(a)(1). The allegations contained herein are based upon the statements of witnesses personally interviewed by me or members of this office under my supervision, notes of witness interviews obtained from the Office of the United States Attorney for the Eastern District of New York, and records now in the possession of the Office of the District Attorney of Kings County.

2. This office recently completed an investigation under my supervision into allegations that Charles E. Schumer, currently a member of the United States House of Representatives, while a member of the New York State Assembly, made extensive use of

state-paid employees of his Assembly staff and state office facilities to promote his candidacy in 1980 to become the United States Representative for the Tenth Congressional District of New York. Mr. Schumer was subsequently elected to that congressional seat in November, 1980. Our investigation showed that he made such use of state compensated workers and state facilities, and that such use was not reported by Schumer or the officers of his campaign committee as required by 2 U.S.C.§434 (b).

3. During 1981 and 1982, the United States Attorney for the Eastern District of New York conducted an investigation into these allegations against Mr. Schumer and recommended an indictment. The United States Department of Justice overruled that recommendation, however, and announced that the matter was "not appropriate for federal prosecution." Because the U.S. Attorney and the Department of Justice had not exonerated Mr. Schumer this office conducted its own investigation to determine if a crime might have been committed which was within our jurisdiction. We have concluded that there is no basis for criminal prosecution under New York's laws. However, it appears to us that Charles Schumer and officers of his campaign committee violated certain provisions of the Federal Election Campaigns Act. I have been advised by the staff of the United States Attorney's Office for the Eastern District of New York that federal prosecutors have never referred this matter to the Commission.

4. At the time Charles Schumer announced his candidacy for Congress in January, 1980, he had been a member of the New York State Assembly since 1975. He had an office in Albany in the State Office Building and an office in his district. He also was the chair of the Assembly's Committee on Oversight and Investigation ("the Committee"), a position he had held since January, 1979. The Committee employees and those who worked at his district and Albany offices were responsible to Mr. Schumer, and served at his pleasure. As set forth more fully below between January, 1980 and September, 1980, members of the staff of the Committee and of Schumer's other offices, while on the payroll of New York State, devoted substantial periods of time - in some cases, almost all their time - to working on his congressional campaign. In fact, some staffers were specifically hired with the intent that they would devote substantial amounts of their time to campaign activities. This work was performed during working hours and in many cases at Schumer's state offices. As set forth more fully below, the facilities of the Committee, including office space, photocopying equipment and telephone equipment, were used by Schumer's employees on behalf of the campaign without any reporting of such uses to the Federal Election Commission.

5. At the very outset of his campaign, Charles Schumer set out to hire a campaign manager who would also perform some assembly duties. It was Mr. Schumer's intent to place this per-

son on his state payroll for a period of time during which some of his/her responsibilites would be strictly campaign oriented. The first person hired for this position was Marc Canu who was on the state payroll from January 7, 1980 until March 31, 1980. He was replaced by Carol Kellerman who was on the state payroll from March 10, 1980 until May 7, 1980, and again after the general election from November of 1980 until the end of December 1980. Both Canu and Kellerman were interviewed and hired by Congressman Schumer. Canu has informed me that by February, 1980, he was devoting at least eighty percent of his worktime to the campaign. Kellerman has admitted to me that while she was on the state payroll in the Spring of 1980, she spent thirty-five percent of her worktime exclusively on campaign functions. (She has further informed me that she spent an additional thirty-five percent of her time on work that qualified as both state and campaign work.)

6. Canu has informed me that the campaign work performed by him on state time involved distribution of campaign literature, setting up fund-raising coffee klatches, updating a mailing list, arranging for appearances by Schumer at different functions, contacting volunteers and attempting to locate a campaign headquarters.

7. Kellerman has informed me that her campaign duties performed on state time included locating a campaign headquarters,

developing the prime voter list (which was to be used exclusively for campaign mailings and telephone calls), reviewing district voting patterns, hiring campaign workers and a pollster and planning the campaign budget.

8. In addition to Canu and Kellerman, who were hired specifically to handle campaign matters, other staffers performed campaign functions during working hours. Griffin Thompson, a Committee staffer, has informed me that, during the late winter and spring of 1980, while receiving a salary as an employee of the Committee, he spent as much as eighty percent of his time in such activities as searching for a campaign headquarters, developing campaign position papers, contacting campaign volunteer workers, assisting in the preparation of the prime voter list by reviewing registration cards at the Board of Elections, and, along with others, xeroxing that list at the offices of the Committee using the photocopier belonging to New York State. He also assisted in campaign mailings and made some deliveries to the campaign treasurer, Richard Lukins.

9. Susan Orlove, an employee of the District Office, has informed me that she was personally instructed by Mr. Schumer during the pendency of the campaign to drop all of her state work and engage solely in campaign fund raising activities. Orlove, in fact, spent, during certain periods, about seventy- five percent of her state work time on the campaign. The work she performed included making telephone calls and sending follow-up

letters to solicit contributions from Political Action Committees. These letters were typed at the District Office by Honee Beck, an employee of the District Office. During the final two weeks of the primary campaign, Orlove worked at the campaign headquarters. During this entire period she continued to receive her regular salary from New York State.

10. Janet Kalson, a secretary for the Committee, has informed me that she assisted in the preparation of campaign mailings and the prime voter list. She also spent two weeks photocopying the campaign prime voter list at the Committee Office. This work was performed on state time.

11. Joshua Howard, a Committee staffer in charge of public relations, prepared all campaign literature for the duration of the campaign and all campaign press releases up to the summer of 1980. Some of this work was performed on state time.

12. Anna Barletta, a secretary at Mr. Schumer's Albany Assembly Office, has stated that during the spring of 1980, she spent up to two hours a day on state time receiving dictation from Schumer and typing letters seeking campaign contributions.

13. Apart from work performed by state employees, extensive use was made of state facilities, equipment, and office supplies, none of which was reported in the campaign filings. Joshua Howard, Janet Kalson and Griffin Thompson each informed me that a telephone line at the Committee headquarters was assigned to the use of the campaign. Committee employees were instructed not

to answer that telephone as the other telephones were answered by giving out the Committee's name, but instead to answer by giving only the number of the telephone. Similarly, (as stated in ¶9 above) Susan Orlove used a District Office telephone to conduct campaign fundraising. Extensive use was made of state photocopying facilities for preparation of the prime voter list. This fact has been confirmed by Carol Kellerman, Griffin Thompson, Janet Kalson and Steven Goldberg, a campaign employee. I have been informed by Janet Kalson, Anna Barletta and Susan Orlove that state office equipment was used for campaign correspondence at each of Representative Schumer's three state offices. In addition, I have been informed by Steven Goldberg, Griffin Thompson and Joshua Howard that state office supplies such as staplers, paper, pens, rubber bands and paper clips were taken and used for the campaign. All of these activities obviously also entailed the use of state office space on behalf of the campaign.

14. On information and belief the cost to the campaign of comparable office space, the telephones, and the photocopiers, would have been substantial. Neither Charles Schumer nor the campaign paid for these items, and the fact that New York State paid for them is not reflected in any of Charles Schumer's filings with the Federal Election Commission. Nor do his filings reflect as campaign contributions the salaries which his employees received from New York State while they worked on his campaign.

15. After reviewing the relevant statutes, it is my opinion that in filing reports with the Federal Election Commission, Mr. Schumer and his campaign committee should have reported as campaign contributions the value of the use he made of New York State facilities and employees set forth above and that his failure to do so violates 2 U.S.C. §434 (b).

I request that the Commission investigate these charges and initiate appropriate action pursuant to the authority conferred on the Commission by 2 U.S.C. §437g.

LAURA E. DRAGER
ASSISTANT DISTRICT ATTORNEY

Sworn to before me
this 16 day
of August, 1985

SEYMOUR I. BALDINGER
NOTARY PUBLIC, State of New York
No. -5157975
Qualified in Kings County
Term Expires March 30, 1986

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF KINGS)

I,_____, being duly sworn, state that I am employed in the Office of the District Attorney for Kings County and am over the age of 18.

That on the_____day of_____19____I served this document by enclosing a true copy in a postpaid envelope addressed to:_____

_____

Attorney for:_____

at his/her office and by causing it to be deposited in an official depository of the United States Postal Service within the State of New York.

Sworn to before me this_____ _____

day of_____ 19____

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
COUNTY OF KINGS)

I,_____, being duly sworn, state that I am employed in the Office of the District Attorney for Kings County and am over the age of 18.

That on the_____day of_____19____I served this document on_____

_____ _____

Attorney(s) for_____

located at:_____, by causing a true copy to be left with the person in charge of his/her office, there being no one present who was authorized to give an admission of service.

_____

Sworn to before me this_____

day of_____19____

Please take notice that this is a copy

of a

entered and filed in the office of the

Clerk of Kings County.

Dated,

Sincerely,

Elizabeth Holtzman
District Attorney,
Kings County.

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

To

Attorney for

OFFICE OF
ELIZABETH HOLTZMAN
KINGS COUNTY DISTRICT ATTORNEY

FEDERAL ELECTION COMMISSION

COMPLAINT PURSUANT TO 2 USC SECTION 437g

ELIZABETH HOLTZMAN
District Attorney,
Kings County

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

Due and timely service of a copy
of the attached is admitted.

Dated,

Attorney for

APP-10A 4/83

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Charles E. Schumer	)	
Re-Elect Congressman Chuck	)	
Schumer Committee and	)	MUR 2074
Steven D. Goldenkranz,	)	
as treasurer	)	
State of New York	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 17, 1985, do hereby certify that the Commission took the following actions in MUR 2074:

1. Decided by a vote of 6-0 to take no action against Charles E. Schumer at this time.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision.

2. Failed in a vote of 2-4 to pass a motion to find reason to believe that the State of New York violated 2 U.S.C. § 441a.

   Commissioners Harris and McDonald voted affirmatively for the decision; Commissioners Aikens, Elliott, Josefiak, and McGarry dissented.

(continued)

3. Failed in a vote of 3-3 to pass a motion to

   a) Find reason to believe that the Re-Elect Congressman Chuck Schumer Committee and Steven D. Goldenkranz, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

   b) Direct the Office of General Counsel to send the appropriate letters.

   Commissioners Josefiak, McDonald, and McGarry voted affirmatively for the motion. Commissioners Aikens, Elliott, and Harris dissented.

4. Decided by a vote of 6-0 to close the file in this matter.

   Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision.

Attest:

12-18-85
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Charles E. Schumer	)	
Re-Elect Congressman Chuck	)	
Schumer Committee and	)	MUR 2074
Steven D. Goldenkranz,	)	
as treasurer	)	
State of New York	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 10, 1985, do hereby certify that the Commission took the following actions in MUR 2074:

1. Failed in a vote of 3-2 to pass a motion to find reason to believe that the State of New York and Charles E. Schumer violated 2 U.S.C. § 441a.

   Commissioners Harris, Josefiak, and McDonald voted affirmatively for the motion; Commissioners Aikens and Elliott dissented. Commissioner McGarry was not present.

(continued)

2. Failed in a vote of 2-3 to pass a motion to -

   a) Take no action at this time with respect to Mr. Charles E. Schumer or the State of New York.

   b) Find reason to believe that the Re-Elect Congressman Chuck Schumer Committee and Steven D. Goldenkranz, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

   c) Direct the Office of General Counsel to send the appropriate letters.

   Commissioners Elliott and Josefiak voted affirmatively for the motion; Commissioners Aikens, Harris, and McDonald dissented. Commissioner McGarry was not present.

3. Agreed without objection to consider MUR 2074 at the executive session of December 17, 1985.

Attest:

12-12-85
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: DECEMBER 3, 1985

SUBJECT: OBJECTION - MUR 2074 - First General Counsel's Report

The above-named document was circulated to the Commission on Monday, December 2, 1985, 11:00.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	x
Commissioner Harris	x
Commissioner Josefiak	x
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, December 10, 1985.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: DECEMBER 3, 1985

SUBJECT: OBJECTION - MUR 2074 - General Counsel's Report Signed November 27, 1985

The above-named document was circulated to the Commission on Monday, December 2, 1985, 11:00.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	X
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, December 10, 1985.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: DECEMBER 4, 1985

SUBJECT: OBJECTION - MUR 2074 - First General Counsel's Report

The above-named document was circulated to the Commission on Monday, December 2, 1985, 11:00.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens	X
Commissioner Elliott	
Commissioner Harris	
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, December 10, 1985.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: DECEMBER 3, 1985

SUBJECT: OBJECTION - MUR 2074: First General Counsel's Report

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Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, December 10, 1985.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: November 27, 1985

SUBJECT: MUR 2074 - First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[XX]	Compliance	[XX]
Sensitive	[XX]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

SENSITIVE

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

85 NOV 29 P12:21

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION:
11/27/85 5:00pm

MUR #2074
DATE COMPLAINT RECEIVED BY OGC: August 19, 1985
DATE OF NOTIFICATION TO RESPONDENTS: August 28, 1985
STAFF MEMBER: Snyder

COMPLAINANT'S NAME: Laura E. Drager

RESPONDENTS' NAMES: Charles E. Schumer
Re-Elect Congressman
Chuck Schumer Committee
and Steven D. Goldenkranz,
as treasurer
State of New York

RELEVENT STATUTES: 2 U.S.C. §§ 434(b), 441a, 431(8) and (11)
11 C.F.R. §§ 100.7, 106.3

INTERNAL REPORTS CHECKED: Reports of Re-Elect Congressman Chuck Schumer Committee and Schumer for Congress Committee

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

Laura E. Drager, Assistant District Attorney, Kings County, New York, filed this complaint alleging that Charles E. Schumer, while a member of the New York State Assembly, utilized the services of state employees and state office facilities in connection with his candidacy for Congress in 1980. It is alleged that the use of said services and facilities constituted in-kind contributions to Mr. Schumer's campaign, and that the Schumer for Congress Committee (now known as the Re-Elect Congressman Chuck Schumer Committee and referred to hereinafter

as "the Committee") accepted these in-kind contributions and did not report them to the Federal Election Commission in violation of 2 U.S.C. § 434.

The complaint identified eight individuals, employed by and on the payroll of the State of New York, who allegedly performed services for the committee during their working hours. These individuals served, variously, on the staff of Mr. Schumer's legislative office in the State Office Building in Albany, New York, or in his district office, or on the staff of the Assembly's Committee on Oversight and Investigation, of which Mr. Schumer was chairman. All served at the pleasure of Mr. Schumer. According to the complaint, two of these individuals, Marc Canu and Carol Kellerman, were hired for the express purpose of working on the Schumer campaign. Some of the others, including Griffin Thompson and Susan Orlove, also spent 75%-80% of their working day on campaign activities.

Some others allegedly spent smaller parts of their time on such activites; Anna Barletta, for example, spent two hours a day taking dictation and typing letters requesting campaign contributions, while she was working at Mr. Schumer's Assembly office in Albany in the spring of 1980. The complaint also asserted that the committee made extensive use of New York State office facilities, equipment and supplies. (See Attachment 1).

Complainant concludes that Respondents violated 2 U.S.C. § 434 on the grounds that Respondents did not report to the Commission the fact that they had the benefit of employees' services, office facilities, equipment, and supplies, all paid for by the State of New York.

In response, Respondents acknowledge that state employees did work on the Congressional campaign, but maintain that "every Schumer aide who worked on the campaign also completed a full complement of State work; no one who wanted to work full-time on the campaign was permitted to remain on the Assembly payroll." Response, p. 17.

LEGAL AND FACTUAL ANALYSIS

The statute allegedly violated in this matter states in pertinent part:

> Each report under this section shall disclose-...
> (3)the identification of each -
> (A) person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year ..., together with the date and amount of any such contribution ....

2 U.S.C. 434(b).

The Federal Election Campaign Act ("the Act") also defines the term "contribution" as, "(i) any gift, subscription, loan, advance, or deposit of money or anything of value <u>made by any person</u> for the purpose of influencing any election for Federal

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office ..." 2 U.S.C. § 431(8)(A). (emphasis added). In the present case, respondents received the alleged contributions from the State of New York, which paid the salaries of the legislative employees who purportedly worked on the Schumer campaign, as well as for the office facilities in question. Thus, the complaint raises the threshold question whether a state may be considered a "person" under the Act.

The Act provides the following relevant definition:

> The term "Person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

2 U.S.C. § 431(11). The final clause of the foregoing definition, exempting the Federal Government, was added by amendment in 1979. Even before that time, however, the Commission had considered the question whether governmental bodies should be deemed "persons."

In MUR 246, the complaint alleged that the State of Georgia made an unreported contribution to the Committee for Jimmy Carter by printing a book entitled "A State in Action: Georgia 1971-1975" and providing copies to said committee. The Office of the General Counsel recommended a finding of no reason to believe that the Committee for Jimmy Carter violated 2 U.S.C. § 434(b) on the grounds that the State of Georgia did not fit the statutory definition of a "person," stating that "there appears to be no

legislative history to support a finding that a sovereign state is a person within the meaning of the Act." The Commission adopted the recommendation of the General Counsel. The Commission, at about the same time, announced a general policy that funds expended under the authority of <u>any</u> legislative body should not be deemed contributions. In response to an inquiry as to the effect under the Act of the provision of Federally funded research by the House Republican Conference, the House Republican Policy Committee, and the Republican Research Committee to Republican candidates for Congress, the Commission stated:

> Your letter further states that the activities of the three offices are funded through legislative appropriations. The Commission assumes that these legislative appropriations are the sole source of funds received by each of the said offices. The Commission does not believe that Congress intended that the receipt of legislatively appropriated funds should be deemed as the receipt of a statutory contribution as defined in 2 U.S.C. § 431 ....

A.O. 76-34. The Commission, at various times thereafter, declined to deem as contributions funds appropriated by legislative bodies, whether Federal (MUR's 672 and 916), state (MUR 246), or local (MUR 1297).

In 1979, Congress amended the Act's definition of a "person" by providing that "such term does not include the Federal Government or any authority of the Federal Government." 2 U.S.C. § 431(11). While this amendment ended any uncertainty as to

whether the Federal Government should be considered a "person" under the Act, it created an ambiguity as to the status of the states in this respect. Under the rules of statutory interpretation, it could be argued, the express inclusion of an exemption for the Federal government implicity excluded the granting of a similar exemption to state governments. Curtis v. Oregon State Correctional Inst., 200 v. App.530, 532 P.2d 398,400. Conversely, it has also been held that the legislature's refraining from amending a statutory provision constitutes implicit approval of a prior judicial interpretation of that provision, particularly where the legislature does amend some other part of the same statute. U.S. v. Elgin, Joliet, Eastern Railway Co., 298 U.S. 492 (1935); see also 73 Am. Jur. 2d, Statutes § 169.

In MUR 1686, the Commission considered the effect of this change in the law and determined that a state could be considered a "person" under the Act. In that matter, Governor Jim Hunt used a helicopter and airplane owed by the State of North Carolina in connection with his campaign for the United States Senate. It was alleged that the Hunt Committee had not made a proper allocation of values between the use of such aircraft for campaign purposes and use for official duties. See 11 C.F.R. § 106.3. Because the Hunt Committee may have received an in-kind contribution worth in excess of $1,000 due to the use of said aircraft, the Commission found reason to believe that the State

of North Carolina violated 2 U.S.C. § 441a(a)(1) by making an excessive contribution to a Federal candidate. See also AO 80-48 and MUR 1616. For the foregoing reasons, the Office of General Counsel recommends that the Commission adhere to the position it has taken most recently in MUR's 1686 and 1616 finding that the receipt of legislatively appropriated funds should be deemed as the receipt of a statutory contribution as defined in 2 U.S.C. § 431, and that a state may be considered a "person" under the Act.*/

We turn then to the question whether the payment of salaries to employees, whose supervisor directs them to work on behalf of a Federal candidate, constitutes a contribution under the Act. The Act defines "contribution" to include

> the payment by any person of compensation for the personal service of another person which are rendered to a political committee without charge for any purpose.

2 U.S.c. § 431(8)(A)(ii). The Commission's regulations clarify the application of the statute to a situation such as is involved in the present Matter:

> No compensation is considered paid to any employee under any of the following conditions: (i) If an employee is paid on an hourly or salaried basis and is expected to

*/ This Office makes no recommendation at this time concerning a possible violation by the State of New York. It appears appropriate to focus this investigation on whether Mr. Schumer improperly and without authorization directed those employees of the State who were under his supervision to perform services on behalf of his own Congressional campaign.

> work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time.

11 C.F.R. § 100.7(a)(3)(i).

In the present case, it is undisputed that employees did work in the campaign. There appears to be a material issue of fact whether the employees "made up" this time by doing additional work for the State of New York. For example, Complainant Drager states in her affidavit that Griffin Thompson, "has informed me that, during the late winter and spring of 1980, while receiving a salary as an employee of the Committee, he spent as much as eighty percent of his time" working in various ways on the Congressional campaign.

In response, Respondents assert that this statement is "simply untrue." But Respondents do not cite any source to support this assertion; it is not clear whether they mean that Thompson did not make the statement attributed to him, or that Thompson made a false statement. The Complaint cites statements by other staffers, such as Mark Canu, that they worked on the campaign during working hours, and Respondents generally deny these assertions as well, without, in most cases, providing specific evidence that the statements were not made or were false. Only in the case of Carol Kellerman does the response deal effectively with the 11 C.F.R. § 100.7(a)(3)(i) issue,

stating that: "The Complaint alleges that she [Kellerman] spent approximately 35% of her time 'exclusively on campaign functions;' what the Complaint fails to reveal is that Kellerman worked 16 hours every day, and spent far more than a civil servant's eight-hour day on State work." The response does not state, however, whether the other staff members cited in the complaint also put in full eight-hour days on behalf of the State, over and above the time spent on the Congressional campaign.

The response indicates, instead, that it was not necessary for all the staffers to work any specific number of hours per week on legislative duties. Respondents refer to a statement by Stanley Fink, Speaker of the New York State Assembly, that

> there are no set working hours for Assembly employees; that the amount of work to be done varies depending on whether the legislature is in or out of session; that there is no minimum number of hours that employees have to spend on Assembly duties in order to justify their salaries; and that Assemblymen are free to pay their staff whatever their services were worth, regardless of the number of hours they spend on State business, as long as the employees are not "no shows." Indeed, many legislative employees were on the State payroll all year, yet performed State work only while the legislature was in session.

Response, pps. 16-17. Thus Respondents conclude, as noted above, "Every Schumer aide who worked on the campaign also completed a full complement of State work; no one who wanted to work full-time on the campaign was permitted to remain on the Assembly payroll." Id., p. 17.

But this response fails to establish that the staffers in question put in the number of hours on their legislative duties normally required of them. Respondents argue that it is meaningless to allege that "particular employees spent 75% to 80% of their time doing campaign work," since "depending on the time of year and whether the Assembly was in session or not, Schumer's aides may have had only 15-20 hours or 60-70 hours of work to do each week. But since Schumer's staff continued to perform all their assigned State tasks, one must conclude that any campaign work they performed was 'incidental' to their regular jobs as the Commission understands that term," Id. pps. 35-36.

This argument leaves unresolved the problem of determining how much legislative work was required of these staffers. It does not satisfy the requirements of the Act and the Commission's regulations to state, in conclusory fashion, that the employees were doing all the legislative work required of them at the time, particularly where their supervisor was also the condidate in whose campaign they participated. Rather, Respondents should be required to demonstrate, based on objective standards, that a particular number of hours per week of legislative work was required of these staffers, either through comparisons with the amount of work performed under like circumstances in past years or in reference to the specific level of legislative activity ongoing at the relevant times, and that the staffers did indeed work that required number of hours. Absent such a showing, there

remains a issue of fact as to whether Respondents received a contribution under the standards and definitions of 2 U.S.C. § 431(8)(A)(ii) and 11 C.F.R. § 100.7(a)(3)(i), and this issue can only be resolved through investigation of the points raised herein.

Respondents raised four further arguments in their response that may be considered briefly. First, the assertion that the staffers' work on the Schumer Campaign constitutes volunteer services under 2 U.S.C. § 431(8)(B)(i) is not persuasive because, based on the Complaint, these staffers were paid for the work they did on behalf of Respondents. Second, this Office does not agree that the Committee's use of State facilities was merely "incidental" under 11 C.F.R. § 114.9(a)(1)(i), since that provision applies to corporate facilities, and, moreover the conclusion that such work was incidental can only be based on a showing that the employees performed their normal amount of work for the particular period, and whether or not they did so is, as already noted, an unresolved issue of fact in this Matter. Third, the fact that the election at issue occurred five years ago has no relevance as a matter of law since there is no statute of limitations on violations, although the Commission may take such fact into consideration as a mitigating factor. Fourth, the fact that the committee no longer exists under the name used in 1980 is likewise irrelevant, since Respondent the Re-Elect Chuck Schumer Committee constitutes a successor organization to the former Schumer for Congress Committee.

In summary, the payments by the State of New York of salaries of members of Charles Schumer's legislative staff, who allegedly worked on Mr. Schumer's Congressional campaign during their regular hours, may have resulted in an in-kind contribution by the State of New York to the Committee. It is the view of the General Counsel that a state may be considered a person under the Act, and thus may be deemed to have made a contribution. A payment for services, which is rendered to a political committee without charge, is deemed a contribution, unless the employees, who take time from their regular work to engage in political activities, make up that time within a reasonable period. 11 C.F.R. § 100.7(a)(3)(i). Since Respondents have not shown that all the staffers made up for the time spent on the campaign in order to fulfill their normal work schedule, it appears that the campaign activities of these legislative staffers constitute contributions under the Act. Since the value of these services may exceed $1,000, there is reason to believe that the Committee and its treasurer violated 2 U.S.C. § 441a(f) by accepting the prohibited contribution, and 2 U.S.C. § 434 by failing to report receipt of the contribution. There is no reason to believe, however, that Mr. Schumer himself violated the Act, as the contributions in question are deemed to have been accepted by his committee.

RECOMMENDATIONS

1. Find no reason to believe that Charles E. Schumer violated any provision of the Act in this matter;

2. Find reason to believe that the Re-Elect Congressman Chuck Schumer Committee and Steven D. Goldenkranz, as treasurer, violated 2 U.S.C. §§ 434 and 441a(f).

3. Approve and send the attached letters.

Charles N. Steele
General Counsel

November 27, 1985
Date

BY: Kenneth A. Gross
Associate General Counsel

Attachments
1. Complaint
2. Response
3. Proposed letter to Respondents

CS #1

3 5 0 4 0 5 8 2 5 1 0

attachment 1

FEDERAL ELECTION COMMISSION
COMPLAINT PURSUANT TO 2 U.S.C.§ 437g

Name of Complainant: LAURA E. DRAGER

Address of Complainant: Office of the District Attorney
Kings County
210 Joralemon Street
Brooklyn, New York 11201

Name of Respondents: Representative Charles E. Schumer
Schumer for Congress

Laura E. Drager deposes and says:

1. I am an Assistant District Attorney and Chief of the Rackets Bureau in the Office the the District Attorney, Kings County, State of New York. I submit this complaint to the Federal Election Commission for review pursuant to the authority conferred on the Commission by 2 U.S.C. §437(g)(a)(1). The allegations contained herein are based upon the statements of witnesses personally interviewed by me or members of this office under my supervision, notes of witness interviews obtained from the Office of the United States Attorney for the Eastern District of New York, and records now in the possession of the Office of the District Attorney of Kings County.

2. This office recently completed an investigation under my supervision into allegations that Charles E. Schumer, currently a member of the United States House of Representatives, while a member of the New York State Assembly, made extensive use of

state-paid employees of his Assembly staff and state office facilities to promote his candidacy in 1980 to become the United States Representative for the Tenth Congressional District of New York. Mr. Schumer was subsequently elected to that congressional seat in November, 1980. Our investigation showed that he made such use of state compensated workers and state facilities, and that such use was not reported by Schumer or the officers of his campaign committee as required by 2 U.S.C.§434 (b).

3. During 1981 and 1982, the United States Attorney for the Eastern District of New York conducted an investigation into these allegations against Mr. Schumer and recommended an indictment. The United States Department of Justice overruled that recommendation, however, and announced that the matter was "not appropriate for federal prosecution." Because the U.S. Attorney and the Department of Justice had not exonerated Mr. Schumer this office conducted its own investigation to determine if a crime might have been committed which was within our jurisdiction. We have concluded that there is no basis for criminal prosecution under New York's laws. However, it appears to us that Charles Schumer and officers of his campaign committee violated certain provisions of the Federal Election Campaigns Act. I have been advised by the staff of the United States Attorney's Office for the Eastern District of New York that federal prosecutors have never referred this matter to the Commission.

4. At the time Charles Schumer announced his candidacy for Congress in January, 1980, he had been a member of the New York State Assembly since 1975. He had an office in Albany in the State Office Building and an office in his district. He also was the chair of the Assembly's Committee on Oversight and Investigation ("the Committee"), a position he had held since January, 1979. The Committee employees and those who worked at his district and Albany offices were responsible to Mr. Schumer, and served at his pleasure. As set forth more fully below between January, 1980 and September, 1980, members of the staff of the Committee and of Schumer's other offices, while on the payroll of New York State, devoted substantial periods of time - in some cases, almost all their time - to working on his congressional campaign. In fact, some staffers were specifically hired with the intent that they would devote substantial amounts of their time to campaign activities. This work was performed during working hours and in many cases at Schumer's state offices. As set forth more fully below, the facilities of the Committee, including office space, photocopying equipment and telephone equipment, were used by Schumer's employees on behalf of the campaign without any reporting of such uses to the Federal Election Commission.

5. At the very outset of his campaign, Charles Schumer set out to hire a campaign manager who would also perform some assembly duties. It was Mr. Schumer's intent to place this per-

son on his state payroll for a period of time during which some of his/her responsibilites would be strictly campaign oriented. The first person hired for this position was Marc Canu who was on the state payroll from January 7, 1980 until March 31, 1980. He was replaced by Carol Kellerman who was on the state payroll from March 10, 1980 until May 7, 1980, and again after the general election from November of 1980 until the end of December 1980. Both Canu and Kellerman were interviewed and hired by Congressman Schumer. Canu has informed me that by February, 1980, he was devoting at least eighty percent of his worktime to the campaign. Kellerman has admitted to me that while she was on the state payroll in the Spring of 1980, she spent thirty-five percent of her worktime exclusively on campaign functions. (She has further informed me that she spent an additional thirty-five percent of her time on work that qualified as both state and campaign work.)

6. Canu has informed me that the campaign work performed by him on state time involved distribution of campaign literature, setting up fund-raising coffee klatches, updating a mailing list, arranging for appearances by Schumer at different functions, contacting volunteers and attempting to locate a campaign headquarters.

7. Kellerman has informed me that her campaign duties performed on state time included locating a campaign headquarters,

developing the prime voter list (which was to be used exclusively for campaign mailings and telephone calls), reviewing district voting patterns, hiring campaign workers and a pollster and planning the campaign budget.

8. In addition to Canu and Kellerman, who were hired specifically to handle campaign matters, other staffers performed campaign functions during working hours. Griffin Thompson, a Committee staffer, has informed me that, during the late winter and spring of 1980, while receiving a salary as an employee of the Committee, he spent as much as eighty percent of his time in such activities as searching for a campaign headquarters, developing campaign position papers, contacting campaign volunteer workers, assisting in the preparation of the prime voter list by reviewing registration cards at the Board of Elections, and, along with others, xeroxing that list at the offices of the Committee using the photocopier belonging to New York State. He also assisted in campaign mailings and made some deliveries to the campaign treasurer, Richard Lukins.

9. Susan Orlove, an employee of the District Office, has informed me that she was personally instructed by Mr. Schumer during the pendency of the campaign to drop all of her state work and engage solely in campaign fund raising activities. Orlove, in fact, spent, during certain periods, about seventy- five percent of her state work time on the campaign. The work she performed included making telephone calls and sending follow-up

letters to solicit contributions from Political Action Committees. These letters were typed at the District Office by Honee Beck, an employee of the District Office. During the final two weeks of the primary campaign, Orlove worked at the campaign headquarters. During this entire period she continued to receive her regular salary from New York State.

10. Janet Kalson, a secretary for the Committee, has informed me that she assisted in the preparation of campaign mailings and the prime voter list. She also spent two weeks photocopying the campaign prime voter list at the Committee Office. This work was performed on state time.

11. Joshua Howard, a Committee staffer in charge of public relations, prepared all campaign literature for the duration of the campaign and all campaign press releases up to the summer of 1980. Some of this work was performed on state time.

12. Anna Barletta, a secretary at Mr. Schumer's Albany Assembly Office, has stated that during the spring of 1980, she spent up to two hours a day on state time receiving dictation from Schumer and typing letters seeking campaign contributions.

13. Apart from work performed by state employees, extensive use was made of state facilities, equipment, and office supplies, none of which was reported in the campaign filings. Joshua Howard, Janet Kalson and Griffin Thompson each informed me that a telephone line at the Committee headquarters was assigned to the use of the campaign. Committee employees were instructed not

to answer that telephone as the other telephones were answered by giving out the Committee's name, but instead to answer by giving only the number of the telephone. Similarly, (as stated in ¶9 above) Susan Orlove used a District Office telephone to conduct campaign fundraising. Extensive use was made of state photocopying facilities for preparation of the prime voter list. This fact has been confirmed by Carol Kellerman, Griffin Thompson, Janet Kalson and Steven Goldberg, a campaign employee. I have been informed by Janet Kalson, Anna Barletta and Susan Orlove that state office equipment was used for campaign correspondence at each of Representative Schumer's three state offices. In addition, I have been informed by Steven Goldberg, Griffin Thompson and Joshua Howard that state office supplies such as staplers, paper, pens, rubber bands and paper clips were taken and used for the campaign. All of these activities obviously also entailed the use of state office space on behalf of the campaign.

14. On information and belief the cost to the campaign of comparable office space, the telephones, and the photocopiers, would have been substantial. Neither Charles Schumer nor the campaign paid for these items, and the fact that New York State paid for them is not reflected in any of Charles Schumer's filings with the Federal Election Commission. Nor do his filings reflect as campaign contributions the salaries which his employees received from New York State while they worked on his campaign.

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15. After reviewing the relevant statutes, it is my opinion that in filing reports with the Federal Election Commission, Mr. Schumer and his campaign committee should have reported as campaign contributions the value of the use he made of New York State facilities and employees set forth above and that his failure to do so violates 2 U.S.C. §434 (b).

I request that the Commission investigate these charges and initiate appropriate action pursuant to the authority conferred on the Commission by 2 U.S.C. §437g.

Laura E. Drager
LAURA E. DRAGER
ASSISTANT DISTRICT ATTORNEY

Sworn to before me
this 16 day
of August, 1985

Seymour I. Baldinger

SEYMOUR I. BALDINGER
NOTARY PUBLIC, State of New York
No. -5157975
Qualified in Kings County
Term Expires March 30, 1986

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF KINGS)

I,_____, being duly sworn, state that I am employed in the Office of the District Attorney for Kings County and am over the age of 18.

That on the_____day of_____19____I served this document by enclosing a true copy in a postpaid envelope addressed to:_____

_____

Attorney for:_____

at his/her office and by causing it to be deposited in an official depository of the United States Postal Service within the State of New York.

Sworn to before me this_____ _____

day of_____ 19____

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
COUNTY OF KINGS)

I,_____, being duly sworn, state that I am employed in the Office of the District Attorney for Kings County and am over the age of 18.

That on the_____day of_____19____I served this document on_____

_____ _____

Attorney(s) for_____

located at:_____, by causing a true copy to be left with the person in charge of his/her office, there being no one present who was authorized to give an admission of service.

_____

Sworn to before me this_____

day of_____19____

Please take notice that this is a copy

of a

entered and filed in the office of the

Clerk of Kings County.

Dated,

Sincerely,

Elizabeth Holtzman
District Attorney,
Kings County.

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

To

Attorney for

APP-10A 4/83

OFFICE OF
ELIZABETH HOLTZMAN
KINGS COUNTY DISTRICT ATTORNEY

FEDERAL ELECTION COMMISSION

COMPLAINT PURSUANT TO 2 USC SECTION 437g

ELIZABETH HOLTZMAN
District Attorney,
Kings County

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

Due and timely service of a copy
of the attached is admitted.

Dated,

Attorney for

8 5 0 4 0 1 2 0 2 5 2 0

attachment 2

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RANDOLPH E. PAUL (1946-1956)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

ADRIAN W. DEWIND
LLOYD K. GARRISON
JAMES S. LEWIS
MORDECAI ROCHLIN
HOWARD A. SEITZ
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MARTIN LONDON
BAYLESS MANNING
JOHN L. MASTRENGALE
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SOUSER MCCONNON
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DONALD F. MOORE
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JOHN J. O'NEIL
STUART I. ORAN
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LEONARD V. QUIGLEY
SIMON H. RIFKIND
STUART ROBINOWITZ
SIDNEY S. ROSDEITCHER
STEVEN B. ROSENFELD
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EILEEN S. SILVERS
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ALLEN L. THOMAS
JUDITH R. THOYER
JAY TOPKIS
JOSE E. TRIAS
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ALFRED D. YOUNGWOOD
NORMAN ZELENKO

WRITER'S DIRECT DIAL NUMBER

(212) 644-8132

September 25, 1985

FEC
AID: 57
SEP 26 P 1: 29

Federal Election Commission
Washington, D.C. 20463

Attention: Charles Snyder, Esq.

Re: MUR 2074

Dear Mr. Snyder:

On behalf of our clients, Representative Charles E. Schumer and the Committee to Re-Elect Charles Schumer, we are pleased to take this opportunity to respond to your letter of August 28, 1985, and to the Complaint filed with the Commission by the District Attorney of Kings County, New York. By her complaint, the District Attorney seeks to initiate a third investigation into whether then Assemblyman Schumer did something wrong by permitting members of his New York State Assembly staff to do campaign work on a voluntary basis, in addition to performing their regular duties as Assembly staffers -- even though the FECA and the Commission's rulings make it clear that work by a legislative assistant in a

legislator's campaign does not constitute a reportable "contribution" and even though this Commission does not deem either legislatively appropriate funds or items and services purchased with those funds to be "contributions." In light of these rulings, the Complaint is defective on its face and should be dismissed.

Congressman Schumer's 1980 campaign has been subjected to the most intensive investigation since early 1981, first by the United States Attorney for the Eastern District of New York and then by the Kings County District Attorney. Both the Justice Department and the District Attorney concluded, after extensive investigations, that prosecution of Congressman Schumer or any member of his staff was unwarranted. Of particular interest to this Commission, in January 1983, the Department of Justice found that this matter was "not appropriate for federal prosecution," even though the United States Attorney specifically proposed to indict Congressman Schumer on the ground that the very actions that form the basis of the Complaint now before you violated the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 432(b)(1) and 434(b) (FECA). In rejecting the proposed prosecution, the Justice Department did not refer the matter to you for a civil investigation, although it had that option. The Justice Department made these determinations

after reviewing our brief discussing the applicability of the Federal Election Campaign Act of 1971 and the reasons why no violation of the Act had been committed. None of this is revealed to you in the Complaint.

The irony inherent in this complaint is that the conduct of which the District Attorney here complains is conduct that she herself engaged in and that every other politician regularly engages in: permitting staff members to remain on the public payroll while working on campaigns. In so doing, the District Attorney and other politicians are merely following rulings of this Commission and of the courts that have grappled with this question. Campaigning by political staff is a tradition deeply ingrained in our political system. This Commission has repeatedly opined that salaries paid from official funds to a Presidential or Congressional staff member need not be reported as campaign contributions. This Commission has also ruled that legislatively appropriated funds (including monies appropriated for staffing and equipping a legislator's office) should not be deemed a statutory "contribution" under 2 U.S.C. § 431(8). We submit that these pronouncements, coupled with a reading of the statute itself, compel the conclusion that Congressman Schumer did not violate the FECA in 1980.

Similarly, courts confronted with the question of whether legislators may properly permit their staff to work on campaigns -- even, as in one case, work on them "extensively and exclusively" -- have decided that the matter is simply not justiciable. These courts have ruled that it is all but impossible to distinguish between "campaign" work and some of the representational duties regularly performed by elected officials. And they have noted that legislatures have declined to place any limits on staff participation in campaigns, even after studying the question.

Moreover, we make these observations assuming the allegations of the Complaint to be true. However, as might be expected, the Complaint materially misstates, and omits to state, facts that are highly relevant to any determination by the Commission. We welcome this opportunity to set the record straight.

For four years, the scarce resources of the Federal and State governments have been expended in a futile attempt to prove that Congressman Schumer did something illegal by permitting his staff members to volunteer to work on his campaign in their spare time. It is time for a denouement. We therefore respectfully ask the Commission to issue a finding of no probable cause and close this matter for once and for all.

Statement of Facts

The Complaint in this matter alleges that members of Schumer's staff, while on the New York State payroll, devoted substantial periods of time to working on his 1980 Congressional campaign. The Complaint further alleges that this work was performed "during working hours" and that the workers made use of office space and office equipment paid for by the State of New York. Finally, the Complaint alleges that Schumer put two individuals on his State payroll with the intention that they devote substantial amounts of their time to campaign activities while employed by New York State.

The Complaint is both incomplete and inaccurate. It fails to set forth critical facts about the participation of Assembly staffers in Congressman Schumer's 1980 campaign, and it varies from the facts as we, from our extensive conversations with the participant witnesses and their counsel, know them to be. Therefore, while we believe this matter can and should be closed without regard to the factual allegations, we submit our own precis of the facts relevant to any inquiry by the Commission.

Schumer's Early Legislative Career

Schumer was first elected to the New York State Assembly as soon as he graduated from Harvard Law School in 1974. He served for six years until 1980.

During Schumer's years in the Assembly, he opened a constituent-service office in his District to help constituents with problems such as rent disputes, heating problems, local sanitation services, Medicare and Social Security problems, and the like. Schumer encouraged his constituents to come to him for help with such matters; from his earliest days as an Assemblyman, he had staff or volunteers pass out cards giving his office phone number as a place constituents could call with questions or problems.

Partly as a result of the modest allotment he received for staff and partly as a result of his own personal style, Schumer handled much of this case work himself. He returned nearly all the calls that came into his District Office, answered his own correspondence and dealt with the civic, religious and neighborhood leaders in his District.

In 1977, Schumer was appointed Chairman of the Assembly's Subcommittee on City Management and Government; in 1979, he became Chairman of the Standing Committee on Legislative Oversight and Investigation. Each position augmented Schumer's staff allotment, and Schumer hired

additional staff for his District Office. Nonetheless, through 1979, Schumer himself continued to handle many of the approximately 200 constituent cases that came into the office each week. He also stayed in personal contact with community leaders. Indeed, he spent a large proportion of his time doing District liaison work.

Assemblyman Schumer Decides to Run for Congress

By mid-1979, it was apparent that Representative Elizabeth Holtzman wanted to run for the United States Senate seat held by Jacob K. Javits. Assemblyman Schumer explored the possibility of running for Holtzman's seat during the fall of 1979; he announced his candidacy on January 13, 1980.

Schumer knew that he could no longer expect to handle constituent cases in his District, personally attend to the concerns of community leaders, oversee the work of the Assembly Committee of which he was Chairman and edit its reports, and continue to perform his legislative duties in Albany while he was raising funds for a contested Congressional campaign. Nonetheless, if Schumer was to be elected to Congress, it was more important than ever that these representational duties not be neglected.

So Schumer concluded that he needed to hire an "alter ego" who could take over some of the responsibilities

he had never before delegated. Schumer wanted his "alter ego" to do three different things for him.

During Phase One, the person hired would replace him in the District and take over the constituent case work and community leader liaison job that Schumer had always handled personally, as well as exercise some oversight over the activities of the Committee on Legislative Oversight. The "alter ego" would undoubtedly do some groundwork for the Congressional campaign, but those duties would be secondary; Schumer did not even have an opponent at the time, so there was no campaign to run. Schumer expected that this phase would last until the end of May, during which time the staff member -- who would be doing primarily State work -- would be on the State payroll.

During Phase Two, Schumer's new assistant would run his Congressional campaign on a more-or-less full time basis. Schumer intended from the very beginning that his "alter ego" would leave the State payroll and and be compensated out of campaign funds once campaign work predominated over State work, although the person would continue to do State work as well. Schumer thought Phase Two would begin around June 1.

Assuming Schumer was elected to Congress, during Phase Three the "alter ego" would rejoin the State payroll to oversee the winding down of his District and Committee

offices. Schumer hoped the person's familiarity with his constituents would enable him to become the District liaison on his Congressional office staff.

Two persons held the "alter ego" job -- Mark Canu, followed by Carol Kellermann.

Canu is Hired

On the recommendation of Norman Adler, the Political Action Director of District Counsel #37 of the American Federation of State, County & Municipal Employees, he hired Mark Canu for the job. At the time, Canu was liaison from the Borough of Staten Island to Mayor Koch's Office of Neighborhood Services. He had worked in local politics on Staten Island for a number of years.

Four people besides Schumer interviewed Canu: Iris Weinshall (now Schumer's wife), Peter Samuels (Schumer's law school classmate, now a partner at Proskauer, Rose, Goetz & Mendelsohn), and Dan Feldman and Joshua Howard, the senior members of Schumer's Committee staff. Schumer, Weinshall and Samuels all outlined the three phases of the job to Canu; they told Canu that he would start by doing State work, then transfer to the campaign payroll when there was a campaign to run.

Canu is Fired and
Kellermann is Hired

Canu accepted the job and went on the Committee's payroll January 7. From the beginning, his performance was unacceptable. He failed to assume Schumer's role of meeting with District leaders and dealing with their problems. He took no affirmative steps to do casework for constituents, so the regular caseworkers simply by-passed him and took their questions directly to Schumer. He never reorganized the District Office, as Schumer wanted. Thus, while Schumer had hired Canu to do primarily State work, Canu simply failed to pick up the ball.

The Complaint alleges (¶ 5) that, by February 1980, Canu was devoting "at least eighty percent of his work time to the campaign." Since there was no campaign and no opponents, this allegation is on its face absurd. Some of the things Canu helped with were undoubtedly helpful to Schumer's political aspirations. For example, Canu handed out "calling cards" telling constituents to telephone Schumer's office if they had problems -- a technique Schumer had used for years to call himself to the attention of voters. But that was as close as Canu ever came to "campaigning."

Moreover, Canu not only did not do the State work he was hired to do, he also showed little initiative in doing even the most preliminary groundwork for the ultimate campaign.

By February 1980, it was apparent to Schumer that Canu could not be his "alter ego;" their styles simply did not mesh. Canu agreed to leave the job as soon as a successor could be found. Canu remained on the payroll for a month, helping with the on-going Committee investigation into EMS -- clearly State work.

Meanwhile, Schumer needed to find a new "alter ego." He decided to hire Carol Kellermann, a law school friend and former Legal Aid attorney with substantial political experience.

In late February 1980, Schumer asked Kellermann to work for him. Kellermann told Schumer that she wanted carte blanche to set her own agenda and her own priorities; she announced that she would not tolerate interference from Schumer or constant questioning by him. Schumer, relieved that he had found someone who could take charge of his office and his campaign, told Kellermann, "You'll be my Number One person."

After Kellermann agreed to work for Schumer, they discussed logistics. Schumer explained that she would be on

the Committee payroll doing primarily State work and only incidental campaign work, until campaign activities began to predominate over her legislative functions, at which point she would go off the State payroll and onto the campaign payroll. He told Kellermann he anticipated the change would come around June 1.

Kellermann's Work
During "Phase One"

Kellermann went to work for Schumer on March 10 and stayed on the Assembly payroll only until April 30. During that time, she served as Schumer's Administrative Assistant,[1/] doing District, Committee and legislative work. She also did some campaign groundwork. The Complaint alleges that she spent approximately 35% of her time "exclusively on campaign functions;" what the Complaint fails to reveal is that Kellermann worked 16 hours every day, and spent far more than a civil servant's eight-hour day on State work.

Kellermann's District Work: Kellermann spent most of her time during these seven weeks in Schumer's District

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1/ Originally Kellermann was so classified on the payroll form. Her title was later changed to "Principal Assistant." Both titles accurately described her broad-ranging functions.

Office in Brooklyn, where she found the most pressing problems. She devoted her initial efforts to reorganizing the office so that it could run efficiently, even in Schumer's absence. Kellermann screened all of Schumer's incoming mail and answered as much as she could on Schumer's behalf. She revamped the procedures used to schedule his time and mapped out his schedule in advance, making her own decisions about where he would go and whom he would see. She screened his telephone messages and answered his calls. She evaluated the staffing in the District Office and recommended that another case worker be hired.

Kellermann made herself available to community leaders and resolved as many of their problems as she could. She dealt with supplemental budget requests from community organization. She also helped the District Office staff with case work, particularly where legal problems were involved and her experience as a lawyer proved useful.

Kellermann worked on a number of projects of importance to Schumer's Assembly constituents. To cite but a few examples, she helped organize a car patrol to transport senior citizens to lunch at a community center during the New York City transit strike. At the request of the Brooklyn District Attorney, she tried to convince frightened witnesses to testify in a criminal case against a phony home improve-

ments contractor. She participated in negotiations with developers and tenants who were affected by the Avenue K Housing Rehabilitation Project, for which Schumer had obtained State funding. Kellermann also handled a neighborhood controversy involving expansion of the Community Hospital of Brooklyn and researched the City Council's repeal of the veteran's property tax exemption.

Committee Work: Kellermann found the Legislative Oversight Committee to be well organized and running smoothly. However, Kellermann familiarized herself with the Committee's previous work and its on-going operations. She also began to oversee its agenda. She reviewed ideas for new investigations and approved or rejected them. Kellermann also reviewed old investigations that had not been completed to see whether they should be updated and publicized.

Legislative Work: Kellermann not only performed the classic duties of the administrative assistant of a legislator, but in addition served as Schumer's principal legislative adviser. He consulted with her at length about how he should vote on all critical issues, especially the death penalty and a bill that would have permitted parents to kidnap their children from "cults." Kellermann also advised Schumer about his legislative agenda, particularly whether he

should respond to requests from the Democratic leadership that he go to Albany for critical votes.

Campaign Work: Kellermann's State-oriented duties kept her busier than most full-time jobs. But she laid the groundwork for the campaign in her spare time. Kellermann selected a polling firm, hired the first paid members of the campaign staff, drew up a budget, reviewed district voting results, opened campaign bank accounts and ordered a poster. She spent several weekends searching for a headquarters, and she helped clean and paint the office that was eventually found.

Kellermann Leaves the State Payroll

By late April, Kellermann had reorganized the District Office to her satisfaction. The separate campaign office had been opened on April 14, staffed with persons paid from campaign funds. Other staff and volunteers began to come on board. And after Schumer's principal opponent, Susan Alter, announced her candidacy on April 14, the campaign began to get off the ground. Therefore, Kellermann went to Schumer and told him that she wanted to work out of the campaign headquarters and intended to take herself off the State payroll. Schumer believed that Kellermann was cheating herself, as she would still be doing considerable State work

during May. He argued that she should stay on the State payroll for another month. But Kellermann insisted, and Schumer acceded to her request.

Kellermann left the State payroll April 30 and began to run Schumer's campaign in earnest. However, she continued to do casework, monitor the work of the Committee, and perform other legislative functions -- even though she was not being paid by the State of New York for this concededly state work.

Schumer's Assembly Staff
Helps With His Campaign

Certain members of Schumer's Assembly staff did work on his campaign between May and the September 9 primary. Stanley Fink, Speaker of the New York State Assembly, told government investigators that there is no Assembly rule that bars Assembly staffers from campaigning, and that staff members frequently work on political campaigns.[2/] He also informed those investigators that there are no set working hours for Assembly employees; that the amount of work to be done varies depending on whether the

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2/ New York does not have a "Hatch Act" covering employees of the State Assembly.

legislature is in or out of session; that there is no minimum number of hours that employees have to spend on Assembly business in order to justify their salaries; and that Assemblymen are free to pay their staff whatever their services were worth, regardless of the number of hours they spend on State business, as long as the employees are not "no shows." Indeed, many legislative employees were on the State payroll all year, yet performed State work only while the legislature was in session.

Nonetheless, the District Attorney alleges in her complaint that Congressman Schumer received reportable campaign contributions from New York State by permitting employees who were on the payroll to work on his campaign when they were not busy with their other duties. Nothing could be further from the truth. Every Schumer aide who worked on the campaign also completed a full complement of State work; no one who wanted to work full-time on the campaign was permitted to remain on the Assembly payroll. Significantly, the Complaint does not allege otherwise.

It is important to note that no State employee was coerced into doing campaign work for Schumer; only volunteers worked on the campaign. Schumer was adamant on that point. He readily agreed, for example, when Committee staffer Robert O'Melia said he did not want to do any campaign work. Not

only was O'Melia not "punished" for refusing to volunteer, he got a raise during 1980. It was not necessary to dragoon staff into working on the campaign; most were eager to be involved in this new activity. The very type of person who is attracted to work for a legislator is by nature interested in politics -- a proposition that applies not only to state aides, but also to congressional assistants.

Here is what the staff did during the campaign:

(a) Susan Orlove, a district case worker who was on the Committee payroll, organized coffee klatches at which Schumer could appear and served as the Assemblyman's liaison with labor organizations and other political action committees. However, Orlove continued to do her case work at the District Office. Contrary to the allegation of the Complaint (¶ 9), Schumer never told Orlove to stop her District work and devote all her efforts to the campaign. In fact, Kellermann asked that Orlove work on the campaign full time, but Schumer refused to permit that because he wanted her to continue with her case work.

(b) Griff Thompson, a research aide on the Committee, also did some campaign work. Steve Goldberg (a staffer paid by the campaign committee) asked Kellermann if Thompson could help him compile a District voter list. Kellermann told Goldberg that was acceptable, so Thompson

3 5 0 4 0 5 2 6 5 3 8

went to the Board of Election twelve times to review voting information. Thompson continued to perform all of his assigned Committee work during the campaign; he assisted with investigations into solid waste disposal, "sanit maids" (an idea to have a special sanitations summons force), and training procedures for lifeguards at New York City swimming pools.

The Complaint alleges (¶ 8) that Thompson spent as much as 80% of his time in such activities as searching for campaign headquarters and developing campaign position papers. This is simply untrue. Thompson, along with Kellermann (on weekends) and Steve Goldberg (a paid staffer), helped search for and found the headquarters, but he spend minimal time on that task. And Thompson's "position papers," as the Complaint calls them, were analyses of issues of interest to Schumer's Assembly constituents. One, for example, outlined the impact of the Soviet grain embargo on the emigration prospects of Soviet Jews -- an issue of great concern to Schumer's mostly Jewish constituents. The same issue was undoubtedly of interest to voters in the Congressional election, but the paper constituted part of the legitimate work of an elected official reporting to his District on an issue of relevance to its people. It would

have been useful in dealing with Schumer's constituents even if Schumer had not been running for Congress.

Indeed, these "position papers" demonstrate that it is impossible to divide a legislative aide's duties into "campaign" work and "legislative" work. Legislators are always running for election, and a good deal of their time is spent attending to the needs of constituents and making sure that constituents and legislators are well informed of each others' interests and positions. Such constituent work and issue-oriented work fall within the ambit of "appropriate" representational duties of a legislator, United States v. Brewster, 408 U.S. 501, 512 (1972). Courts have been asked several times to draw a distinction between campaign work and representational work, but have decided that the matter is non-justiciable in the absence of readily ascertainable standards for drawing lines between official and political business. Those same courts have readily acknowledged that no such standards exist. Joseph v. Cannon, 642 F.2d 1373 (D.C. Cir. 1981), cert. denied, 455 U.S. 999 (1982); Common Cause v. Bolger, No. 1887-73, mem. op. (D.D.C. 1982).

Three years ago, the Solicitor General of the United States urged the Supreme Court to decline certiorari from a Court of Appeals decision dismissing a civil complaint in a qui tam proceeding. Joseph v. Cannon, supra. The

complaint in Cannon alleged that a United States Senator had violated the False Claims Act by permitting one of his staff members to work "extensively and exclusively" on a campaign while on the Senate payroll. The Court of Appeals had upheld dismissal of the complaint because it could not draw any line between campaign work and other legislative staff work. The Solicitor General agreed:

> It is difficult to distinguish between participating in a Senator's campaigns and helping him perform such legitimate official functions as serving constituents, ascertaining their views, and gathering information from them or explaining the Senator's position to them. See United States v. Brewster, 408 U.S. 501, 512 (1972); S. Rep. No. 95-500, 95th Cong., 1st Sess. 4 (1977) ("[A] staff members' Senate duties*** necessarily encompass political and representational responsibilities, as well as legislative administration or clerical ones, and are often performed during irregular and unconventional work hours.").
>
> If some independent standards existed for making the distinction between official activities and campaign activities, it might be possible to define the duties of a Senator's aide in a way that barred him from collecting a salary for engaging in campaign activities. But in the absence of any such standards, we doubt that Congress intended the Courts to construct such a definition . . . Indeed, the history of the Senate's treatment of this problem suggests that the Senate did not want an aide's role to be subject to such limitations, except to the extent they were imposed by the individual Senator.

At most, Thompson's work on "position papers" is the sort that has both political and representational aspects.

(c) Joshua Howard, the Committee's press specialist, designed about a dozen pieces of campaign literature and drafted six campaign press releases (a total of ten pages) between January and June 1980. Howard, who did at least some of this work on weekends, has confirmed to us and to everyone who ever asked him that he never had to take time out from his Committee duties to do campaign work. Howard was not the full-time press aide for the Congressional campaign; Kellermann engaged Lou Gordon, who was paid out of campaign funds.

(d) Anna Barletta, Schumer's secretary in Albany, did some typing for Schumer and envelope stuffing for mailings. A few of those mailings were purely campaign related, but most were constituent information mailings or letters to people who had signed petitions on local issues -- i.e., the very sorts of mailings that were described by the Solicitor General in Cannon as being both a "legitimate official function" and "participating in a . . . campaign." Barletta had been sending out such mailings for years -- certainly well before the 1980 campaign. It was part of her State job.

Barletta performed all her State work during that period.

(e) Janet Kalson, the Committee's New York City secretary, did some campaign work at the Committee's office

when she was not occupied with her regular duties. When Kalson asked if she could work at campaign headquarters for the summer months, Schumer told her she would have to use her accrued vacation and then go off the State payroll to do so. Kalson spent her two weeks vacation time campaigning, then returned to the Committee staff. She left Schumer's staff shortly thereafter to join someone else's campaign.

(f) Members of the Committee staff helped to duplicate a master voter list at the Committee's World Trade Center office. They did this in their spare time, and without neglecting any of their State duties.

At no time did Schumer authorize any of the Committee or District employees to neglect their State duties in order to work on the campaign, and no one complained to Schumer that he or she could not finish his/her Assembly work because of the campaign. Nor was Schumer ever told that any Committee or District employee had failed to complete his or her regular duties because of campaign work. In fact, it was very much in Schumer's interest that the work of the District Office and the Committee continue, since both enhanced his reputation and visibility. He therefore did nothing to curtail the work of his staff on Assembly-related matters.

Schumer's insistence that his staffers complete their State work is borne out by the Committee's output

during 1980. Over the spring and summer, the Committee on Legislative Oversight concluded and published the results of 16 different investigations on various issues, including an inquiry into the City's purchase of new buses that were too big for City-owned garages; an exposé of the Board of Education's failure to secure abandoned schools, which had led to millions of dollars in property damage; another exposé about construction of unnecessary schools in districts where schools had excess capacity; and a report on damage caused to city streets and equipment because of the use of rock salt during winter months. The Committee's continuing revelations about mismanagement at New York City's Emergency Medical Service during 1980, following a series of such revelations in 1979, eventually led to the dismissal of that agency's head on July 24 and earned the Committee a commendation from Mayor Koch. And in August, the Committee began an investigation into the underutilization of a new child health care facility in Brooklyn, which culminated in a report that was issued in December.

This was the same rate of productivity as in the previous year, when there was no campaign.

Like the "position papers" prepared by Griff Thompson, it is undoubtedly true that some of this work had political aspects and was helpful in his quest for election to Congress. However, as noted above, that does not remove

it from the ambit of a legislator's legitimate representational function.

Post-Primary Activity

Schumer won the Democratic primary on September 9 -- the equivalent of election in Democratic Brooklyn. Kellermann went on vacation for two weeks and then returned to the campaign payroll to work on the general election, even though she spent the post-primary period doing mostly District work. After the general election, she returned to the Assembly payroll to assist in closing down Schumer's state offices.

At the end of 1980, The Village Voice -- a paper hostile to Schumer -- published a story alleging that Schumer had misused his Committee staff by making them work on his campaign. Four and one-half years of investigations ensued.

The Federal Investigation

For nearly two years, the United States Attorney for the Eastern District of New York, acting at the instigation of The Village Voice, investigated Schumer's campaign practices. The United States Attorney formed a variety of theories in an attempt to indict Congressman Schumer for mail fraud because Schumer let volunteers from his Assembly staff work on his campaign. The United States Attorney also urged

that Schumer's failure to report the salaries of his aides as a "contribution" to his campaign violated the FECA.

However, senior officials at the Department of Justice, after a thorough review that included submissions from Congressman Schumer on both the mail fraud and FECA aspects of the case, ruled that the matter "was not appropriate for federal prosecution." All of the allegations contained in the Complaint submitted to this Commission, and all of the statements offered in response, were before the Justice Department. Its rejection of a federal prosecution constituted a decision that there had been no criminal violation of the campaign contribution statute.

At the time it rejected prosecution, the Justice Department had the option of referring the matter to another government agency, such as this Commission, or to State authorities. It did not do so.

The State Investigation

From January 1983 through August 1985, the propriety of Schumer's conduct during the 1980 campaign was under investigation by the Kings County District Attorney. The District Attorney first spent months trying to obtain a "special prosecutor" to look into the matter -- first by asking the governor, then by appointing one herself. When

that proved futile, her own staff conducted dozens of witness interviews and reviewed notes provided by the United States Attorney. After nearly two years of investigations, on August 16, the District Attorney released a statement saying there is no basis for criminal prosecution.

However, not content to let the matter rest after four and one-half years of inquiry, the District Attorney filed the Complaint that is now before the Commission.

Schumer Did Not Fail to
Report a Statutory Contribution

In the Complaint, the District Attorney suggests that Schumer violated 2 U.S.C. § 432(b) by failing to report the use of state-compensated workers and state facilities in connection with his campaign. The statute in question provides:

> (b) Account of contributions; segregated funds
>
> (1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50 the name and address of the person making the contribution and the date of receipt.

It is the District Attorney's contention that the State of New York was a "person" who made a "contribution" to Schumer's 1980 campaign, and that Schumer was obligated to report his staffers' salaries and the value of their office

space, telephone lines, etc., as "contributions." The problem with the District Attorney's theory is that it flies in the face of the language of the statute, prior pronouncements of this Commission, and common sense.

First, the statute only requires the reporting of contributions from a "person." The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11). That definition does not encompass the State of New York. Indeed, the term "State" is defined separately from the term "person" in the FECA. 2 U.S.C. § 431(12). Moreover, a "State" is not defined as a "person."

Since Congress chose to define the term "person" separately from the term "State," it would be stretching the language of the statute to deem the State of New York to be a "person."

The interpretation that the term "person" does not encompass a state is reinforced by a 1980 amendment to the Federal Election Campaign Act. In that amendment, Congress excluded "the United States and its agencies" from the ambit of the term "person." Unlike the term "State," the Federal government was not otherwise defined in the statute, and might therefore have been thought to be a "person."

Well prior to that amendment, this Commission had concluded that the United States was not a "person" within the meaning of the FECA. The question arose when the Commission received several complaints alleging that Rogers C.B. Morton, Counsellor to President Ford, was participating in the President's 1976 campaign, that these activities constituted "contributions" within the meaning of the Act, and that his legislatively appropriated salary constituted a reportable "expenditure" by President Ford's Committee. (MUR 077 (76)).

The Commission voted 5-1 that no violation had been committed. Although there was no majority statement filed by the Commission, three Commission members filed a statement arguing that the United States was not a "person" within the meaning of the Act.

In 1977, the Senate Rules Committee asked the Commission for its views on "the use of official staff by holders of public office in campaign for nomination for an election to Federal office." Letter, Senate Rules Committee to Federal Election Commission, dated August 16, 1977. After reviewing its prior rulings, all of which had concluded that the use of staff on campaigns did not give rise to a reportable "contribution" or "expenditure," the Commission stated:

> This review indicates that the Commission determined that the definition of contribution in the Act does not cover the payment of salary to individuals who have engaged in campaign activity to some extent during normal working hours.

One of its reasons was that the United States was not a "person:"

> . . . Second, since the definition of person, § 431(h) does not specifically include the United States, the definition of contribution which includes the payment of compensation by any person does not appear applicable. . . with [sic] the coverage of the Act.

Letter, Federal Election Commission to Senate Rules Committee, dated September 13, 1977, at p. 7.

It would impute an irrational intent to Congress and to this Commission to presume that they intended to make a State a "person" when the United States was not, and thus to impose reporting requirements on state legislators who were running for Congress from which incumbent Congressmen were exempt. The presumption of rationality that must be accorded to all legislation negates such an interpretation, particularly when its adoption would deny a state legislator running for Federal office the same protection as a Federal legislator running for re-election.

Finally, as a matter of practical construction, another venerable canon for statutory interpretation, governments have not been considered persons, despite the widespread participation by legislative aides in political

campaigns. Thus, we are unaware of a single prior criminal indictment or civil case in which a governmental entity, be it federal, state or local, was deemed a contributor because it paid the salaries of legislative staffers who worked on campaigns. This issue has arisen in at least four other cases besides Mr. Morton's. In each case, campaigning by Congressional or White House aides or Cabinet officers was alleged to constitute a campaign contribution. In all four cases, the Commission concluded that there was no reason to believe a violation had been committed. MUR 114, MUR 128, MUR 077, MUR 164.

Second, that salaries paid to State legislative staffers who are performing campaign work in addition to their regular Senate work, or the cost of supplies and facilities incidentally used by them, should not be deemed to be a "contribution" from a "person" is further reinforced by this Commission's conclusion that legislatively appropriated funds are not a statutory "contribution" under the FECA.

In Advisory Opinion 1976-34 of this Federal Election Commission, reprinted at CCH Federal Election Campaign Financing Guide, ¶ 5200, the Commission was asked whether the monies appropriated by Congress to fund certain activities of the House Republican Conference, the House Republican Policy Committee, and the Republican Research Committee, were reportable as "contributions" to "political

committees." The Commission noted that these three offices provided support to incumbent Republican Congressmen and occasionally performed services for non-incumbent Republican candidates. The Commission also observed that the activities of the three offices (like the activities of Schumer's office) were funded through legislative appropriations.

The Commission ruled:

> [We do] not believe that Congress intended that the receipt of legislatively appropriated funds should be deemed as the receipt of a statutory contribution as defined in 2 U.S.C. § 431(e).

The Commission did not limit this ruling to funds appropriated by the Federal legislature and there is no basis for differentiating between funds appropriated by Congress and funds appropriated by a state legislature.

In its 1977 letter to the Senate Rules Committee, the Commission announced the "definition of contribution in the Act does not cover the payment of salary to individuals who have engaged in campaign activity to some extent during normal working hours." The Commission listed two justifications (other than the United States' not being a "person") for so concluding:

> First, it is not reasonable to impute donative intent as required by §431(e)(1) to the United States government . . . Finally, there is no legislative history which indicates any intent to include the payment by staff salaries with legislatively appropriated funds. . . .

(Letter of September 13 at p. 7) Again, it would be irrational to impute donative intent to State governments where none can be imputed to the United States, or to presume, in the absence of legislative history to the contrary, that Congress intended to treat the federal and state governments differently in this matter.

Third, the law itself exempts volunteer services, like those provided by Schumer's staff, from the definition of "contribution." § 431(8)(B) provides:

> The term "contribution" does not include --
>
> a) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

No one on the Schumer staff was ever forced to work on his 1980 campaign. Most staffers volunteered. To the extent that anyone was asked to help, he was free to say no without penalty, as O'Melia did. And everyone was expected to perform all his/her regular duties.

In the President Ford Committee case, three of the six members of the Commission decided that it would present the Commission with administrative difficulties to construe staff salary payments as "a gift . . . of money or anything of value made for the purpose of -- (a) influencing" nomination or election to Federal Office. These Commissioners

reasoned that, since the definition of "contribution" excludes the value of voluntary services, the Commission would have to make three determinations in order to decide whether a complaint like the District Attorney's in this case stated a claim:

1) whether the employee's services on the campaign were truly voluntary,

2) whether the employee had done his/her normal day's work, so that his/her campaign work could be said to be "without compensation," and

3) whether the particular activities performed by the employee were intended to influence the election or to report to constituents on public issues or assist them with particular problems.

(Letter of September 13, p. 7) The Commission was no more prepared than the courts to grapple with these particular problems. It concluded that it had no jurisdiction over the issue.

Fourth, the same reasoning that applies to staff salaries also covers public facilities and supplies purchased via legislative appropriation. On September 28, 1977, the Commission reported to the Senate Rules and Administration Committee that the provision of free office space in government buildings to Congressional campaign committees was not a "contribution" or an "expenditure" within the meaning of the

FECA (Letter from Federal Election Commission to Senate Rules Committee, dated September 28, 1978). In light of this ruling, there is no basis to conclude that the Schumer's staff's use of their desks and office supplies, which were provided by the State legislature, constitute "contributions" that must be reported.

Fifth, although not strictly relevant, the logic behind analogous FECA regulations confirms the conclusion that work done by Schumer staffers, and their use of state offices and equipment, does not constitute a "contribution." Although there are stringent limits on use of corporate facilities for campaign activity by a stockholder or employee of a corporation, the Commission permits stockholders or employees to make "incidental" use of corporate facilities for individual volunteer activity in connection with a Federal election campaign. The term "incidental use" has been defined by the Federal Election Commission as "an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period." 11 C.F.R. § 114.9(a)(1)(i).

One cannot, of course, measure the term "incidental" for a legislative aide in the same way one would measure it for someone who held a job that had normal working hours and a constant work load. Indeed, that is what makes

the Complaint's allegations that particular employees spent 75% to 80% of their time doing campaign work so meaningless -- depending on the time of year and whether the Assembly was in session or not, Schumer's aides may have had only 15-20 hours or 60-70 hours of work to do each week. But since Schumer's staff continued to perform all their assigned State tasks, one must conclude that any campaign work they performed was "incidental" to their regular jobs as the Commission understands that term.

One must similarly conclude that any use of State facilities for campaign activities by the Schumer staff qualified as "incidental" use within the meaning of these analogous FECA rules. The staff's use of the telephones, pencils and paper clips on their desks is neither surprising nor violative of any Commission regulation. Nor would it have been reportable, even if supplies purchased with legislatively appropriated funds had to be reported.[3/]

3/ Indeed, on the one occasion when the staff's use of State office supplies threatened to get out of hand, Kellermann and Schumer reimbursed the State. When Schumer staffers helped to photocopy a master voter list, they used a significant quantity of paper owned by the State of New York. They did so without authorization from Schumer or Kellermann. When Kellermann learned what the scope of that job had been,

(Continued)

It Would Be Inappropriate for the Commission to Act Now On a Matter That Could Have Been Referred to It Years Ago

While there are ample statutory and precedential reasons for the Commission to close this matter immediately, there is also an equitable consideration that militates against the commencement of a third investigation into this matter.

The activity complained of in the District Attorney's complaint took place over five years ago. It has not been kept secret during these five years; on the contrary, both the Federal and State investigations were the subject of widespread publicity. The Justice Department's decision to close its file was reported on the front page of The New York Times. The District Attorney's plea for appointment of a special prosecutor was published in every newspaper in New York and in the Washington Post. If there was an appropriate time for this matter to have been studied by the Commission, it was years ago -- not now, five years and more after the event.

(Continued)

she asked for an estimate of how much paper had been used and reimbursed the State for the full amount from campaign funds. Schumer concurred with her directive.

Moreover, the opportunity to refer this matter to the Commission has existed from the beginning. Indeed, in our 1982 brief to the Justice Department, we said that if the government was bent on bringing a case to test whether salaries paid to State legislative aides were contributions when those paid to federal aides were not, the most appropriate forum would be a civil case under the FECA, 2 U.S.C. § 437g(a). The Justice Department did not take us up on our suggestion; neither did it refer the question to the Commission. Under those circumstances, we submit that it would be inappropriate for the Commission to commence an investigation now -- especially where the law and the Commission's prior rulings so clearly support our position.

There is No Case Against the
Schumer Re-Election Committee

The District Attorney's complaint in this matter names as a co-defendant the Schumer for Congress Committee. This was the campaign committee that Schumer formed in 1980 to coordinate the funding of his first Congressional campaign. Its treasurer was Richard Lukins.

On September 6, a copy of this Complaint was served on the Committee to Re-Elect Charles Schumer and its treasurer, Steven Goldenkranz. Obviously, the "re-elect" committee is not the campaign committee that was involved in

the 1980 campaign; it was not formed until a much later date. And Mr. Goldenkranz, the Treasurer of the Re-Election Committee, had nothing whatever to do with the 1980 campaign. Thus, the proper party has not been served with the complaint.

However, if the 1980 Committee (which no longer exists) were served with the complaint, its answer would be the same as Congressman Schumer's. There was no violation of the reporting requirements imposed on the Committee because there was simply nothing for the Committee to report. Therefore, the complaint should be dismissed as against the Committee, as well.

Conclusion

For all these reasons, we would submit that the complaint filed by the District Attorney be dismissed. We remain available to provide you with any information you may need to enable you to reach a conclusion.

Very truly yours,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By _____
Arthur L. Liman
Colleen McMahon

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attachment 3
(Part 1)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Arthur Liman, Esquire
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York 10154

RE: MUR 2074
Re-Elect Congressman Schumer
Committee and Stephen P.
Goldenkrantz, as treasurer

Dear Mr. Liman:

The Federal Election Commission notified your client on August 28, 1985, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy summary of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on , 1985, determined that there is reason to believe that your client has violated 2 U.S.C. §§ 434 and 441a, provisions of the Act. Specifically, it appears that your client accepted contributions in the form of services, which were compensated by the State of New York and which were rendered to Mr. Schumer's political committee without charge. Under the Commission's regulations, such services would constitute a contribution to the Committee, unless it is shown that the employees made up for the time spent on the campaign during their regular work period within a reasonable time, and thus, in effect, spent as much time on their regular duties as they would normally be required to do under the circumstances. Because the value of their services may have exceeded $1,000, there is reason to believe the Schumer Committee violated 2 U.S.C. § 441a. Since receipt of the contribution was not reported, there is reason to believe the Schumer Committee and its treasurer violated 2 U.S.C. § 434.

Your client's response to the Commission's initial notification of this complaint did not provide complete information regarding the matters in question. You may submit any factual or legal materials that you believe are relevant to the Commission's analysis of this matter. Please file any such response within ten days of your receipt of this notification.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter of recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent will not be entertained.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Charles Snyder, the attorney assigned to this matter, at (202) 523-4000.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Procedures

attachment 3
(Part 2)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Arthur Liman, Esquire
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, New York 10154

RE: MUR 2074
Charles E. Schumer

Dear Mr. Liman:

On August 28, 1985, the Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on , 1985, determined that on the basis of the information in the complaint, and information provided by you there is no reason to believe that a violation of any statute within its jurisdiction has been committed by Congressman Charles E. Schumer. Accordingly, the Commission closed its file in this matter as it pertains to Mr. Schumer. This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele
General Counsel

By Kenneth A. Gross
Associate General Counsel

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GCC# 8630

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RANDOLPH E. PAUL (1946-1956)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

ADRIAN W. DEWIND
LLOYD K. GARRISON
JAMES B. LEWIS
MORDECAI ROCHLIN
HOWARD A. SEITZ
SAMUEL J. SILVERMAN
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ARTHUR KALISH
LEWIS A. KAPLAN
ANTHONY B. KUKLIN
JEROME KURTZ
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ROBERT L. LAUFER
WALTER F. LEINHARDT
ARTHUR L. LIMAN
MARTIN LONDON
BAYLESS MANNING
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JUDITH R. THOYER
JAY TOPKIS
JOSÉ E. TRÍAS
DAVID T. WASHBURN
ALFRED D. YOUNGWOOD
NORMAN ZELENKO

WRITER'S DIRECT DIAL NUMBER

(212) 644-8132

September 25, 1985

SEP 26 P 1:29

Federal Election Commission
Washington, D.C. 20463

Attention: Charles Snyder, Esq.

Re: MUR 2074

Dear Mr. Snyder:

On behalf of our clients, Representative Charles E. Schumer and the Committee to Re-Elect Charles Schumer, we are pleased to take this opportunity to respond to your letter of August 28, 1985, and to the Complaint filed with the Commission by the District Attorney of Kings County, New York. By her complaint, the District Attorney seeks to initiate a third investigation into whether then Assemblyman Schumer did something wrong by permitting members of his New York State Assembly staff to do campaign work on a voluntary basis, in addition to performing their regular duties as Assembly staffers -- even though the FECA and the Commission's rulings make it clear that work by a legislative assistant in a

legislator's campaign does not constitute a reportable "contribution" and even though this Commission does not deem either legislatively appropriate funds or items and services purchased with those funds to be "contributions." In light of these rulings, the Complaint is defective on its face and should be dismissed.

Congressman Schumer's 1980 campaign has been subjected to the most intensive investigation since early 1981, first by the United States Attorney for the Eastern District of New York and then by the Kings County District Attorney. Both the Justice Department and the District Attorney concluded, after extensive investigations, that prosecution of Congressman Schumer or any member of his staff was unwarranted. Of particular interest to this Commission, in January 1983, the Department of Justice found that this matter was "not appropriate for federal prosecution," even though the United States Attorney specifically proposed to indict Congressman Schumer on the ground that the very actions that form the basis of the Complaint now before you violated the Federal Election Campaign Act of 1971, 2 U.S.C. §§ 432(b)(1) and 434(b) (FECA). In rejecting the proposed prosecution, the Justice Department did not refer the matter to you for a civil investigation, although it had that option. The Justice Department made these determinations

after reviewing our brief discussing the applicability of the Federal Election Campaign Act of 1971 and the reasons why no violation of the Act had been committed. None of this is revealed to you in the Complaint.

The irony inherent in this complaint is that the conduct of which the District Attorney here complains is conduct that she herself engaged in and that every other politician regularly engages in: permitting staff members to remain on the public payroll while working on campaigns. In so doing, the District Attorney and other politicians are merely following rulings of this Commission and of the courts that have grappled with this question. Campaigning by political staff is a tradition deeply ingrained in our political system. This Commission has repeatedly opined that salaries paid from official funds to a Presidential or Congressional staff member need not be reported as campaign contributions. This Commission has also ruled that legislatively appropriated funds (including monies appropriated for staffing and equipping a legislator's office) should not be deemed a statutory "contribution" under 2 U.S.C. § 431(8). We submit that these pronouncements, coupled with a reading of the statute itself, compel the conclusion that Congressman Schumer did not violate the FECA in 1980.

Similarly, courts confronted with the question of whether legislators may properly permit their staff to work on campaigns -- even, as in one case, work on them "extensively and exclusively" -- have decided that the matter is simply not justiciable. These courts have ruled that it is all but impossible to distinguish between "campaign" work and some of the representational duties regularly performed by elected officials. And they have noted that legislatures have declined to place any limits on staff participation in campaigns, even after studying the question.

Moreover, we make these observations assuming the allegations of the Complaint to be true. However, as might be expected, the Complaint materially misstates, and omits to state, facts that are highly relevant to any determination by the Commission. We welcome this opportunity to set the record straight.

For four years, the scarce resources of the Federal and State governments have been expended in a futile attempt to prove that Congressman Schumer did something illegal by permitting his staff members to volunteer to work on his campaign in their spare time. It is time for a denouement. We therefore respectfully ask the Commission to issue a finding of no probable cause and close this matter for once and for all.

Statement of Facts

The Complaint in this matter alleges that members of Schumer's staff, while on the New York State payroll, devoted substantial periods of time to working on his 1980 Congressional campaign. The Complaint further alleges that this work was performed "during working hours" and that the workers made use of office space and office equipment paid for by the State of New York. Finally, the Complaint alleges that Schumer put two individuals on his State payroll with the intention that they devote substantial amounts of their time to campaign activities while employed by New York State.

The Complaint is both incomplete and inaccurate. It fails to set forth critical facts about the participation of Assembly staffers in Congressman Schumer's 1980 campaign, and it varies from the facts as we, from our extensive conversations with the participant witnesses and their counsel, know them to be. Therefore, while we believe this matter can and should be closed without regard to the factual allegations, we submit our own precis of the facts relevant to any inquiry by the Commission.

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Schumer's Early Legislative Career

Schumer was first elected to the New York State Assembly as soon as he graduated from Harvard Law School in 1974. He served for six years until 1980.

During Schumer's years in the Assembly, he opened a constituent-service office in his District to help constituents with problems such as rent disputes, heating problems, local sanitation services, Medicare and Social Security problems, and the like. Schumer encouraged his constituents to come to him for help with such matters; from his earliest days as an Assemblyman, he had staff or volunteers pass out cards giving his office phone number as a place constituents could call with questions or problems.

Partly as a result of the modest allotment he received for staff and partly as a result of his own personal style, Schumer handled much of this case work himself. He returned nearly all the calls that came into his District Office, answered his own correspondence and dealt with the civic, religious and neighborhood leaders in his District.

In 1977, Schumer was appointed Chairman of the Assembly's Subcommittee on City Management and Government; in 1979, he became Chairman of the Standing Committee on Legislative Oversight and Investigation. Each position augmented Schumer's staff allotment, and Schumer hired

additional staff for his District Office. Nonetheless, through 1979, Schumer himself continued to handle many of the approximately 200 constituent cases that came into the office each week. He also stayed in personal contact with community leaders. Indeed, he spent a large proportion of his time doing District liaison work.

Assemblyman Schumer Decides to Run for Congress

By mid-1979, it was apparent that Representative Elizabeth Holtzman wanted to run for the United States Senate seat held by Jacob K. Javits. Assemblyman Schumer explored the possibility of running for Holtzman's seat during the fall of 1979; he announced his candidacy on January 13, 1980.

Schumer knew that he could no longer expect to handle constituent cases in his District, personally attend to the concerns of community leaders, oversee the work of the Assembly Committee of which he was Chairman and edit its reports, and continue to perform his legislative duties in Albany while he was raising funds for a contested Congressional campaign. Nonetheless, if Schumer was to be elected to Congress, it was more important than ever that these representational duties not be neglected.

So Schumer concluded that he needed to hire an "alter ego" who could take over some of the responsibilities

he had never before delegated. Schumer wanted his "alter ego" to do three different things for him.

During Phase One, the person hired would replace him in the District and take over the constituent case work and community leader liaison job that Schumer had always handled personally, as well as exercise some oversight over the activities of the Committee on Legislative Oversight. The "alter ego" would undoubtedly do some groundwork for the Congressional campaign, but those duties would be secondary; Schumer did not even have an opponent at the time, so there was no campaign to run. Schumer expected that this phase would last until the end of May, during which time the staff member -- who would be doing primarily State work -- would be on the State payroll.

During Phase Two, Schumer's new assistant would run his Congressional campaign on a more-or-less full time basis. Schumer intended from the very beginning that his "alter ego" would leave the State payroll and and be compensated out of campaign funds once campaign work predominated over State work, although the person would continue to do State work as well. Schumer thought Phase Two would begin around June 1.

Assuming Schumer was elected to Congress, during Phase Three the "alter ego" would rejoin the State payroll to oversee the winding down of his District and Committee

offices. Schumer hoped the person's familiarity with his constituents would enable him to become the District liaison on his Congressional office staff.

Two persons held the "alter ego" job -- Mark Canu, followed by Carol Kellermann.

Canu is Hired

On the recommendation of Norman Adler, the Political Action Director of District Counsel #37 of the American Federation of State, County & Municipal Employees, he hired Mark Canu for the job. At the time, Canu was liaison from the Borough of Staten Island to Mayor Koch's Office of Neighborhood Services. He had worked in local politics on Staten Island for a number of years.

Four people besides Schumer interviewed Canu: Iris Weinshall (now Schumer's wife), Peter Samuels (Schumer's law school classmate, now a partner at Proskauer, Rose, Goetz & Mendelsohn), and Dan Feldman and Joshua Howard, the senior members of Schumer's Committee staff. Schumer, Weinshall and Samuels all outlined the three phases of the job to Canu; they told Canu that he would start by doing State work, then transfer to the campaign payroll when there was a campaign to run.

Canu is Fired and
Kellermann is Hired

Canu accepted the job and went on the Committee's payroll January 7. From the beginning, his performance was unacceptable. He failed to assume Schumer's role of meeting with District leaders and dealing with their problems. He took no affirmative steps to do casework for constituents, so the regular caseworkers simply by-passed him and took their questions directly to Schumer. He never reorganized the District Office, as Schumer wanted. Thus, while Schumer had hired Canu to do primarily State work, Canu simply failed to pick up the ball.

The Complaint alleges (¶ 5) that, by February 1980, Canu was devoting "at least eighty percent of his work time to the campaign." Since there was no campaign and no opponents, this allegation is on its face absurd. Some of the things Canu helped with were undoubtedly helpful to Schumer's political aspirations. For example, Canu handed out "calling cards" telling constituents to telephone Schumer's office if they had problems -- a technique Schumer had used for years to call himself to the attention of voters. But that was as close as Canu ever came to "campaigning."

Moreover, Canu not only did not do the State work he was hired to do, he also showed little initiative in doing even the most preliminary groundwork for the ultimate campaign.

By February 1980, it was apparent to Schumer that Canu could not be his "alter ego;" their styles simply did not mesh. Canu agreed to leave the job as soon as a successor could be found. Canu remained on the payroll for a month, helping with the on-going Committee investigation into EMS -- clearly State work.

Meanwhile, Schumer needed to find a new "alter ego." He decided to hire Carol Kellermann, a law school friend and former Legal Aid attorney with substantial political experience.

In late February 1980, Schumer asked Kellermann to work for him. Kellermann told Schumer that she wanted carte blanche to set her own agenda and her own priorities; she announced that she would not tolerate interference from Schumer or constant questioning by him. Schumer, relieved that he had found someone who could take charge of his office and his campaign, told Kellermann, "You'll be my Number One person."

After Kellermann agreed to work for Schumer, they discussed logistics. Schumer explained that she would be on

the Committee payroll doing primarily State work and only incidental campaign work, until campaign activities began to predominate over her legislative functions, at which point she would go off the State payroll and onto the campaign payroll. He told Kellermann he anticipated the change would come around June 1.

Kellermann's Work
During "Phase One"

Kellermann went to work for Schumer on March 10 and stayed on the Assembly payroll only until April 30. During that time, she served as Schumer's Administrative Assistant,[1/] doing District, Committee and legislative work. She also did some campaign groundwork. The Complaint alleges that she spent approximately 35% of her time "exclusively on campaign functions;" what the Complaint fails to reveal is that Kellermann worked 16 hours every day, and spent far more than a civil servant's eight-hour day on State work.

Kellermann's District Work: Kellermann spent most of her time during these seven weeks in Schumer's District

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1/ Originally Kellermann was so classified on the payroll form. Her title was later changed to "Principal Assistant." Both titles accurately described her broad-ranging functions.

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Office in Brooklyn, where she found the most pressing problems. She devoted her initial efforts to reorganizing the office so that it could run efficiently, even in Schumer's absence. Kellermann screened all of Schumer's incoming mail and answered as much as she could on Schumer's behalf. She revamped the procedures used to schedule his time and mapped out his schedule in advance, making her own decisions about where he would go and whom he would see. She screened his telephone messages and answered his calls. She evaluated the staffing in the District Office and recommended that another case worker be hired.

Kellermann made herself available to community leaders and resolved as many of their problems as she could. She dealt with supplemental budget requests from community organization. She also helped the District Office staff with case work, particularly where legal problems were involved and her experience as a lawyer proved useful.

Kellermann worked on a number of projects of importance to Schumer's Assembly constituents. To cite but a few examples, she helped organize a car patrol to transport senior citizens to lunch at a community center during the New York City transit strike. At the request of the Brooklyn District Attorney, she tried to convince frightened witnesses to testify in a criminal case against a phony home improve-

ments contractor. She participated in negotiations with developers and tenants who were affected by the Avenue K Housing Rehabilitation Project, for which Schumer had obtained State funding. Kellermann also handled a neighborhood controversy involving expansion of the Community Hospital of Brooklyn and researched the City Council's repeal of the veteran's property tax exemption.

Committee Work: Kellermann found the Legislative Oversight Committee to be well organized and running smoothly. However, Kellermann familiarized herself with the Committee's previous work and its on-going operations. She also began to oversee its agenda. She reviewed ideas for new investigations and approved or rejected them. Kellermann also reviewed old investigations that had not been completed to see whether they should be updated and publicized.

Legislative Work: Kellermann not only performed the classic duties of the administrative assistant of a legislator, but in addition served as Schumer's principal legislative adviser. He consulted with her at length about how he should vote on all critical issues, especially the death penalty and a bill that would have permitted parents to kidnap their children from "cults." Kellermann also advised Schumer about his legislative agenda, particularly whether he

should respond to requests from the Democratic leadership that he go to Albany for critical votes.

Campaign Work: Kellermann's State-oriented duties kept her busier than most full-time jobs. But she laid the groundwork for the campaign in her spare time. Kellermann selected a polling firm, hired the first paid members of the campaign staff, drew up a budget, reviewed district voting results, opened campaign bank accounts and ordered a poster. She spent several weekends searching for a headquarters, and she helped clean and paint the office that was eventually found.

Kellermann Leaves the State Payroll

By late April, Kellermann had reorganized the District Office to her satisfaction. The separate campaign office had been opened on April 14, staffed with persons paid from campaign funds. Other staff and volunteers began to come on board. And after Schumer's principal opponent, Susan Alter, announced her candidacy on April 14, the campaign began to get off the ground. Therefore, Kellermann went to Schumer and told him that she wanted to work out of the campaign headquarters and intended to take herself off the State payroll. Schumer believed that Kellermann was cheating herself, as she would still be doing considerable State work

during May. He argued that she should stay on the State payroll for another month. But Kellermann insisted, and Schumer acceded to her request.

Kellermann left the State payroll April 30 and began to run Schumer's campaign in earnest. However, she continued to do casework, monitor the work of the Committee, and perform other legislative functions -- even though she was not being paid by the State of New York for this concededly state work.

Schumer's Assembly Staff
Helps With His Campaign

Certain members of Schumer's Assembly staff did work on his campaign between May and the September 9 primary. Stanley Fink, Speaker of the New York State Assembly, told government investigators that there is no Assembly rule that bars Assembly staffers from campaigning, and that staff members frequently work on political campaigns.[2/] He also informed those investigators that there are no set working hours for Assembly employees; that the amount of work to be done varies depending on whether the

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2/ New York does not have a "Hatch Act" covering employees of the State Assembly.

legislature is in or out of session; that there is no minimum number of hours that employees have to spend on Assembly business in order to justify their salaries; and that Assemblymen are free to pay their staff whatever their services were worth, regardless of the number of hours they spend on State business, as long as the employees are not "no shows." Indeed, many legislative employees were on the State payroll all year, yet performed State work only while the legislature was in session.

Nonetheless, the District Attorney alleges in her complaint that Congressman Schumer received reportable campaign contributions from New York State by permitting employees who were on the payroll to work on his campaign when they were not busy with their other duties. Nothing could be further from the truth. Every Schumer aide who worked on the campaign also completed a full complement of State work; no one who wanted to work full-time on the campaign was permitted to remain on the Assembly payroll. Significantly, the Complaint does not allege otherwise.

It is important to note that no State employee was coerced into doing campaign work for Schumer; only volunteers worked on the campaign. Schumer was adamant on that point. He readily agreed, for example, when Committee staffer Robert O'Melia said he did not want to do any campaign work. Not

only was O'Melia not "punished" for refusing to volunteer, he got a raise during 1980. It was not necessary to dragoon staff into working on the campaign; most were eager to be involved in this new activity. The very type of person who is attracted to work for a legislator is by nature interested in politics -- a proposition that applies not only to state aides, but also to congressional assistants.

Here is what the staff did during the campaign:

(a) Susan Orlove, a district case worker who was on the Committee payroll, organized coffee klatches at which Schumer could appear and served as the Assemblyman's liaison with labor organizations and other political action committees. However, Orlove continued to do her case work at the District Office. Contrary to the allegation of the Complaint (¶ 9), Schumer never told Orlove to stop her District work and devote all her efforts to the campaign. In fact, Kellermann asked that Orlove work on the campaign full time, but Schumer refused to permit that because he wanted her to continue with her case work.

(b) Griff Thompson, a research aide on the Committee, also did some campaign work. Steve Goldberg (a staffer paid by the campaign committee) asked Kellermann if Thompson could help him compile a District voter list. Kellermann told Goldberg that was acceptable, so Thompson

went to the Board of Election twelve times to review voting information. Thompson continued to perform all of his assigned Committee work during the campaign; he assisted with investigations into solid waste disposal, "sanit maids" (an idea to have a special sanitations summons force), and training procedures for lifeguards at New York City swimming pools.

The Complaint alleges (¶ 8) that Thompson spent as much as 80% of his time in such activities as searching for campaign headquarters and developing campaign position papers. This is simply untrue. Thompson, along with Kellermann (on weekends) and Steve Goldberg (a paid staffer), helped search for and found the headquarters, but he spend minimal time on that task. And Thompson's "position papers," as the Complaint calls them, were analyses of issues of interest to Schumer's Assembly constituents. One, for example, outlined the impact of the Soviet grain embargo on the emigration prospects of Soviet Jews -- an issue of great concern to Schumer's mostly Jewish constituents. The same issue was undoubtedly of interest to voters in the Congressional election, but the paper constituted part of the legitimate work of an elected official reporting to his District on an issue of relevance to its people. It would

have been useful in dealing with Schumer's constituents even if Schumer had not been running for Congress.

Indeed, these "position papers" demonstrate that it is impossible to divide a legislative aide's duties into "campaign" work and "legislative" work. Legislators are always running for election, and a good deal of their time is spent attending to the needs of constituents and making sure that constituents and legislators are well informed of each others' interests and positions. Such constituent work and issue-oriented work fall within the ambit of "appropriate" representational duties of a legislator, United States v. Brewster, 408 U.S. 501, 512 (1972). Courts have been asked several times to draw a distinction between campaign work and representational work, but have decided that the matter is non-justiciable in the absence of readily ascertainable standards for drawing lines between official and political business. Those same courts have readily acknowledged that no such standards exist. Joseph v. Cannon, 642 F.2d 1373 (D.C. Cir. 1981), cert. denied, 455 U.S. 999 (1982); Common Cause v. Bolger, No. 1887-73, mem. op. (D.D.C. 1982).

Three years ago, the Solicitor General of the United States urged the Supreme Court to decline certiorari from a Court of Appeals decision dismissing a civil complaint in a qui tam proceeding. Joseph v. Cannon, supra. The

complaint in Cannon alleged that a United States Senator had violated the False Claims Act by permitting one of his staff members to work "extensively and exclusively" on a campaign while on the Senate payroll. The Court of Appeals had upheld dismissal of the complaint because it could not draw any line between campaign work and other legislative staff work. The Solicitor General agreed:

> It is difficult to distinguish between participating in a Senator's campaigns and helping him perform such legitimate official functions as serving constituents, ascertaining their views, and gathering information from them or explaining the Senator's position to them. See United States v. Brewster, 408 U.S. 501, 512 (1972); S. Rep. No. 95-500, 95th Cong., 1st Sess. 4 (1977) ("[A] staff members' Senate duties*** necessarily encompass political and representational responsibilities, as well as legislative administration or clerical ones, and are often performed during irregular and unconventional work hours.").
>
> If some independent standards existed for making the distinction between official activities and campaign activities, it might be possible to define the duties of a Senator's aide in a way that barred him from collecting a salary for engaging in campaign activities. But in the absence of any such standards, we doubt that Congress intended the Courts to construct such a definition . . . Indeed, the history of the Senate's treatment of this problem suggests that the Senate did not want an aide's role to be subject to such limitations, except to the extent they were imposed by the individual Senator.

At most, Thompson's work on "position papers" is the sort that has both political and representational aspects.

(c) Joshua Howard, the Committee's press specialist, designed about a dozen pieces of campaign literature and drafted six campaign press releases (a total of ten pages) between January and June 1980. Howard, who did at least some of this work on weekends, has confirmed to us and to everyone who ever asked him that he never had to take time out from his Committee duties to do campaign work. Howard was not the full-time press aide for the Congressional campaign; Kellermann engaged Lou Gordon, who was paid out of campaign funds.

(d) Anna Barletta, Schumer's secretary in Albany, did some typing for Schumer and envelope stuffing for mailings. A few of those mailings were purely campaign related, but most were constituent information mailings or letters to people who had signed petitions on local issues -- i.e., the very sorts of mailings that were described by the Solicitor General in Cannon as being both a "legitimate official function" and "participating in a . . . campaign." Barletta had been sending out such mailings for years -- certainly well before the 1980 campaign. It was part of her State job.

Barletta performed all her State work during that period.

(e) Janet Kalson, the Committee's New York City secretary, did some campaign work at the Committee's office

when she was not occupied with her regular duties. When Kalson asked if she could work at campaign headquarters for the summer months, Schumer told her she would have to use her accrued vacation and then go off the State payroll to do so. Kalson spent her two weeks vacation time campaigning, then returned to the Committee staff. She left Schumer's staff shortly thereafter to join someone else's campaign.

(f) Members of the Committee staff helped to duplicate a master voter list at the Committee's World Trade Center office. They did this in their spare time, and without neglecting any of their State duties.

At no time did Schumer authorize any of the Committee or District employees to neglect their State duties in order to work on the campaign, and no one complained to Schumer that he or she could not finish his/her Assembly work because of the campaign. Nor was Schumer ever told that any Committee or District employee had failed to complete his or her regular duties because of campaign work. In fact, it was very much in Schumer's interest that the work of the District Office and the Committee continue, since both enhanced his reputation and visibility. He therefore did nothing to curtail the work of his staff on Assembly-related matters.

Schumer's insistence that his staffers complete their State work is borne out by the Committee's output

during 1980. Over the spring and summer, the Committee on Legislative Oversight concluded and published the results of 16 different investigations on various issues, including an inquiry into the City's purchase of new buses that were too big for City-owned garages; an exposé of the Board of Education's failure to secure abandoned schools, which had led to millions of dollars in property damage; another exposé about construction of unnecessary schools in districts where schools had excess capacity; and a report on damage caused to city streets and equipment because of the use of rock salt during winter months. The Committee's continuing revelations about mismanagement at New York City's Emergency Medical Service during 1980, following a series of such revelations in 1979, eventually led to the dismissal of that agency's head on July 24 and earned the Committee a commendation from Mayor Koch. And in August, the Committee began an investigation into the underutilization of a new child health care facility in Brooklyn, which culminated in a report that was issued in December.

This was the same rate of productivity as in the previous year, when there was no campaign.

Like the "position papers" prepared by Griff Thompson, it is undoubtedly true that some of this work had political aspects and was helpful in his quest for election to Congress. However, as noted above, that does not remove

it from the ambit of a legislator's legitimate representational function.

Post-Primary Activity

Schumer won the Democratic primary on September 9 -- the equivalent of election in Democratic Brooklyn. Kellermann went on vacation for two weeks and then returned to the campaign payroll to work on the general election, even though she spent the post-primary period doing mostly District work. After the general election, she returned to the Assembly payroll to assist in closing down Schumer's state offices.

At the end of 1980, The Village Voice -- a paper hostile to Schumer -- published a story alleging that Schumer had misused his Committee staff by making them work on his campaign. Four and one-half years of investigations ensued.

The Federal Investigation

For nearly two years, the United States Attorney for the Eastern District of New York, acting at the instigation of The Village Voice, investigated Schumer's campaign practices. The United States Attorney formed a variety of theories in an attempt to indict Congressman Schumer for mail fraud because Schumer let volunteers from his Assembly staff work on his campaign. The United States Attorney also urged

that Schumer's failure to report the salaries of his aides as a "contribution" to his campaign violated the FECA.

However, senior officials at the Department of Justice, after a thorough review that included submissions from Congressman Schumer on both the mail fraud and FECA aspects of the case, ruled that the matter "was not appropriate for federal prosecution." All of the allegations contained in the Complaint submitted to this Commission, and all of the statements offered in response, were before the Justice Department. Its rejection of a federal prosecution constituted a decision that there had been no criminal violation of the campaign contribution statute.

At the time it rejected prosecution, the Justice Department had the option of referring the matter to another government agency, such as this Commission, or to State authorities. It did not do so.

The State Investigation

From January 1983 through August 1985, the propriety of Schumer's conduct during the 1980 campaign was under investigation by the Kings County District Attorney. The District Attorney first spent months trying to obtain a "special prosecutor" to look into the matter -- first by asking the governor, then by appointing one herself. When

that proved futile, her own staff conducted dozens of witness interviews and reviewed notes provided by the United States Attorney. After nearly two years of investigations, on August 16, the District Attorney released a statement saying there is no basis for criminal prosecution.

However, not content to let the matter rest after four and one-half years of inquiry, the District Attorney filed the Complaint that is now before the Commission.

Schumer Did Not Fail to
Report a Statutory Contribution

In the Complaint, the District Attorney suggests that Schumer violated 2 U.S.C. § 432(b) by failing to report the use of state-compensated workers and state facilities in connection with his campaign. The statute in question provides:

> (b) Account of contributions; segregated funds
>
> (1) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of $50 the name and address of the person making the contribution and the date of receipt.

It is the District Attorney's contention that the State of New York was a "person" who made a "contribution" to Schumer's 1980 campaign, and that Schumer was obligated to report his staffers' salaries and the value of their office

space, telephone lines, etc., as "contributions." The problem with the District Attorney's theory is that it flies in the face of the language of the statute, prior pronouncements of this Commission, and common sense.

First, the statute only requires the reporting of contributions from a "person." The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. 2 U.S.C. § 431(11). That definition does not encompass the State of New York. Indeed, the term "State" is defined separately from the term "person" in the FECA. 2 U.S.C. § 431(12). Moreover, a "State" is not defined as a "person."

Since Congress chose to define the term "person" separately from the term "State," it would be stretching the language of the statute to deem the State of New York to be a "person."

The interpretation that the term "person" does not encompass a state is reinforced by a 1980 amendment to the Federal Election Campaign Act. In that amendment, Congress excluded "the United States and its agencies" from the ambit of the term "person." Unlike the term "State," the Federal government was not otherwise defined in the statute, and might therefore have been thought to be a "person."

Well prior to that amendment, this Commission had concluded that the United States was not a "person" within the meaning of the FECA. The question arose when the Commission received several complaints alleging that Rogers C.B. Morton, Counsellor to President Ford, was participating in the President's 1976 campaign, that these activities constituted "contributions" within the meaning of the Act, and that his legislatively appropriated salary constituted a reportable "expenditure" by President Ford's Committee. (MUR 077 (76)).

The Commission voted 5-1 that no violation had been committed. Although there was no majority statement filed by the Commission, three Commission members filed a statement arguing that the United States was not a "person" within the meaning of the Act.

In 1977, the Senate Rules Committee asked the Commission for its views on "the use of official staff by holders of public office in campaign for nomination for an election to Federal office." Letter, Senate Rules Committee to Federal Election Commission, dated August 16, 1977. After reviewing its prior rulings, all of which had concluded that the use of staff on campaigns did not give rise to a reportable "contribution" or "expenditure," the Commission stated:

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> This review indicates that the Commission determined that the definition of contribution in the Act does not cover the payment of salary to individuals who have engaged in campaign activity to some extent during normal working hours.

One of its reasons was that the United States was not a "person:"

> . . . Second, since the definition of person, § 431(h) does not specifically include the United States, the definition of contribution which includes the payment of compensation by any person does not appear applicable. . . with [sic] the coverage of the Act.

Letter, Federal Election Commission to Senate Rules Committee, dated September 13, 1977, at p. 7.

It would impute an irrational intent to Congress and to this Commission to presume that they intended to make a State a "person" when the United States was not, and thus to impose reporting requirements on state legislators who were running for Congress from which incumbent Congressmen were exempt. The presumption of rationality that must be accorded to all legislation negates such an interpretation, particularly when its adoption would deny a state legislator running for Federal office the same protection as a Federal legislator running for re-election.

Finally, as a matter of practical construction, another venerable canon for statutory interpretation, governments have not been considered persons, despite the widespread participation by legislative aides in political

campaigns. Thus, we are unaware of a single prior criminal indictment or civil case in which a governmental entity, be it federal, state or local, was deemed a contributor because it paid the salaries of legislative staffers who worked on campaigns. This issue has arisen in at least four other cases besides Mr. Morton's. In each case, campaigning by Congressional or White House aides or Cabinet officers was alleged to constitute a campaign contribution. In all four cases, the Commission concluded that there was no reason to believe a violation had been committed. MUR 114, MUR 128, MUR 077, MUR 164.

Second, that salaries paid to State legislative staffers who are performing campaign work in addition to their regular Senate work, or the cost of supplies and facilities incidentally used by them, should not be deemed to be a "contribution" from a "person" is further reinforced by this Commission's conclusion that legislatively appropriated funds are not a statutory "contribution" under the FECA.

In Advisory Opinion 1976-34 of this Federal Election Commission, reprinted at CCH Federal Election Campaign Financing Guide, ¶ 5200, the Commission was asked whether the monies appropriated by Congress to fund certain activities of the House Republican Conference, the House Republican Policy Committee, and the Republican Research Committee, were reportable as "contributions" to "political

committees." The Commission noted that these three offices provided support to incumbent Republican Congressmen and occasionally performed services for non-incumbent Republican candidates. The Commission also observed that the activities of the three offices (like the activities of Schumer's office) were funded through legislative appropriations.

The Commission ruled:

> [We do] not believe that Congress intended that the receipt of legislatively appropriated funds should be deemed as the receipt of a statutory contribution as defined in 2 U.S.C. § 431(e).

The Commission did not limit this ruling to funds appropriated by the Federal legislature and there is no basis for differentiating between funds appropriated by Congress and funds appropriated by a state legislature.

In its 1977 letter to the Senate Rules Committee, the Commission announced the "definition of contribution in the Act does not cover the payment of salary to individuals who have engaged in campaign activity to some extent during normal working hours." The Commission listed two justifications (other than the United States' not being a "person") for so concluding:

> First, it is not reasonable to impute donative intent as required by §431(e)(1) to the United States government . . . Finally, there is no legislative history which indicates any intent to include the payment by staff salaries with legislatively appropriated funds. . . .

(Letter of September 13 at p. 7) Again, it would be irrational to impute donative intent to State governments where none can be imputed to the United States, or to presume, in the absence of legislative history to the contrary, that Congress intended to treat the federal and state governments differently in this matter.

Third, the law itself exempts volunteer services, like those provided by Schumer's staff, from the definition of "contribution." § 431(8)(B) provides:

> The term "contribution" does not include --
>
> a) the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee;

No one on the Schumer staff was ever forced to work on his 1980 campaign. Most staffers volunteered. To the extent that anyone was asked to help, he was free to say no without penalty, as O'Melia did. And everyone was expected to perform all his/her regular duties.

In the President Ford Committee case, three of the six members of the Commission decided that it would present the Commission with administrative difficulties to construe staff salary payments as "a gift . . . of money or anything of value made for the purpose of -- (a) influencing" nomination or election to Federal Office. These Commissioners

reasoned that, since the definition of "contribution" excludes the value of voluntary services, the Commission would have to make three determinations in order to decide whether a complaint like the District Attorney's in this case stated a claim:

1) whether the employee's services on the campaign were truly voluntary,

2) whether the employee had done his/her normal day's work, so that his/her campaign work could be said to be "without compensation," and

3) whether the particular activities performed by the employee were intended to influence the election or to report to constituents on public issues or assist them with particular problems.

(Letter of September 13, p. 7) The Commission was no more prepared than the courts to grapple with these particular problems. It concluded that it had no jurisdiction over the issue.

Fourth, the same reasoning that applies to staff salaries also covers public facilities and supplies purchased via legislative appropriation. On September 28, 1977, the Commission reported to the Senate Rules and Administration Committee that the provision of free office space in government buildings to Congressional campaign committees was not a "contribution" or an "expenditure" within the meaning of the

FECA (Letter from Federal Election Commission to Senate Rules Committee, dated September 28, 1978). In light of this ruling, there is no basis to conclude that the Schumer's staff's use of their desks and office supplies, which were provided by the State legislature, constitute "contributions" that must be reported.

Fifth, although not strictly relevant, the logic behind analogous FECA regulations confirms the conclusion that work done by Schumer staffers, and their use of state offices and equipment, does not constitute a "contribution." Although there are stringent limits on use of corporate facilities for campaign activity by a stockholder or employee of a corporation, the Commission permits stockholders or employees to make "incidental" use of corporate facilities for individual volunteer activity in connection with a Federal election campaign. The term "incidental use" has been defined by the Federal Election Commission as "an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period." 11 C.F.R. § 114.9(a)(1)(i).

One cannot, of course, measure the term "incidental" for a legislative aide in the same way one would measure it for someone who held a job that had normal working hours and a constant work load. Indeed, that is what makes

the Complaint's allegations that particular employees spent 75% to 80% of their time doing campaign work so meaningless -- depending on the time of year and whether the Assembly was in session or not, Schumer's aides may have had only 15-20 hours or 60-70 hours of work to do each week. But since Schumer's staff continued to perform all their assigned State tasks, one must conclude that any campaign work they performed was "incidental" to their regular jobs as the Commission understands that term.

One must similarly conclude that any use of State facilities for campaign activities by the Schumer staff qualified as "incidental" use within the meaning of these analogous FECA rules. The staff's use of the telephones, pencils and paper clips on their desks is neither surprising nor violative of any Commission regulation. Nor would it have been reportable, even if supplies purchased with legislatively appropriated funds had to be reported.[3/]

3/ Indeed, on the one occasion when the staff's use of State office supplies threatened to get out of hand, Kellermann and Schumer reimbursed the State. When Schumer staffers helped to photocopy a master voter list, they used a significant quantity of paper owned by the State of New York. They did so without authorization from Schumer or Kellermann. When Kellermann learned what the scope of that job had been,

(Continued)

It Would Be Inappropriate for the Commission to Act Now On a Matter That Could Have Been Referred to It Years Ago

While there are ample statutory and precedential reasons for the Commission to close this matter immediately, there is also an equitable consideration that militates against the commencement of a third investigation into this matter.

The activity complained of in the District Attorney's complaint took place over five years ago. It has not been kept secret during these five years; on the contrary, both the Federal and State investigations were the subject of widespread publicity. The Justice Department's decision to close its file was reported on the front page of The New York Times. The District Attorney's plea for appointment of a special prosecutor was published in every newspaper in New York and in the Washington Post. If there was an appropriate time for this matter to have been studied by the Commission, it was years ago -- not now, five years and more after the event.

(Continued)

she asked for an estimate of how much paper had been used and reimbursed the State for the full amount from campaign funds. Schumer concurred with her directive.

Moreover, the opportunity to refer this matter to the Commission has existed from the beginning. Indeed, in our 1982 brief to the Justice Department, we said that if the government was bent on bringing a case to test whether salaries paid to State legislative aides were contributions when those paid to federal aides were not, the most appropriate forum would be a civil case under the FECA, 2 U.S.C. § 437g(a). The Justice Department did not take us up on our suggestion; neither did it refer the question to the Commission. Under those circumstances, we submit that it would be inappropriate for the Commission to commence an investigation now -- especially where the law and the Commission's prior rulings so clearly support our position.

There is No Case Against the
Schumer Re-Election Committee

The District Attorney's complaint in this matter names as a co-defendant the Schumer for Congress Committee. This was the campaign committee that Schumer formed in 1980 to coordinate the funding of his first Congressional campaign. Its treasurer was Richard Lukins.

On September 6, a copy of this Complaint was served on the Committee to Re-Elect Charles Schumer and its treasurer, Steven Goldenkranz. Obviously, the "re-elect" committee is not the campaign committee that was involved in

the 1980 campaign; it was not formed until a much later date. And Mr. Goldenkranz, the Treasurer of the Re-Election Committee, had nothing whatever to do with the 1980 campaign. Thus, the proper party has not been served with the complaint.

However, if the 1980 Committee (which no longer exists) were served with the complaint, its answer would be the same as Congressman Schumer's. There was no violation of the reporting requirements imposed on the Committee because there was simply nothing for the Committee to report. Therefore, the complaint should be dismissed as against the Committee, as well.

Conclusion

For all these reasons, we would submit that the complaint filed by the District Attorney be dismissed. We remain available to provide you with any information you may need to enable you to reach a conclusion.

Very truly yours,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By _____
Arthur L. Liman
Colleen McMahon

GCCH 8591

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(212) 644-8001

85 SEP 20 PM 12:43

September 19, 1985

Charles Snyder, Esq.
Federal Election Commission
1325 K Street, NW
Washington, DC 20463

Re: MUR 2074

SEP 20 P 12:50

Dear Mr. Snyder:

This is to confirm our conversation today with relation to the Schumer Re-election Committee's time to respond to the FEC Complaint.

As I mentioned in my letter of September 6, 1985 and in our conversation, we expect to file an answer for the Committee at the same time as we file the Congressman's. Due to a delay in designating us as their attorneys (which is shortly forthcoming), I had not yet "officially" requested an extension of the Committee's answer deadline from September 21 to September 26, 1985. In accordance with our conversation, I will assume that there is no problem with extending the Committee's answer time; we will file both answers on September 26 as agreed.

Thank you for your cooperation and assistance.

Cordially,

Cristina Palacio

Cristina Palacio

CP/mtc

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85 SEP 25 A10:00

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2074

NAME OF COUNSEL: Paul Weiss Rifkind Wharton + Garrison (Arthur L. Liman Colleen McMahon)

ADDRESS: 345 Park Avenue
New York, NY 10154

TELEPHONE: (212) 644-8132 / (212) 644-2732

SEP 25 A10:31

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

9/21/85
Date

Signature

RESPONDENT'S NAME: RE-ELECT CHUCK SCHUMER COMMITTEE

ADDRESS: 1718 EAST 26 ST.
BROOKLYN NEW YORK, 11229

HOME PHONE: (718) 338-8130

BUSINESS PHONE: (212) 889-8380

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85 SEP 25 A10: 08

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 13, 1985

Cristina Palacio, Esquire
Paul, Weiss, Rifkind, Wharton & Garrison
345 Park Avenue
New York, NY 10154

RE: MUR 2074

Dear Ms. Palacio:

In response to your letter to Charles Snyder of our Office, dated September 6, 1985, please be advised that, after considering the circumstances presented in your letter, the Commission has determined to grant your request for an extension on behalf of Mr. Schumer of fourteen days. Mr. Schumer's response to the complaint is now due on September 26, 1985.

If you will be representing the committee as well, please complete and return the enclosed designation of counsel form.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure

8 6 0 4 0 5 3 2 7 0 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

Enclosure

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EDINBURGH TOWER (34TH FLOOR)
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE 5-220041
TELECOPIER 852-123-4286
TELEX HX66208

RANDOLPH E. PAUL (1946-1956)
LOUIS S. WEISS (1927-1950)
JOHN F. WHARTON (1927-1977)

ADRIAN W. DEWIND
LLOYD K. GARRISON
JAMES B. LEWIS
MORDECAI ROCHLIN
HOWARD A. SEITZ
SAMUEL J. SILVERMAN
JOHN C. TAYLOR 3RD
COUNSEL

SAMUEL MYERS
EUROPEAN COUNSEL

MORRIS E. ABRAM
NEALE M. ALBERT
MARK M. ALCOTT
DANIEL J. BELLER
MARK A. BELNICK
ALLAN BLUMSTEIN
RICHARD S. BORISOFF
JOHN F. BREGLIO
DAVID C. BRODHEAD
RICHARD J. BRONSTEIN
JOSEPH E. BROWDY
CAMERON CLARK
JEROME ALAN COHEN
EDWARD N. COSTIKYAN
JAMES M. DUBIN
RICHARD A. ENGELMAN
LESLIE GORDON FAGEN
PETER L. FELCHER
GEORGE P. FELLEMAN
BERNARD FINKELSTEIN
MITCHELL S. FISHMAN
MARTIN FLUMENBAUM
MAX GITTER
RICHARD D. GOLDSTEIN
BERNARD M. GREENE
JAY GREENFIELD
PETER R. HAJE
ALBERT P. HAND
SEYMOUR HERTZ
JOSEPH S. ISEMAN
ARTHUR KALISH
LEWIS A. KAPLAN
ANTHONY B. KUKLIN
JEROME KURTZ
STEVEN E. LANDERS
ROBERT L. LAUFER
WALTER F. LEINHARDT
ARTHUR L. LIMAN
MARTIN LONDON
BAYLESS MANNING
JOHN D. MESSENGER
JOHN D. MINROE
COLLEEN McMAHON
ROBERT E. MONTGOMERY, JR.
ROBERT H. MONTGOMERY, JR.*
DONALD F. MOORE
TOBY S. MYERSON
PAUL J. NEWLON
MATTHEW NIMETZ
KEVIN J. O'BRIEN
LIONEL H. OLMER
JOHN J. O'NEIL
STUART I. ORAN
JAMES L. PURCELL
LEONARD V. QUIGLEY
SIMON H. RIFKIND
STUART ROBINOWITZ
SIDNEY S. ROSDEITCHER
STEVEN B. ROSENFELD
PETER J. ROTHENBERG
ERNEST RUBENSTEIN
MOSES SILVERMAN
EILEEN S. SILVERS
STEVEN SIMKIN
ROBERT S. SMITH
THEODORE C. SORENSEN
GERALD D. STERN
ALLEN L. THOMAS
JUDITH R. THOYER
JAY TOPKIS
JOSÉ E. TRIAS
DAVID T. WASHBURN
ALFRED D. YOUNGWOOD
NORMAN ZELENKO

*MEMBER CONNECTICUT & DISTRICT OF COLUMBIA BARS ONLY

WRITER'S DIRECT DIAL NUMBER

(212) 644-8001

September 6, 1985

85 SEP 12 : 25

85 SEP 10 A11 : 00

Charles Snyder, Esq.
Federal Election Commission
1325 K Street, NW
Washington, DC 20463

Re: MUR 2074

Dear Mr. Snyder:

After our conversation this afternoon, I was informed that the Complaint was hand delivered to Mr. Schumer on August 28, 1985. However, when the papers were received by our offices, the main attorney working on Schumer matters was not in the country. Thus, we would like to request an extension of Mr. Schumer's time to reply from September 12, 1985 to September 26, 1985.

As I mentioned on the phone, the Schumer Re-election Committee received the Complaint only this morning. If we are representing them as well, we expect both replies to be submitted at the same time. I will, of course, request an extension of their reply time when we have been designated as their attorneys.

Cordially,

Cristina Palacio

Cristina Palacio

CP/mtc

FEDERAL EXPRESS

Cook Rpd
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PAUL, WEISS, RIFKIND, WHARTON & GARRISON

345 PARK AVENUE NEW YORK, NEW YORK 10154

TELEPHONE (212) 644-8000
TELECOPIER (212) 644-8202
RAPIFAX (212) 355-0118
TELEX WU 12-7831; WUI 666-843

1615 L STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE (202) 223-7300
TELECOPIER (202) 223-7420
TELEX 248237 PWA UR

8, PLACE VENDÔME
75001 PARIS, FRANCE
TELEPHONE 296.10.15
TELECOPIER 260.63.59
TELEX 213649F

EDINBURGH TOWER (34TH FLOOR)
15 QUEEN'S ROAD, CENTRAL
HONG KONG
TELEPHONE 5-220041
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NORMAN ZELENKO

*MEMBER CONNECTICUT & DISTRICT OF COLUMBIA BARS ONLY

85 SEP 12 : 25

September 6, 1985

85 SEP 10 A11:00

Charles Snyder, Esq.
Federal Election Commission
1325 K Street, NW
Washington, DC 20463

Re: MUR 2074

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After our conversation this afternoon, I was informed that the Complaint was hand delivered to Mr. Schumer on August 28, 1985. However, when the papers were received by our offices, the main attorney working on Schumer matters was not in the country. Thus, we would like to request an extension of Mr. Schumer's time to reply from September 12, 1985 to September 26, 1985.

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Cordially,

Cristina Palacio

Cristina Palacio

CP/mtc

FEDERAL EXPRESS

85040 2706

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85 SEP 3 A9:04

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2074

/ NAME OF COUNSEL: Arthur Liman

ADDRESS: Paul, Weiss, Rifkind, Wharton & Garrison
919 Third Ave.
New York, NY 10022

TELEPHONE: 212-644-8132

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

8/29/85
Date

Charles E. Schumer
Signature

RESPONDENT'S NAME: Charles E. Schumer

ADDRESS: 126 Cannon HOB
Washington, DC 20515

HOME PHONE: 718 622-4222

BUSINESS PHONE: 202 225-6616

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1985

HAND DELIVERED

Honorable Charles E. Schumer
126 Cannon House Office Building
Washington, D.C. 20515

Re: MUR 2074

Dear Mr. Schumer:

This letter is to notify you that on August 19, 1985, the Federal Election Commission received a complaint which alleges that you and the Schumer for Congress Committee may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2074. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you and the Schumer for Congress Committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a) (4) (B) and § 437g(a) (12) (A) unless you notify the Commission in writing that you wish the matter to be made public.

If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

2 5 0 4 0 : 0 2 7 1 0

If you have any questions, please contact Charles Snyder, the attorney assigned to this matter at (202)523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

3 5 0 4 0 5 0 2 7 1 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1985

Laura E. Drager
Chief, Rackets Bureau
District Attorney, Kings County
Municipal Building
210 Joralemon Street
Brooklyn, NY 11201

Dear Ms. Drager:

This letter is to acknowledge receipt of your complaint which we received on August 19, 1985, against Charles E. Schumer and the Schumer for Congress Committee, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. We have numbered this matter under review MUR 2074. Please refer to this number in all future correspondence. If you have any questions, please contact Stuart C. Mc Hardy at (202)523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

8 5 0 4 0 5 3 2 7 1 2

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

August 28, 1985

Re-Elect Chuck Schumer Committee
Treasurer
1718 East 26th Street
Brooklyn, NY 11229

Re: MUR 2074

Dear Sir:

This letter is to notify you that on August 19, 1985, the Federal Election Commission received a complaint which alleges that the Schumer for Congress Committee and you, as treasurer may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 2074. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate, in writing, that no action should be taken against you and the Schumer for Congress Committee in connection with this matter. Your response must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath.

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If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

9 5 0 4 0 1 3 2 7 1 3

If you have any questions, please contact Charles Snyder, the attorney assigned to this matter at (202)523-4000. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosures
Complaint
Procedures
Designation of Counsel Statement

9504053714

GCC#8333

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85 AUG 19 A10:13

OFFICE OF THE
District Attorney
KINGS COUNTY

MUNICIPAL BUILDING • BROOKLYN, NEW YORK 11201 718 802-2000

ELIZABETH HOLTZMAN
District Attorney

August 16, 1985

General Counsel
Federal Election Commission
1325 K Street N.W.
Washington D.C. 20463

To The Commission:

In accordance with 11 CFR Section 111.4, I have enclosed three copies of a complaint which I wish to file pursuant to 2 USC Section 437g. I have attached a list of the names and means of contacting witnesses to whom I have spoken which may aid in any investigation the Commission may undertake.

Please rest assured that the Office of the Kings County District Attorney is ready to assist in any investigation which may take place. If we can be of any help, feel free to contact our office.

Sincerely,

Laura E. Drager

Laura E. Drager
Chief, Rackets Bureau

LD:fm
encs.

3 5 0 4 0 7 5 2 7 1 5

FEDERAL ELECTION COMMISSION
COMPLAINT PURSUANT TO 2 U.S.C.§ 437g

Name of Complainant: LAURA E. DRAGER

Address of Complainant: Office of the District Attorney
Kings County
210 Joralemon Street
Brooklyn, New York 11201

Name of Respondents: Representative Charles E. Schumer
Schumer for Congress

Laura E. Drager deposes and says:

1. I am an Assistant District Attorney and Chief of the Rackets Bureau in the Office the the District Attorney, Kings County, State of New York. I submit this complaint to the Federal Election Commission for review pursuant to the authority conferred on the Commission by 2 U.S.C. §437(g)(a)(1). The allegations contained herein are based upon the statements of witnesses personally interviewed by me or members of this office under my supervision, notes of witness interviews obtained from the Office of the United States Attorney for the Eastern District of New York, and records now in the possession of the Office of the District Attorney of Kings County.

2. This office recently completed an investigation under my supervision into allegations that Charles E. Schumer, currently a member of the United States House of Representatives, while a member of the New York State Assembly, made extensive use of

state-paid employees of his Assembly staff and state office facilities to promote his candidacy in 1980 to become the United States Representative for the Tenth Congressional District of New York. Mr. Schumer was subsequently elected to that congressional seat in November, 1980. Our investigation showed that he made such use of state compensated workers and state facilities, and that such use was not reported by Schumer or the officers of his campaign committee as required by 2 U.S.C.§434 (b).

3. During 1981 and 1982, the United States Attorney for the Eastern District of New York conducted an investigation into these allegations against Mr. Schumer and recommended an indictment. The United States Department of Justice overruled that recommendation, however, and announced that the matter was "not appropriate for federal prosecution." Because the U.S. Attorney and the Department of Justice had not exonerated Mr. Schumer this office conducted its own investigation to determine if a crime might have been committed which was within our jurisdiction. We have concluded that there is no basis for criminal prosecution under New York's laws. However, it appears to us that Charles Schumer and officers of his campaign committee violated certain provisions of the Federal Election Campaigns Act. I have been advised by the staff of the United States Attorney's Office for the Eastern District of New York that federal prosecutors have never referred this matter to the Commission.

4. At the time Charles Schumer announced his candidacy for Congress in January, 1980, he had been a member of the New York State Assembly since 1975. He had an office in Albany in the State Office Building and an office in his district. He also was the chair of the Assembly's Committee on Oversight and Investigation ("the Committee"), a position he had held since January, 1979. The Committee employees and those who worked at his district and Albany offices were responsible to Mr. Schumer, and served at his pleasure. As set forth more fully below between January, 1980 and September, 1980, members of the staff of the Committee and of Schumer's other offices, while on the payroll of New York State, devoted substantial periods of time - in some cases, almost all their time - to working on his congressional campaign. In fact, some staffers were specifically hired with the intent that they would devote substantial amounts of their time to campaign activities. This work was performed during working hours and in many cases at Schumer's state offices. As set forth more fully below, the facilities of the Committee, including office space, photocopying equipment and telephone equipment, were used by Schumer's employees on behalf of the campaign without any reporting of such uses to the Federal Election Commission.

5. At the very outset of his campaign, Charles Schumer set out to hire a campaign manager who would also perform some assembly duties. It was Mr. Schumer's intent to place this per-

son on his state payroll for a period of time during which some of his/her responsibilites would be strictly campaign oriented. The first person hired for this position was Marc Canu who was on the state payroll from January 7, 1980 until March 31, 1980. He was replaced by Carol Kellerman who was on the state payroll from March 10, 1980 until May 7, 1980, and again after the general election from November of 1980 until the end of December 1980. Both Canu and Kellerman were interviewed and hired by Congressman Schumer. Canu has informed me that by February, 1980, he was devoting at least eighty percent of his worktime to the campaign. Kellerman has admitted to me that while she was on the state payroll in the Spring of 1980, she spent thirty-five percent of her worktime exclusively on campaign functions. (She has further informed me that she spent an additional thirty-five percent of her time on work that qualified as both state and campaign work.)

6. Canu has informed me that the campaign work performed by him on state time involved distribution of campaign literature, setting up fund-raising coffee klatches, updating a mailing list, arranging for appearances by Schumer at different functions, contacting volunteers and attempting to locate a campaign headquarters.

7. Kellerman has informed me that her campaign duties performed on state time included locating a campaign headquarters,

developing the prime voter list (which was to be used exclusively for campaign mailings and telephone calls), reviewing district voting patterns, hiring campaign workers and a pollster and planning the campaign budget.

8. In addition to Canu and Kellerman, who were hired specifically to handle campaign matters, other staffers performed campaign functions during working hours. Griffin Thompson, a Committee staffer, has informed me that, during the late winter and spring of 1980, while receiving a salary as an employee of the Committee, he spent as much as eighty percent of his time in such activities as searching for a campaign headquarters, developing campaign position papers, contacting campaign volunteer workers, assisting in the preparation of the prime voter list by reviewing registration cards at the Board of Elections, and, along with others, xeroxing that list at the offices of the Committee using the photocopier belonging to New York State. He also assisted in campaign mailings and made some deliveries to the campaign treasurer, Richard Lukins.

9. Susan Orlove, an employee of the District Office, has informed me that she was personally instructed by Mr. Schumer during the pendency of the campaign to drop all of her state work and engage solely in campaign fund raising activities. Orlove, in fact, spent, during certain periods, about seventy- five percent of her state work time on the campaign. The work she performed included making telephone calls and sending follow-up

letters to solicit contributions from Political Action Committees. These letters were typed at the District Office by Honee Beck, an employee of the District Office. During the final two weeks of the primary campaign, Orlove worked at the campaign headquarters. During this entire period she continued to receive her regular salary from New York State.

10. Janet Kalson, a secretary for the Committee, has informed me that she assisted in the preparation of campaign mailings and the prime voter list. She also spent two weeks photocopying the campaign prime voter list at the Committee Office. This work was performed on state time.

11. Joshua Howard, a Committee staffer in charge of public relations, prepared all campaign literature for the duration of the campaign and all campaign press releases up to the summer of 1980. Some of this work was performed on state time.

12. Anna Barletta, a secretary at Mr. Schumer's Albany Assembly Office, has stated that during the spring of 1980, she spent up to two hours a day on state time receiving dictation from Schumer and typing letters seeking campaign contributions.

13. Apart from work performed by state employees, extensive use was made of state facilities, equipment, and office supplies, none of which was reported in the campaign filings. Joshua Howard, Janet Kalson and Griffin Thompson each informed me that a telephone line at the Committee headquarters was assigned to the use of the campaign. Committee employees were instructed not

to answer that telephone as the other telephones were answered by giving out the Committee's name, but instead to answer by giving only the number of the telephone. Similarly, (as stated in ¶9 above) Susan Orlove used a District Office telephone to conduct campaign fundraising. Extensive use was made of state photocopying facilities for preparation of the prime voter list. This fact has been confirmed by Carol Kellerman, Griffin Thompson, Janet Kalson and Steven Goldberg, a campaign employee. I have been informed by Janet Kalson, Anna Barletta and Susan Orlove that state office equipment was used for campaign correspondence at each of Representative Schumer's three state offices. In addition, I have been informed by Steven Goldberg, Griffin Thompson and Joshua Howard that state office supplies such as staplers, paper, pens, rubber bands and paper clips were taken and used for the campaign. All of these activities obviously also entailed the use of state office space on behalf of the campaign.

14. On information and belief the cost to the campaign of comparable office space, the telephones, and the photocopiers, would have been substantial. Neither Charles Schumer nor the campaign paid for these items, and the fact that New York State paid for them is not reflected in any of Charles Schumer's filings with the Federal Election Commission. Nor do his filings reflect as campaign contributions the salaries which his employees received from New York State while they worked on his campaign.

15. After reviewing the relevant statutes, it is my opinion that in filing reports with the Federal Election Commission, Mr. Schumer and his campaign committee should have reported as campaign contributions the value of the use he made of New York State facilities and employees set forth above and that his failure to do so violates 2 U.S.C. §434 (b).

I request that the Commission investigate these charges and initiate appropriate action pursuant to the authority conferred on the Commission by 2 U.S.C. §437g.

LAURA E. DRAGER
ASSISTANT DISTRICT ATTORNEY

Sworn to before me
this 16 day
of August, 1985

SEYMOUR I. BALDINGER
NOTARY PUBLIC, State of New York
No. -515797
Qualified in Kings County
Term Expires March 30, 1986

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF KINGS)

I,_____, being duly sworn, state that I am employed in the Office of the District Attorney for Kings County and am over the age of 18.

That on the_____day of_____19____I served this document by enclosing a true copy in a postpaid envelope addressed to:_____

_____

Attorney for:_____

at his/her office and by causing it to be deposited in an official depository of the United States Postal Service within the State of New York.

Sworn to before me this_____ _____

day of_____ 19____

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK)
COUNTY OF KINGS)

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That on the_____day of_____19____I served this document on_____

_____ _____

Attorney(s) for_____

located at:_____, by causing a true copy to be left with the person in charge of his/her office, there being no one present who was authorized to give an admission of service.

_____

Sworn to before me this_____

day of_____19____

Please take notice that this is a copy

of a

entered and filed in the office of the

Clerk of Kings County.

Dated,

Sincerely,

Elizabeth Holtzman
District Attorney,
Kings County.

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

To

Attorney for

FEDERAL ELECTION COMMISSION

COMPLAINT PURSUANT TO 2 USC SECTION 437g

ELIZABETH HOLTZMAN
District Attorney,
Kings County

Attorney for

Municipal Building,
210 Joralemon Street
Brooklyn, New York 11201

Due and timely service of a copy
of the attached is admitted.

Dated,

Attorney for

OFFICE OF
ELIZABETH HOLTZMAN
KINGS COUNTY DISTRICT ATTORNEY

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2074

Date Filmed 5-7-86 Camera No. --- 2

Cameraman GPC

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