BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Robert Riley, Jr.	)	MURs 4568, 4633, 4634 and 4736
Bob Riley for Congress and	)	
Hughel Goodgame, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. **ACTIONS RECOMMENDED** Find probable cause to believe that Robert Riley, Jr. ("Riley, Jr.") knowingly and willfully violated 2 U.S.C. § 441a(a)(1) by making excessive contributions; find probable cause to believe that Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, ("the Riley Committee") knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting excessive contributions;

take no further action and close the file as to Congressman Robert (Bob) Riley, and authorize contingent suit authority.

II. **BACKGROUND**

The available information based on this Office's investigation and public disclosure records shows that, in May 1996, Riley, Jr., acting through an organization called Triad Management Services ("Triad"), contributed $5000 to five political action committees ("PACs"). Shortly thereafter (i.e., within a few days to two weeks), four of these PACs made contributions in the same or similar amounts to the Riley Committee, the principal campaign committee of Riley, Jr.'s father, Congressman Riley.[1] These

[1] Three of these PACs immediately contributed a full $1000 to the Riley Committee and the fourth contributed $500. The fifth PAC also contributed $1000 to the Riley Committee, but did not do so until after the June 4, 1996 primary. This fifth PAC also did not report receiving the May 9, 1996 Riley, Jr. contribution until July 1996.

contributions, which were made in connection with Congressman Riley's June 4, 1996 primary for the Republican nomination from Alabama's Third Congressional District, occurred after Riley, Jr. already had made the maximum legal contribution to the Riley Committee.

The Commission's reason to believe findings in these matters were based on alternative theories; in the case of Riley, Jr. violations of 2 U.S.C. § 441f, or in the alternative, § 441a(a)(1), 11 C.F.R. § 110.1(h), and for the Riley Committee violations of 2 U.S.C. § 441f, or in the alternative, § 441a(f).[2] After reviewing the evidence obtained during the investigation, this Office concluded that the legal theory most appropriate to Riley, Jr. and the Riley Committee was the § 441a(a)(1), 11 C.F.R. § 110.1(h) "excessive contribution" theory, rather than the 2 U.S.C. § 441f "contribution in the name of another" theory. Therefore, the General Counsel's Brief, dated February 23, 2001, ("GC Brief") stated that this Office was prepared to recommend that the Commission find that Riley, Jr. knowingly and willfully violated the Act by making excessive contributions to the Riley Committee, because his contributions to the five PACs were made with the knowledge that the PACs would use a substantial portion of those funds to make contributions to the Riley Committee; and that the Riley Committee knowingly and willfully violated the Act by accepting these excessive contributions from Riley, Jr. The GC Brief sets forth evidence which strongly supports these recommendations, and is

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[2] The Commission also found reason to believe that Congressman Robert ("Bob") Riley had violated 2 U.S.C. § 441f, or in the alternative, § 441a(f). As noted below, however, the GC Brief did not recommend any probable cause findings against Congressman Riley.

incorporated by reference into this Report.[3]

On March 13, 2001, the Respondents provided a joint response to the GC Brief ("Response"). The Respondents attempted to rebut the GC Brief by (1) proposing a novel, but erroneous, formulation of the applicable law; (2) arguing that the evidence is based on "supposition and innuendo" and that it does not establish earmarking, a legal theory that was not included in the General Counsel's Brief; (3) pointing out that Riley, Jr. had testified at his deposition as to an alternative motivation for his PAC contributions; (4) identifying a late endorsement from the NRA as a reason for the PACs' support; and (5) questioning the basis for a finding of probable cause that the Riley Committee's violations are knowing and willful. The Response does not take issue with the GC Brief's description of Riley, Jr.'s position with or involvement in the Riley Committee's 1996 campaign, nor that he conducted his dealings with Triad in complete secrecy, under circumstances in which he would have been expected to be more forthcoming if he believed his conduct was legal. As discussed below, the Response also does not dispute most of the essential facts presented in the GC Brief. Perhaps most significantly, the Response also avoids any comment on the GC Brief's detailed challenge to Riley, Jr.'s credibility on the basis of the incomplete, inconsistent and evolving statements he has provided at different points both before and during this investigation, and on the basis of various implausible statements made during his deposition.

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[3] Although this Report does not, at this time, recommend any findings regarding Triad in connection with the Riley, Jr. contributions, this Office anticipates making such recommendations in a later Report addressing a wider range of Triad activities.

Below, this Office analyzes the Response's legal and factual arguments.

III. ANALYSIS

A. Respondents Propose an Erroneous Legal Standard

The Respondents contend that the General Counsel's Brief fails to articulate the proper legal standard of review for this matter. It is Respondents, however, who have articulated the wrong legal standard.

While Respondents concede that the question of whether Riley, Jr.'s contributions violated the Act should initially be analyzed under the "knowledge" criterion of 11 C.F.R. § 110.1(h)(2), they then argue the novel notion that this analysis requires application of the "earmarking" standard set forth in 11 C.F.R. § 110.6, and specifically the "direction or control" concepts found in § 110.6(d). *See* Respondents' Brief at 2-5. They draw this conclusion by suggesting that there is an internal contradiction between the portion of §110.1(h) which deals with when a contributor may contribute to a political committee which *anticipates* supporting a particular candidate and the portion of §110.1(h)(2) which provides that a contributor may not contribute if he has *knowledge* that his funds will go to a specific candidate. However to "anticipate" means to have an expectation of future action, as distinguished from a definite plan or an inevitable course of conduct. Section 110.1(h)(2) only provides for aggregation of a contributor's contributions to different committees in the case of where the contributor's has knowledge of the committee's plans. While earmarking may be another way to gain knowledge of the contribution's ultimate destination, it is covered in § 110.6. The regulatory scheme includes § 110.1 (h) so as to cover knowledge gained in other ways.

Nothing in the Act, the regulations, the Explanations and Justifications, advisory opinions or Commission enforcement actions purports to tie § 110.1(h) and § 110.6 together in the way Respondents contend. Sections 110.1(h) and 110.6 were drafted to address different types of situations; indeed, they implement different parts of the statute - §441a(a)(1) in the case of § 110.1(h) and § 441a(a)(8) in the case of § 110.6. *See* titles to 11 C.F.R. §§ 110.1(h) and 110.6. In relevant part, § 110.1(h) provides that a contributor will not exceed the contribution limits if he gives $1,000 to a candidate and also contributes to a political committee that has already supported the candidate or anticipates doing so, as long as the contributor does not give with the knowledge that a substantial portion of his/her contribution will go to that candidate. In other words, § 110.1(h) applies to situations where a contributor knows that a substantial portion of his contribution will go to the candidate, even if it has not been earmarked. *See e.g,* AO 1984-02 (contributions made to an unauthorized committee supporting a named candidate are attributable to the contributor's limit for direct contributions to that candidate or his authorized committee, because the contributions to the unauthorized committee were made with the knowledge that the committee would expend the funds to support that candidate); *See also* AO 1976-20.

Neither the Act nor the regulation specify any particular way that the knowledge referenced in § 110.1(h) might be gained by the contributor—it could presumably come from any source, including the assurances of a third-party in a position to know a committee's (e.g., a PAC's) intentions. In such circumstances, the contributor does not need to earmark his contribution in order to know where it is going.

"Earmarking," in contrast, does not apply to a contributor's passive receipt of knowledge and subsequent actions based on that knowledge. Rather, it applies to situations in which a contribution passes from a contributor through a conduit or intermediary, and the contributor affirmatively encumbers his contribution so that it results in all or some of it ending up with a specific candidate. Respondents show their evident confusion of the regulatory scheme by contending that if a PAC, acting as a conduit, maintains "direction or control" as defined at 11 C.F.R. §110.6(d), then the contributions cannot be considered the excessive contribution of the original contributor. To the contrary, that section provides that a showing of direction or control by the intermediary causes both the intermediary and the contributor to be deemed to have made contributions. In sum, Respondents' contention that the "direction or control" standard of §110.6(d) should be imported to § 110.1(h) to show a contributor's "knowledge" simply has no basis. As discussed, the two regulations are separate and distinct; there is no contradiction between the concept that a committee "anticipates supporting" a candidate and the concept that a contributor makes a contribution with "knowledge" in §110.1(h). Further, §110.6(d), by its plain language, refers to direction or control by conduits and intermediaries, not the original contributors.

Based on the above, the Commission should reject the Respondents' attempt to create a new legal standard for 11 C.F.R. §110.1(h). This Office maintains that the evidence adduced in its Brief shows that Riley, Jr. had knowledge, transmitted to him through Triad, that a substantial portion of his contributions would ultimately go to his father's campaign. Accordingly, based on §110.1(h), Riley Jr. made excessive contributions under 2 U.S.C. §441a(a).

B. Respondents' Factual Rebuttal Does Not Dispute the Evidence Showing that Riley, Jr. Knew the PACs Would Contribute his Funds to the Riley Committee

Respondents argue that the evidence presented in the GC Brief is founded upon "supposition and innuendo" and that it ignores direct testimony that Riley, Jr. did not, in effect, earmark his contributions. Response at 5-6. Although much of the evidence cited in the GC Brief is circumstantial, that does not reduce it to the level of "supposition and innuendo." Circumstantial evidence can be quite compelling, and has been used to support countless criminal convictions, which are subject to a higher burden of proof than the probable cause standard that the Act establishes for the Commission's determination in this matter. This Office's reliance on circumstantial evidence is necessary, given that Triad President Carolyn Malenick asserted her Fifth Amendment privilege rather than provide testimony as to what knowledge she provided to Riley, Jr. regarding the PACs, and also because there are serious questions regarding Riley, Jr.'s credibility. Moreover, as this Office does not contend that Riley, Jr. had any direct contacts with the PACs, it does not "ignore" direct testimony that there were no such contacts, but rather views it as irrelevant to proof of its case.

Respondents do not dispute the essential facts which point to the conclusion that Riley, Jr. contributed with the knowledge that the PACs would contribute a substantial portion of these funds to his father's congressional campaign. Respondents do not challenge the evidence that Riley, Jr. initially approached Triad to enlist its support in seeking contributions for his father's campaign from a "coalition" of Triad-organized conservative PACs. Respondents also do not challenge evidence that Riley, Jr. received Triad materials indicating that the PACs consulted with Triad on candidate "targeting

strategy" for the 1996 congressional elections, and had agreed to participate in contested Republican primaries. GC Brief at 6-8, Triad PAC Memorandum (Attachment 1). Further, Respondents do not challenge the assertion that Triad was a major source, and in two cases the sole source, of funds for the PACs to which Riley, Jr. contributed. Indeed, Triad stipulated that during 1995-1996, it forwarded $298,500 in individual contributions to the PACs that participated in its "targeting strategy" coalition, including the five PACs to which Riley, Jr. contributed. *See* Stipulations of Fact at Para. 6.1, 6.11-6.12 (Attachment 2). Triad also stipulated that it advised persons to whom it made contribution recommendations, such as Riley, Jr., as to its ongoing discussions with representatives of the PACs as to the candidates the PACs had targeted, and that Triad asked how the PAC's list of candidates might be expanded should the PAC receive additional funds. GC Brief at p. 8, Stipulations at Para. 6.7. Respondents do not claim that there is any reason that Triad would have departed from these stipulated practices in its dealings with Riley, Jr.

Although the GC Brief noted that Riley, Jr. has consistently denied ever being given any promise or guarantee that the PACs would contribute to his father's campaign, it also noted that Riley, Jr.'s credibility must be questioned as a result of inconsistent and incomplete testimony he has given in a Senate Investigation Interview, a sworn affidavit and in his FEC deposition. GC Brief at 19-24. As noted above, the Response does not even mention, much less attempt to rebut, the GC Brief's lengthy challenge to Riley, Jr.'s credibility.

Recently, in an age discrimination case, the U.S. Supreme Court confirmed that the factfinder is entitled to consider a party's dishonesty about a material fact as

"affirmative evidence of guilt" and in appropriate circumstances may reasonably infer that a party is dissembling to cover up an illegal purpose. *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 2108 (2000), *citing Wright v. West*, 505 U.S. 277, 296 (1992) and *Wilson v. United States*, 162 U.S. 613, 620-621 (1896).

Despite the fact that earmarking is not the theory relied on in the GC Brief, Respondents expend much effort to rebut the notion that Riley, Jr. had earmarked his PAC contributions for the Riley Committee, and to establish that that there was no direct communication between Riley, Jr. and the PACs. This argument misses the mark. The GC Brief argues not that Riley, Jr. earmarked the contributions, but that, based on knowledge provided to him by Triad, Riley, Jr. knew that the five PACs would give a substantial portion of the funds to his father's campaign.

Although the PAC representatives deny having any understanding with Triad with regard to the disposition of a particular check, such as Riley, Jr.'s, they acknowledge receiving funding from, and having an ongoing relationship with, Triad that included sharing their candidate contribution plans. By May 1996, a pattern had been established by which each of the PACs had received considerable funds from Triad, and had made contributions to candidates which were "recommended" to them by Triad.[4] This is most patently clear in the case of American Free Enterprise PAC ("AFE") and Citizens Allied

[4] The allegations against Riley, Jr. and the Riley Committee cannot be viewed in a vaccum. Although not included as part of the evidence cited in the GC Brief, it should be noted that each of the five PACs to which Riley, Jr. contributed are also involved in a similar set of allegations regarding contributions by John and Ruth Stauffer to nine Triad-recommended PACs which made subsequent contributions to the 1996 Senatorial campaign of the Stauffers son-in-law, Sam Brownback. *See* General Counsel's Brief, dated March 12, 2001, that was sent to John and Ruth Stauffer, and the Sam Brownback for US Senate Committee in these same MURs.

for Free Enterprise PAC ("CAFE"), who received all of their funds from Triad and made all of their contributions to Triad-recommended candidates. GC Brief at 11-13.

The Response also cites testimony from Riley, Jr. to the effect that Malenick told him that there was no promise or guarantee that the PACs would give to his father's campaign. While the GC Brief stated that this was Riley, Jr.'s position, it also showed several reasons why that testimony should not be credited. Triad knew that Riley, Jr., who had originally approached Triad for just this purpose, wanted PACs to make contributions to his father's campaign.[5] The basis for Riley, Jr.'s original contact with Triad, the influence that Triad had over the PACs, as well as Malenick's stipulated practice of advising potential donors of her contacts with the PACs, and the fact that the PACs did make contributions to the Riley Committee all point to Riley, Jr. having knowledge of how the PACs would use his funds at the time he made the contributions. Further, as the GC Brief argues, and the Response does not dispute, it seems unlikely that Riley, Jr. (whose deposition testimony twice mentioned shortages of personal funds in 1996) would dig into his savings and transmit funds through a relative stranger, if he did not know their ultimate destination. GC Brief at 24-25.

Nor does the Response dispute the statement in the GC Brief (at footnote 17) that Riley, Jr.'s involvement in his father's campaign, including fundraising, belies his claim that he could have been unaware of the PAC contributions at issue during 1996. Indeed,

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[5] Although Riley, Jr. described his initial approach to Triad on behalf of his father's campaign in a 1997 interview with a Senate Investigator (Attachment 3), he failed to mention this contact in his 1998 sworn affidavit (Attachment 4), where he characterized all contacts as occurring after Triad consultant Carlos Rodriguez visited the Riley campaign in May 1996.

Riley Committee campaign manager Billie Joe Johnson submitted an affidavit stating that the campaign attributed these PAC contributions to Triad's endorsement of the campaign, yet he did not know that Riley, Jr. recently had made contributions to these same PACs.[6] GC Brief at 26, Johnson Affidavit Para. 6 (Attachment 5). Thus, contrary to his deposition testimony, what appears most plausible is that Riley, Jr., knowing his contributions violated the Act, concealed his role in them from others involved in the Riley campaign.

Respondents contend that Riley, Jr. could not have had the requisite knowledge regarding how the PACs would use his funds, because he "unilaterally" selected the PACs from a list of 10-12 PACs suggested by Triad. Response at 8. At one point, Respondents also attempt to argue that Triad did not necessarily know the identity of the PACs which Riley, Jr. had selected until after the PACs made their contributions. *See* Response at 12 (discussing AFE PAC). These arguments are flawed. First, Riley, Jr.'s testimony has varied over time. In 1997, for example, Riley, Jr. reportedly told a Senate Investigator that "Malenick helped him select particular PACs to contribute to." *See* Senate Investigators' Memorandum at p. 2 (Attachment 3). From the totality of the evidence, it seems apparent that Malenick steered Riley, Jr. to the five PACs over which Triad exercised the most influence. For example, AFE and CAFE were relatively new PACs which had been in existence for less than a year, and there is no evidence that there was any reason for Riley, Jr. to have selected these PACs unless Malenick had told him

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[6] As noted in the GC Brief, Mr. Johnson stated that he might have had a conversation with Riley, Jr. on the subject of Triad's financial assistance to the campaign. We note the Response did not deny that Riley, Jr. took part in such a conversation.

to. Second, the record establishes that Riley, Jr. sent his contributions to Triad for transmission to the PACs and that Triad routinely gave the PACs a heads-up telephone call to let them know that additional funds were on the way, so it is clear that Triad knew which PACs were to receive Riley, Jr.'s funds.

Respondents also argue that Riley, Jr. should not be held accountable for any actions that Triad might have taken to influence the PACs to make contributions to the Riley Committee. Response at 7. Although the GC Brief did not put forth an "agency theory" it did argue that Triad could be confident that the PACs would contribute a substantial portion of Riley, Jr.'s funds to the Riley Committee, that Triad stipulated that it would routinely share this type of information with a donor such as Riley, Jr., and that there is no evidence or reason for Triad to have varied from its normal practice in dealing with Riley, Jr. Thus, the GC Brief contends that Riley, Jr. himself knew, through Triad, where his contributions would end up, and therefore knowingly and willfully made excessive contributions to the Riley Committee.

C. Respondents' Alternative Explanations for Riley, Jr.'s Motivations and the Timing of the PAC Contributions Are Not Persuasive

Respondents argue that Riley, Jr.'s motivations for making contributions to the PACs and the timing of the PACs' contributions to the Riley Committee can be explained in ways other than those indicated by the evidence cited in the GC Brief. Response at 14-17. Respondents cite to Riley, Jr.'s testimony that he made his PAC contributions in order to support candidates other than his father who would help maintain Republican control of the House of Representatives. Response at 14-15. Respondents fail to address the fact that Riley, Jr. gave a distorted time-line of events and a different rationale in his

sworn affidavit, attributing his PAC contributions to his gratitude for the ongoing encouragement and help that Triad had provided to his father's campaign -- an explanation that tied in with his distorted time-line. *See* Riley Affidavit (Attachment 4). Further, the Response did not address why Riley, Jr. chose to contribute to PACs, rather than making direct contributions to the many conservative Republican candidates seeking election or re-election in 1996. While direct contributions to conservative candidates would seem to be the most logical way to help elect the type of candidates that Riley, Jr. purportedly sought to support, such contributions would not have resulted in his funds passing through to his father's campaign. If Riley, Jr. had actually contributed to the PACs with no knowledge of how they would have used his funds, it was certainly possible that the PACs might have given some portion of Riley, Jr.'s $5000 to one of his father's primary opponents. Such a possibility makes it likely that Riley, Jr. would have chosen to contribute directly to candidates rather than to PACs. The most plausible conclusion is that Riley, Jr.'s decision to contribute to PACs, rather than candidates, was based on his knowledge that these particular Triad-recommended PACs would forward a substantial portion of his funds to the Riley Committee.

Respondents also contend that the timing of the PAC contributions to the Riley campaign can be explained by the candidate's last minute receipt of an NRA endorsement. Response at 16-17. GC Brief at 13-15. The NRA endorsement explanation might be credible if even one of the PAC representatives had cited this endorsement as a reason for making a contribution to the Riley Committee. In fact,

however, none of the PAC representatives mentioned the NRA endorsement.[7] Further, if the PAC contributions were the result of the NRA endorsement, it would be reasonable to expect that the Riley Committee would have received some pre-primary PAC contributions from groups other than those to which Riley, Jr. sent funds. But, other than the PACs to which Riley, Jr. gave funds, the Riley Committee only received one other PAC contribution -- from the Alabama Realtors PAC (of which the candidate was reportedly a member) -- during the last few weeks of the primary campaign, after the purported date of the NRA endorsement.[8] *See* Riley Committee Disclosure Reports. Respondents cannot deny the essential fact that the last minute pre-primary PAC support received by the Riley Committee came almost exclusively from PACs to which Riley, Jr. had made contributions.

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[7] The Response cites deposition testimony from Faith Family and Freedom PAC Treasurer Devin Anderson for the proposition that the FFF contribution to the Riley Committee may have been based on some positive mention of the Riley candidacy by the NRCC, the Cook Report or some other publication. See Response at 11. In fact, Mr. Anderson testified that the NRCC did not take ordinarily take sides during contested Republican primaries, and was unable to explain any reason for FFF to select Riley out of the field of seven candidates in the primary. Further this Office could not locate any favorable mention of Riley in the Cook Report. Similarly, Conservative Campaign Fund Treasurer testified that he supported Riley, because his opponent was a moderate, yet could not name the supposedly moderate opponent. GC Brief at 15. This testimony is contradicted by Riley, Jr.'s own testimony that all seven candidates in the primary were equally conservative. GC Brief at 9. In contrast, AFE and CAFE representatives acknowledged making the contributions in response to direction from Triad. GC Brief at 11-13.

[8] This Office, after conducting a thorough search, has been unable to locate any news accounts reporting on this endorsement. Consequently, there is no evidence that PACs located outside Alabama even would have been aware of the NRA endorsement prior to making their own contributions. Further, the NRA's own PAC did not make a contribution to the Riley Committee until June 4, 1996, the day of the primary.

Finally, as a "last note," Respondents imply that the Commission should consider the March 1998 Majority Report from the Investigation of the Senate Governmental Affairs Committee, which found, without holding hearings or taking testimony from the most relevant witnesses, that there was no evidence to contradict Riley, Jr.'s version of events relating to his PAC contributions. Response at 17. In contrast, this Office reached its conclusions after conducting a thorough investigation, the results of which were set forth in the GC Brief.[9]

As set forth in the GC Brief, the evidence reveals that after making his contributions to the PACs, Riley, Jr. has acted and testified in what appears to be a deceptive and misleading manner regarding those contributions. GC Brief at 19-24. A knowing and willful violation may be inferred from defendants' scheme for disguising their actions and their "deliberate convey[ance] of information they knew to be false to the Federal Election Commission. *U.S. v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). In this case, there is evidence both that Riley, Jr. attempted to hide the fact of his PAC contributions from his father's campaign manager and that he subsequently attempted to mislead the Commission by providing incomplete and inaccurate statements and affidavits during the investigation of these matters.

First, Riley, Jr., who purported to be acting on behalf of the Riley Committee, apparently concealed his dealings with Triad, as well as his PAC contributions, from his

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[9] This Office also notes that the Minority Report from the same Senate investigation reached a different conclusion than the Majority Report regarding the legality of Riley, Jr.'s PAC contributions. See Final Report of the Senate Committee on Governmental Affairs: Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns, Vol. 5 of 6, Additional and Minority Views, March 10, 1998, Rept. 105-167, Part 2, Chapter 12.

father's campaign manager, Billie Joe Johnson. For example, Riley, Jr. did not tell Mr. Johnson or others with whom he was working closely on fundraising for the Riley campaign that he had numerous contacts with Carolyn Malenick or that he was making PAC contributions through Triad. These omissions, in circumstances where he would be expected to share information regarding a potential source of funds for the campaign, suggest an attempt to conceal his conduct. Moreover, Riley, Jr., who had a prominent role in fundraising for the Riley Committee, testified that he was unaware that the PACs had contributed to the Riley Committee until long after the election. *See* Riley Dep. Tr. at 205-206. This statement is in marked contrast to the statement provided by Riley Committee campaign manager Billie Joe Johnson, whose affidavit indicated that the campaign attributed the receipt of contributions from the out-of-state PACs to Triad's efforts, and that he may even have discussed this belief with Riley, Jr. *See* Johnson Affidavit at p. 2, Para. 6 (Attachment 5). Mr. Johnson's statement suggests that Riley, Jr. could not have been unaware of the PAC contributions, and Riley, Jr.'s secrecy in failing to acknowledge his contributions to the PACs after they gave to the Riley Committee appears to have been a deliberate deception.

Second, after this investigation began, Riley, Jr. provided the Commission with a sworn affidavit with a distorted timeline, which suggests that he did not initially approach Triad seeking PAC contributions for his father's campaign. Instead, Riley, Jr.'s affidavit inaccurately states that his contacts with Triad began after a Triad representative visited his father's campaign and that his PAC contributions were meant, at least in part, to express gratitude for Triad's support of his father. *Compare* Riley, Jr. Affidavit

(Attachment 4) to Memorandum of Riley, Jr. Interview with Senate Investigator (Attachment 3).

The evidence thus suggests that Riley, Jr. made his PAC contributions in secrecy, and that he later attempted to mislead the Commission in its investigation of the matter, both of which constitute evidence that Riley, Jr.'s violations were knowing and willful. Accordingly, this Office recommends that the Commission find probable cause to believe that Robert Riley, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a)(1).

D. Riley, Jr.'s Knowledge of the Triad-Directed PAC Contributions Can be Imputed to the Riley Committee

Respondents mistakenly assert that the GC Brief presented no evidence that anyone associated with the Riley Committee had any knowledge regarding the Riley, Jr. contributions to the PACs and/or the PACs' subsequent contributions to the Riley Committee. Response at p. 17. This assertion is untrue. As set forth in the GC Brief, Riley, Jr. served as a senior Advisor to his father's campaign organization, and approached Triad while acting on behalf of the Riley Committee. Riley, Jr. spoke to Triad numerous times as part of his efforts to enlist Triad's assistance in getting the members of its PAC coalition to contribute to the Riley Committee. These facts suggest that Riley, Jr. was acting as an agent of the Riley Committee in his dealings with Triad, and, under standard agency law, his knowledge of his own excessive contributions that were accepted by the Riley Committee, can be imputed to the Riley Committee. Accordingly, for the reasons set forth above in connection with the proposed findings against Riley, Jr., this Office recommends that the Commission find probable cause to

believe that Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f).

V. CONGRESSMAN ROBERT ("BOB") RILEY

Although Congressman Robert ("Bob") Riley submitted an affidavit stating that he was aware that Riley, Jr. was considering making contributions to PACs recommended by Triad, and that he later became aware that his campaign had received contributions from PACs that resulted from a favorable recommendation by Triad, this Office has concluded that there is insufficient evidence to conclude that Congressman Riley personally violated the Act in connection with these matters. While Congressman Riley did meet with Triad representatives on at least two occasions, the investigation has not produced evidence which would show whether Congressman Riley was aware that Triad had provided Riley, Jr. with information about the PACs intent to use his funds to support the Riley Committee either prior to, or at, the time at which the contributions were made. Similarly, Riley, Jr. testified that while he may have told his father he was planning to help some of the PACs, he did not think he told his father "how much I was planning to do." Riley, Jr. Dep. Tr. at 242. Under these circumstances, this Office has not been able to conclude whether or not Congressman Riley knew precisely what PACs Riley, Jr. had contributed to, or that these were the same PACs which contributed to the Riley Committee. Thus, while Congressman Riley had a certain level of knowledge regarding the PAC contributions, this Office has concluded that the unresolved questions regarding the extent of his knowledge do not provide sufficient support for probable cause findings

against him in these matters. Accordingly, this Office recommends that the Commission take no further action as to Congressman Riley, and close the file as him.[10]

VI. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

[10] Each of the five PACs that are involved with the Riley, Jr. contributions also are involved with the John and Ruth Stauffer contributions which appear connected with PAC contributions to the Sam Brownback for US Senate Committee. This Office will make a recommendation as to the disposition of the PACs in its Report concerning the Stauffer contributions.

VII. CONTINGENT SUIT AUTHORITY

This Office also is requesting contingent suit authority due to the fact that the SOL for Riley, Jr. might be viewed as running on May 10, 2001 (five years from the date on which he wrote his checks plus one day of tolling that Respondents agreed to for an extension in the period to respond to the GC Brief).

VIII. RECOMMENDATIONS

1. Find probable cause to believe that Robert Riley, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a)(1).
2. Find probable cause to believe that Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f).
3. Take no further action against Congressman Robert ("Bob") Riley, and close the file as to him.
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5. Authorize contingent suit authority.
6. Approve the appropriate letters.

3/20/01
Date

Lois G. Lerner
Acting General Counsel

Attachments

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6.

Staff Assigned: Mark Shonkwiler