

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRET

FIRST GENERAL COUNSEL'S REPORT May 29 1 30 PM '97

MUR 4389 and Pre-MUR 329

DATE SUA SPONTE SUBMISSION

FILED: May 20, 1996

DATE COMPLAINT FILED: June 17, 1996

DATE OF NOTIFICATION: June 20, 1996

DATE ACTIVATED: October 28, 1996

SENSITIVE

STAFF MEMBER: Eugene H. Bull

COMPLAINANT:

Michael J. Schroeder

RESPONDENTS:

Orange County Democratic Central Committee,
and Edward R. Haskett, as treasurer
James ("Jim") Toledano, Chairman of the Orange County
Democratic Central Committee
James ("Jim") M. Prince
Prince for Congress and James M. Prince, as treasurer
Debra Lee LaPrade
Paul LaPrade

RELEVANT STATUTE(S):

2 U.S.C. § 431(4)(A)
2 U.S.C. § 431(8)
2 U.S.C. § 431(9)(A)(i)
2 U.S.C. § 433(a)
2 U.S.C. § 434(a)
2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 441a(a)(1)
2 U.S.C. § 441a(a)(2)
2 U.S.C. § 441a(a)(4)
2 U.S.C. § 441a(a)(7)(B)(i)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)
11 C.F.R. § 100.7(a)(1)(iii)
11 C.F.R. § 100.7(b)(9)
11 C.F.R. § 100.8(a)(1)(iv)
11 C.F.R. § 109.1(b)(5)
11 C.F.R. § 110.1(h)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

10044281940

I. GENERATION OF MATTER

This matter was initiated by a sua sponte submission received from the Orange County Democratic Party and Central Committee on May 20, 1996 and a complaint received from Michael J. Schroeder on June 17, 1996 against the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer (a.k.a. Orange County Democratic Party) (the "Democratic Committee" or the "Party"), James Toledano, James Prince, Debra Lee LaPrade, and Paul LaPrade.¹

According to the sua sponte submission received from the Democratic Committee, its Chairman, Jim Toledano, used \$10,000 received from Paul LaPrade, to produce a mailer shortly before the March 26, 1996 primary election in California's 46th Congressional District. The mailer was distributed to voters of the district, allegedly under the auspices of the Democratic Committee, and stated that the Democratic Committee had endorsed Jim Prince and a candidate for state assembly. The mailer also urged citizens to vote on election day. However, the Democratic Committee asserts that neither its treasurer nor its executive committee had authorized any mailing or expenditures of funds for such purpose.

The Democratic Committee asserts that the \$10,000 LaPrade contribution was in Mr. Toledano's possession as of March 6, 1996. Mr. Toledano deposited the contribution into a new bank account he opened the next day in the name of the Democratic Committee and then used those funds to make payments in connection with the mailer. The Democratic Committee further

¹ The Commission also received a letter dated March 26, 1996, from David Levy, the former treasurer of the Democratic Committee. In the letter, Mr. Levy discusses the expenditures made by Mr. Toledano in connection with the mailer at issue in this MUR. However, because the letter did not qualify as a properly filed complaint upon which the Commission could take action, it was filed in the Central Enforcement Docket for informational purposes.

asserts that Mr. Toledano contravened its by-laws because he did not inform or consult its executive committee before or after the bank account was opened and the mailer was distributed. Also, Mr. Toledano never requested authorization from the executive committee before receiving and expending funds on behalf of the Democratic Committee.

The Democratic Committee's sua sponte submission also alleges that the Prince for Congress Committee and James M. Prince, as treasurer (the "Prince Committee"), incorrectly reported the LaPrade contribution on its 1998 April Quarterly Report as having been conveyed to the Prince Committee through the Democratic Committee.

The complaint filed by Mr. Schroeder parallels several of the allegations made by the sua sponte submission. Mr. Schroeder asserts that prior to their 12 Day Pre-Election Report due before the March 26, 1996 California Primary, Mr. Toledano, as Chairman, and/or the Democratic Committee received payments of \$5,000 or more from Debra Lee LaPrade and Paul LaPrade to be used in support of the election of Jim Prince to California's 46th Congressional District. Complainant alleges that the Democratic Committee filed no pre-election report of any kind disclosing the receipt of said payments. He further alleges the monies were used to finance a mailer supporting the candidacy of Mr. Prince. The mailer was mailed "after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of election." However, no 48 hour notification was filed. Moreover, the required disclaimer was not included even though the mailer expressly advocated Jim Prince's candidacy.

Finally, Complainant contends that the payments by Debra Lee LaPrade and Paul LaPrade caused each of them to exceed applicable contribution limits of the Act.

10044281942

II. FACTUAL AND LEGAL ANALYSIS

A. Responses

1. Orange County Democratic Central Committee

Relying on information set forth in the sua sponte submission, counsel for the Democratic Committee argues in response to the complaint that there is no basis for taking action against the Committee or its former treasurer. According to counsel, the Democratic Committee and its former treasurer had no knowledge of or involvement in the unauthorized use of the Committee's name by Mr. Toledano, and the Committee is an "unwitting 'victim' in this matter." Counsel points out that the complaint is filed only on information and belief and is based entirely upon an article that appeared in the *Los Angeles Times*.² In this article, Mr. Toledano admits that he engaged in the activity which forms the basis of the complaint against the Democratic Committee and its former treasurer, without consulting with them or obtaining their approval. In short, counsel asserts that the Democratic Committee and its former treasurer were not involved and, consequently, they cannot be held responsible or liable under the Act for any of the alleged violations referred to in the complaint.

2. Jim Toledano

In his response to the complaint, Mr. Toledano states that he received a phone call from Ms. LaPrade who offered to donate \$10,000 "to advance the purposes of the Orange County Democratic Party in the primary." According to Mr. Toledano, he took the money in his capacity as Chair of the Party, acting with what he believed to be valid discretion within the context of the by-laws of the Democratic Committee, and consistent with the "acts" of his

² Rebecca Trownson, *Chairman's Actions Anger O.C. Democrats*, *Los Angeles Times*, April 2, 1996, at A-1. Attachment 1.

predecessors. He states that he opened a separate bank account in the name of the Orange County Democratic Party in order to have easy access to the contribution and spent the funds on the mailer mentioned in the complaint. Mr. Toledano asserts that the mailer was "intended in good faith to be an exempt slate mailer . . . under what [he] understood was the general exemption for educational advertising by a political party to promote voter awareness . . ." and cites 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9) as statutory and regulatory authority. He claims he was unaware at the time that the treasurer of the Democratic Committee had terminated the committee's registration with the Commission.

According to Mr. Toledano, the design of the mailer and all decisions concerning how to use the \$10,000 contribution was his alone. He states that the mailer correctly gave the name of the endorsed candidates and disclosed the Democratic Committee as its source. He further claims that he would not have accepted the contribution with "any strings attached," and denies knowing at the time the contribution was made that Ms. LaPrade was the sister of Jim Prince. He states that had he known, "[he] would not have taken the [contribution] without further inquiry; [or] probably he would not have taken the [contribution] at all because of the way an otherwise legal contribution might have looked to the other candidates."

Mr. Toledano denies that he was asked by or gave advice to Ms. LaPrade about the legality of her contribution. He protests that he would have declined to give such advice had he been asked. He denies that the expenditure in connection with the mailer was " earmarked" for the Prince campaign. He states that, with the exception of requesting a photograph, he did not consult with the Prince campaign on the mailing. Moreover, Mr. Toledano argues that any errors he has made are innocent mistakes "based on inadequate or incomplete information," and contends that the "statements attributed to [him] in the *Los Angeles Times* article are false."

10044281944

In a declaration attached to his response, Mr. Tolcdano reiterates several facts set forth in the response. He once again denies that he gave any legal advice to Ms. LaPrade or that the contributions were earmarked for the Prince campaign. In his statement, Mr. Toledano asserts that he deposited the check at issue into a new, separate account because the Democratic Committee ordinarily opens separate accounts for special projects in order to keep the funds separate from the operation funds and because the treasurer at the time was "extraordinarily difficult to locate if you wanted to make a deposit or get a check."

3. Paul and Debra LaPrade

In their response to the complaint, counsel for Debra and Paul LaPrade states that prior to the 1996 primary for the California 46th Congressional District, the LaPrades had no experience or expertise with Federal election laws. In February 1996, Ms. LaPrade "called the [Democratic Committee] and spoke with James Toledano. Mr. Toledano identified himself as the Orange County Democratic party chairman and as an attorney. [Ms. LaPrade] advised Mr. Toledano that she and her husband wanted to make contributions to the Orange County Democratic party for voter awareness. She was told by Mr. Toledano that she and her husband could each contribute up to \$5,000 to the Democratic party" without violating "federal election laws and contribution limits."

According to counsel for the LaPrades, on or about February 20, 1996, a check in the amount of \$10,000 was delivered to the "Orange County Democratic Party" on behalf of Debra and Paul LaPrade. The LaPrades deny earmarking their contributions for any specific candidate, or otherwise placing any conditions on the use of their contributions. Instead, counsel states that Ms. LaPrade was "led to believe that the Democratic party would decide how to effectively

10044281945

utilize their party donations and she therefore left that matter to the good judgment of the Democratic party and its party chairman."

4. Jim Prince and the Prince for Congress Committee

Jim Prince, through counsel for himself and the Prince Committee, makes several denials and/or assertions concerning the allegations in the complaint. These denials are set forth in his response and a declaration by Mr. Prince attached to his response. First, Mr. Prince denies knowing that the activities of Jim Toledano on his behalf constituted a reportable event or an excessive contribution. He also denies any knowledge that Paul and/or Debra LaPrade had spoken with Mr. Toledano or of what they discussed. He denies speaking with either of the LaPrades, and further denies suggesting or requesting that they make a contribution to the Democratic Committee or his campaign in the manner alleged in this matter. Mr. Prince asserts that he was unaware that Paul and/or Debra LaPrade had written a check to the Democratic Committee until the approximate time at which the mailer was received by voters. He asserts that he has no knowledge that a contribution was earmarked for his campaign or given to the Democratic Committee with instructions to prepare and disseminate a mailer. He further asserts that he has no knowledge regarding the activities of Mr. Toledano or the Democratic Committee in this matter, although he states his belief that Mr. Toledano was attempting to fall within the slate card exemption to the definition of a contribution. Mr. Prince also denies that he suggested to Mr. Toledano that the contributions received from the LaPrades be used to pay for a mailer in support of his candidacy. He asserts that he was not consulted nor did he cooperate, give consent, or act in concert with anyone in connection with the expenditures made for the mailer. Further, Mr. Prince states that Mr. Toledano was not given authorization to raise funds for Mr.

10044281946

Prince, was never an officer of the Prince Committee, and never received any form of compensation or reimbursement from Mr. Prince and/or the Prince Committee.

Mr. Prince states that his Committee erred on the side of disclosure and "tentatively" reported the mailer as a contribution as soon as it became aware of the possibility that the mailer resulted in a contribution to his campaign. Mr. Prince argues that, overall, he acted in good faith, and did not knowingly and willfully accept a contribution in excess of the Act's limitations, intentionally fail to report a contribution, or intentionally fail to include disclaimer language on a communication expressly advocating his election.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits to \$1,000 per election the amount which any person may contribute to a candidate and his or her political committee; and limits to \$5,000 per calendar year the amount which any person may contribute to any political committee — other than political committees established and maintained by a national party, which are not the authorized political committees of any candidate. 2 U.S.C. § 441a(a)(1)(A) and (C). The Act further limits to \$5,000 per election the amount which any multicandidate political committee may contribute to any candidate and his or her political committee. 2 U.S.C. § 441a(a)(2)(A). A "multicandidate political committee" means a political committee which has been registered under section 433 of the Act for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). It is a violation of the Act for any candidate or political committee to knowingly accept any contributions which are in violation of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

10044281947

Pursuant to the Commission's regulations at 11 C.F.R. § 110.1(h), "a person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as: (i) the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee; (ii) the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate, for the same election; and (iii) the contributor does not retain control over the funds."

The term "contribution" includes (i) any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office; or (ii) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose. 2 U.S.C. § 431(8)(A)(i) and (ii). It does not include the payment of a State or local committee of a party of the costs of preparing, displaying, or mailing or distributing a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized. 2 U.S.C. § 431(8)(B)(v). In addition, 11 C.F.R. § 100.7(b)(9) requires that the payment of the portion of the costs allocable to Federal candidates be made from funds subject to the limitations and prohibitions of the Act.

The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. § 431(9)(A)(i). The Commission has defined "anything of value" to include all in-kind contributions, i.e., "the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and

10044281948

services" 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv). Expenditures which are made by any person, including a political committee, "in coordination, consultation or concert with, or at the request or suggestion of, a candidate, his authorized committee or their agents" are considered in-kind contributions to that candidate. 2 U.S.C. § 441a(a)(7)(B)(i). Thus, "[a] communication made in coordination with a candidate presumptively confers 'something of value' received by the candidate so as to constitute an attributable [in-kind] 'contribution.'" Advisory Opinion 1988-22. In contrast, an expenditure made by a person, including a political committee, which expressly advocates the election or defeat of a clearly identified candidate, but which is not made "in cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which [is] not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate" is an "independent expenditure." See 2 U.S.C. § 431(17).

2 U.S.C. § 441d(a) requires that any person making an expenditure for a communication which expressly advocates the election or defeat of a candidate must include a statement in the communication stating who has paid for the communication and whether or not it has been authorized by the candidate and/or his or her authorized committee.

2 U.S.C. § 431(4)(C) defines "political committee" as any local committee of a political party which receives total contributions in excess of \$5,000 during a calendar year, or makes total payments exempted from the definition of contribution or expenditure as defined by 2 U.S.C. § 431(8) and (9) in excess of \$5,000 during a calendar year, or makes total contributions or expenditures in excess of \$1,000 during a calendar year. Political committees must register with the Commission and file periodic reports of their receipts and disbursements. 2 U.S.C. §§ 433(a) and 434(a). Additionally, the principal campaign committee of candidates for Federal

10044281949

office must notify, in writing, either the Clerk of the U.S. House of Representatives, the Secretary of the U.S. Senate, or the Commission, and the Secretary of State, as appropriate, of each contribution totaling \$1,000 or more, received by any authorized committee of the candidate after the 20th day but more than 48 hours before any election. 2 U.S.C. § 434(a)(6)(A).

11 C.F.R. § 109.1(b)(5) defines an agent as any person who has actual authority, either express or implied, to make or authorize the making of expenditures on behalf of a candidate, or who holds a position within the campaign organization that reasonably appears to confer such authority. Courts have generally held that a principal who grants an agent express or implied authority is responsible for the agent's acts within the scope of his or her employment. See *Weeks v. United States*, 245 U.S. 618, 623 (1918); see also *Rouse Woodstock, Inc. v. Surety Federal Savings & Loan Ass'n*, 639 F. Supp. 1004, 1010-11 (N.D. Ill. 1986) (principal who places agent in position of authority normally must accept agent's abuse of that authority). Moreover, a principal who holds out the agent as one having authority or permits the agent to represent that he has authority, so that a reasonable person would believe the agent to have such authority, may be liable for the agent's actions on the basis of the agent's apparent authority. See, e.g., *Metco Products, Inc., Division of Case Mfg. Co. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989). In the past, the Commission has held members of the regulated community liable for the acts of their agents. See MURs 2602 and 3585.

C. Analysis

1. James Toledano and the Democratic Committee violated 2 U.S.C. §§ 433(a), 434(a), 441a(a)(1)(A), and 441d(a).

It is not contested that James Toledano acted without obtaining the approval of the Democratic Committee or its treasurer in connection with the activity which violated the Act.

10044281950

However, the Democratic Committee is responsible for the actions of its Chair, James Toledano, since he acted with apparent authority. Apparent authority exists where a principal holds out the agent as one having authority or permits the agent to represent that he has authority, so that a reasonable person would believe the agent to have such authority. *See, e.g., Metco Products, Inc., Division of Case Mfg. Co. v. NLRB*, 884 F.2d 156, 159 (4th Cir. 1989).

As Chair of the Democratic Committee, it is hardly disputable that James Toledano was held out by the Democratic Committee as one having authority. First, Mr. Toledano himself demonstrates by his response in this matter that he believed the Office of Chair to have the authority, actual and apparent, with which he acted. He states, "I took the money as Chair of the Party, acting within my discretion as I understood it from the *acts of my predecessors* as Chair of the Orange County Democratic Party and *according to my understanding of the By-laws of the Central Committee.*" (emphasis added).

Moreover, it appears that the LaPrades in making their contributions also believed in the apparent authority of James Toledano to accept and expend money in the name of the Democratic Committee. Counsel for the LaPrades states in their response that Debra LaPrade called Mr. Toledano at the Orange County Democratic Party and advised him that she and her husband wanted to make contributions for "voter awareness." Counsel also states in the response that Mr. Toledano identified himself as the "party chairman and as an attorney" and that "Debra LaPrade was led to believe that the Democratic party would decide how to effectively utilize their party donations and she therefore left that matter to the good judgment of the Democratic party and its party chairman."

Finally, it appears that the bank where Mr. Toledano deposited the LaPrades' contributions, and the vendors with whom Mr. Toledano dealt in producing and distributing the

10044281951

10044281952

mailer, believed in his apparent authority. There is no evidence that any of the vendors used in connection with producing and distributing the mailer ever questioned whether Mr. Toledano had the authority to act for the Democratic Committee. Similarly, although the contribution check from the LaPrades was apparently made out to the Democratic Committee, there is no evidence that Mr. Toledano was questioned when he deposited the contribution check into a new account which he had opened in the Democratic Committee's name at the bank where it had an existing account. This particularly demonstrates the bank's belief in Mr. Toledano's apparent authority because counsel for the Democratic Committee believes that Mr. Toledano listed himself as the only signatory on the new account which he opened.

On the basis of the foregoing, it appears that the persons who were in contact with Mr. Toledano in connection with the activity at issue all reasonably believed in his apparent authority as Chair of the Democratic Committee. Therefore, since the Democratic Committee, as principal, held out Mr. Toledano as having this authority, by virtue of his position as Chair, the Democratic Committee is responsible for his activity if it violated the Act.

Mr. Toledano's expenditures on the mailer in excess of \$1,000 dollars were apparently made in connection with Federal elections; thus, they qualified the Democratic Committee for political committee status. See 2 U.S.C. § 431(4)(C). However, the Democratic Committee did not qualify as a "multicandidate political committee" because only committees which have been registered with the Commission for 6 months or more and meet other requirements of 2 U.S.C. § 441a(a)(4) are eligible for this status. Still, as a political committee, the Democratic Committee was required to register with the Commission and file periodic reports of its receipts and disbursements. See 2 U.S.C. §§ 433(a) and 434(a). Because it failed to meet these requirements of the Act, this Office recommends that the Commission find reason to believe that

the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a).³

Further, the Democratic Committee apparently exceeded the Act's limitation on the amount of money a person may contribute to a candidate. See 2 U.S.C. § 441a(a)(1)(A). The contributions which the LaPrades made to the Democratic Committee to be used on "voter awareness" totaled \$10,000. Mr. Toledano deposited this full amount into the new bank account he opened in the name of the Democratic Committee. From all indications, it appears that the entire \$10,000 contribution was then used to finance the production and distribution of the mailer that expressly advocated the Prince candidacy. Moreover, there is evidence of coordination between the Democratic Committee and the Prince campaign in the production phase of the mailer. The *Los Angeles Times* article suggests that the Prince Committee knew about the Democratic Committee's endorsement of Jim Prince and had considered a plan to give money to the Democratic Committee to publicize its endorsement of the candidate. Also, in an affidavit submitted with his response in this matter, Mr. Toledano states that he called the Prince campaign and requested a photograph of Jim Prince. According to Mr. Toledano, an agent of the Prince campaign referred him to a photographer who ultimately delivered the requested photograph.

Mr. Toledano's belief that his use of the \$10,000 for the mailer was consistent with the requirements for exemption from the definition of a contribution under 2 U.S.C. § 431(8)(B)(v) and 11 C.F.R. § 100.7(b)(9) does not survive scrutiny. The mailer featured only 2 candidates for public office, rather than the 3 or more required by the Act. Perhaps even more important, this

³ On August 19, 1996, approximately 3 months after the Democratic Committee filed a sua sponte submission with the Commission in this matter and 2 months after a complaint had been filed, the Democratic Committee filed a Statement of Organization with the Commission.

failure to meet a requirement for an exemption from the definition of a contribution resulted from an apparent scheme to circumvent the contribution limits established by the Act; thus, it cannot be overlooked.

Although this Office does not have a sample of the mailer, the evidence suggests that at least 50% of it was devoted to express advocacy of the Prince candidacy. Accordingly, this Office recommends that the Commission find reason to believe that the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) in connection with the mailer expressly advocating the Prince candidacy. Further, this Office also recommends that the Commission find reason to believe that the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. § 441d(a) because the mailer apparently did not include the appropriate disclaimer although it expressly advocated the Prince candidacy.⁴

2. The LaPrades' contributions violated 2 U.S.C. § 441a(a)(1)(A).

The Act permits a person to contribute \$5,000 per calendar year to a political committee such as the Democratic Committee. See 2 U.S.C. § 441a(a)(1)(C). Thus, ordinarily the Act would not be violated by the LaPrades' contribution of \$5,000 each to the Democratic Committee. However, the Commission's regulations disallow such a contribution to a political committee by a person who has already contributed to a candidate, and has knowledge that a substantial portion of the contribution which they make to the political committee will also be contributed to or spent on behalf of such candidate. See 11 C.F.R. § 110.1(h). If, therefore, the

⁴ While this Office makes no recommendation as to James Toledano, because he acted as an agent of the Democratic Committee, the file as to James Toledano should remain open until the Commission closes the file as to the Democratic Committee.

LaPrades knew the money they gave to the Democratic Committee would be spent on behalf of Jim Prince, then their contributions were really made to the candidate.

Based on the available evidence, it appears that the LaPrades knew that their contributions to the Democratic Committee would be used substantially to promote the Prince candidacy. First, as previously stated, Jim Prince is the brother of Debra LaPrade. The LaPrades reside in Phoenix, Arizona, and apparently have no ties to California's 46th Congressional District apart from Jim Prince. According to their counsel, prior to the 1996 primary election campaign in the 46th Congressional District of California, the LaPrades "had no experience or expertise with federal election laws." However, on June 21, 1995, the Prince Committee received contributions of \$1,000 each from Debra and Paul LaPrade for the primary election campaign. Additionally, the Prince Committee received a \$1,000 contribution from Debra LaPrade on June 27, 1995, and the same amount from Paul LaPrade on June 30, 1995 for the general election campaign. Also, the Prince Committee reported that it received \$2,000 from each of three LaPrade children on June 30, 1995, for the primary and general election campaigns.⁵ Thus, at the time the LaPrades made their contributions of \$5,000 each to the Democratic Committee in March of 1996, neither they nor these children could permissibly make a contribution to the Prince primary or general election campaign.

Further, the *Los Angeles Times* article submitted with the complaint suggests that the LaPrades knew their contributions to the Democratic Committee would be used to support the Prince candidacy. Jim Toledano is the only respondent in this matter who denies the statements

⁵ At this time, this Office does not know the ages of the LaPrade children or whether their contributions complied with the requirements set forth at 11 C.F.R. § 110.1(i)(2) for contributions by minors.

attributed to him in the *Los Angeles Times* article. As mentioned previously, that article reports that, at some point, Prince's campaign discussed the idea of giving the local Democratic Party money to publicize his candidacy. However, the idea "died out" because the campaign lacked the funds to pursue it. The article further attributes to Prince the statement that his "whole family was very enthusiastic about the campaign," and to Prince's father the statement that "[the LaPrade contribution] was given to use for the Democratic Party to get the vote out"

Finally, the article reports that when Ms. LaPrade called Jim Toledano, she identified herself as Prince's sister and told him that she had "maxed out" in contributions to her brother's campaign.

By her own admission, Ms. LaPrade advised Mr. Toledano that she and her husband wanted to make contributions to the Democratic Committee for "voter awareness." However, although there were other Orange County Democrats besides Jim Prince who were candidates for Federal office in the 38th, 39th, and 45th Congressional Districts, none of these candidates received an endorsement in the mailer produced with the LaPrades' contribution. The only candidate other than Prince who received an endorsement in the mailer was running for state assembly in a district which overlaps the 46th Congressional District. According to the *Los Angeles Times* article, Prince's name appears on the mailer in type "about twice the size of" that used on the assembly candidate's name. Further, while Prince is pictured on the back of the mailer, the assembly candidate is not.

On the basis of the foregoing, it appears that the LaPrades gave their money to the Democratic Committee, at a time when they and their children had made their maximum allowable contributions to the Prince campaign, with the understanding or the knowledge that the money would be spent to promote the Prince candidacy. Consequently, the money which the

10044281956

LaPrades gave the Democratic Committee was really a contribution to the Prince campaign. *See* 11 C.F.R. § 110.1(h). Moreover, since Paul and Debra LaPrade had already made the maximum allowable contribution to the Prince campaign, their additional contributions were made in violation of the 2 U.S.C. § 441a(a)(1)(A) limit. Accordingly, this Office recommends that the Commission find reason to believe that Paul and Debra Lee LaPrade violated 2 U.S.C. § 441a(a)(1)(A).

3. The Prince Committee violated 2 U.S.C. §§ 434(a)(6)(A) and 441a(f).

Although Jim Prince denies personal involvement in the alleged activity, the Prince Committee apparently had considered a plan to give money to the Democratic Committee to publicize its endorsement of Jim Prince but dropped the plan for lack of funds. Further, the Prince Committee helped Mr. Toledano to obtain a photograph of Jim Prince to use in the production of the mailer at issue. In view of all the circumstances, the mailer was apparently an in-kind contribution to the Prince Committee. Moreover, the value of the production and distribution of the mailer apparently exceeded the \$1,000 limit which the Act allows a person to contribute to a candidate with respect to an election for Federal office. *See* 2 U.S.C. § 441a(a)(1)(A). Thus, the Prince Committee accepted this in-kind contribution in violation of 2 U.S.C. § 441a(f). Accordingly, this Office recommends that the Commission find reason to believe that Prince for Congress and James M. Prince, as treasurer, violated 2 U.S.C. § 441a(f). Further, although the Prince Committee received the contribution, which was in excess of \$1,000, after the 20th day but more than 48 hours before the primary election, it did not file the required 48 hour notification with the Commission. Therefore, this Office recommends that the

10044281957

Commission find reason to believe that Prince for Congress and James M. Prince, as treasurer, violated 2 U.S.C. § 434(a)(6)(A)]

D. Summary

The foregoing analysis demonstrates that there is adequate basis for the reason to believe findings recommended against the Democratic Committee and its treasurer, the LaPrades, and the Prince Committee. However, if this matter cannot be resolved through preprobable cause conciliation, an investigation may be required in order to proceed. _____

10044281958

10044281959

III. RECOMMENDATIONS

1. Find reason to believe that Paul and Debra Lee LaPrade violated 2 U.S.C. § 441a(a)(1)(A).
2. Find reason to believe that the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, violated 2 U.S.C. §§ 433(a), 434(a), 441a(a)(1)(A), and 441d(a).

3. Find reason to believe that Prince for Congress and James M. Prince, as treasurer, violated 2 U.S.C. §§ 434(a)(6)(A) and 441a(f).
4. Enter into conciliation with Paul and Debra Lee LaPrade, the Orange County Democratic Central Committee and Edward R. Haskett, as treasurer, and Prince for Congress and James M. Prince, as treasurer, prior to a finding of probable cause to believe.
5. Approve the attached Factual and Legal Analyses (3), conciliation agreements (3), and appropriate letters.
6. Approve the Subpoenas and Orders (2).

Lawrence M. Noble
General Counsel

6/28/97
Date

BY:


Lois G. Lerner
Associate General Counsel

10044281960