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FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

May 18, 1999

Mr. James Toledano
James Toledano Law Offices
18201 Von Karman Avenue
Suite 1170
Irvine, CA 92612-1005

RE: MURs 4389 and 4652

Dear Mr. Toledano:

Based on a *sua sponte* submission received by the Federal Election Commission on May 20, 1996, a complaint filed on June 17, 1996, and information supplied by you, the Commission, on February 23, 1999, found that there was reason to believe you violated 2 U.S.C. § 432(b), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

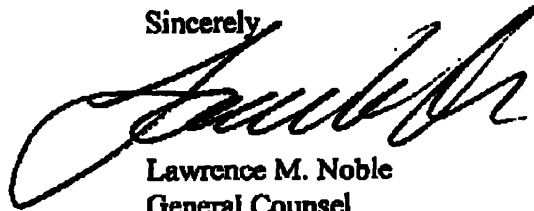
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Mr. James Toledano
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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Eugene Bull, the attorney assigned to this matter, at (202) 694-1650.

Sincerely



Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MURs 4389 and 4652
James ("Jim") Toledano)

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On February 23, 1999, the Commission found reason to believe that Jim Toledano—the former Chairman of the Orange County Democratic Central Committee (the "Democratic Committee" or "Committee")—violated 2 U.S.C. § 432(b). The reason to believe finding was based on Mr. Toledano's failure to forward to the Democratic Committee's treasurer, a \$10,000 contribution check payable to the Committee, in accordance with the Federal Election Campaign Act of 1971, as amended (the "Act").

II. ANALYSIS

The Act provides that every person who receives a contribution for a political committee which is not an authorized committee shall, if the amount of the contribution is in excess of \$50, forward to the treasurer such contribution, the name and address of the person making the contribution, and the date of receipt of the contribution, no later than 10 days after receiving the contribution. 2 U.S.C. § 432(b). Mr. Toledano, upon receiving a \$10,000 contribution check that was payable to the Democratic Committee, did none of the foregoing. Instead, without informing the treasurer or other members of the Democratic Committee's executive committee, he used the contribution to produce a mailer communicating the Committee's endorsement of a federal and a local candidate. In Mr. Toledano's own words, in his response dated April 12, 1999:

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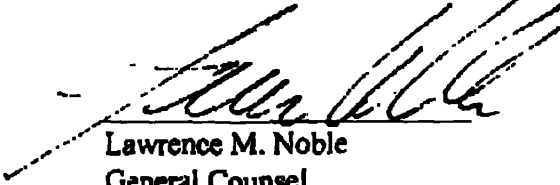
I took the check to Marine National Bank, the bank at which the Party's account was then being maintained and I opened up another account for the purpose of spending this money. In fact, it was not untypical of the Orange County Democratic Party to open separate accounts for special projects.

Whether or not it was fact that the Democratic Committee sometimes set up special project accounts in this manner, Mr. Toledano was not excused by this fact from the Act's requirement that all contributions to the Committee be forwarded to its treasurer within ten days, along with the pertinent information. Neither was Mr. Toledano released from this statutory obligation because, as he alleges, the treasurer of the Democratic Committee was derelict in his duties, and thus forwarding the contribution check to the treasurer would have hindered plans to get the mailer produced and mailed. In fact, nothing in the Act, the legislative history, and the Commission's regulations supports Mr. Toledano's contention in his response that "[i]ndeed, it is not unreasonable to consider me [the treasurer's] de facto agent in light of his derelictions." Such an approach is not only unreasonable, in light of the options available to Mr. Toledano—including not producing the mailer—it is unprecedented. Therefore, Mr. Toledano's failure to forward the \$10,000 contribution check to the Committee's treasurer violated 2 U.S.C. § 432(b).

III. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that James Toledano violated 2 U.S.C. § 432(b).

5/17/99
Date


Lawrence M. Noble
General Counsel

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