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June 7, 1999

Federal Election Commission
999 E Street, NW
Washington, D. C. 20463

Re: MURs 4389 and 4652

To whom it may concern:

Please find enclosed the original and 10 copies of respondent's brief in the above matter. (I do not know where the second number came from; the past three years' correspondence has only borne the first.)

I have served 3 copies of the brief on the General Counsel.

Thank you for your consideration.

Sincerely,

JAMES TOLEDANO

JT:pt

Enclosures (10 copies)

cc: General Counsel (w/ 3 copies)

BEFORE THE FEDERAL ELECTION COMMISSION JUN 14 10 39 AM '99

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

BRIEF OF RESPONDENT

General Counsel asserts in his brief that respondent violated 2 U.S.C. § 432(b) because instead of handing the contribution check to the Treasurer of the Orange County Democratic Central Committee ("the Democratic Committee") to deposit in a Committee bank account, he did it himself. In support of that argument General Counsel asserts that a deposit made in a bank account of the Democratic Committee by the Chair of the Committee instead of the Treasurer of the Committee could not possibly be substantial compliance with the law and that respondent's argument is "unprecedented".

What is more likely "unprecedented" is the characterization of an act such as this as an offense that this Commission needs to consider.

The purpose of the Federal Election Campaign Act of 1971 ("the Act") is to facilitate the reporting of campaign contributions. The Act provides for the designation of a person to account for contributions and do other specific acts that were calculated by Congress to allow the tracking of contributions and their disclosure to the general public. There is nothing in the spirit or intent of the Act that makes improper the due performance of the least significant of those functions by an officer of a political committee other than the

Treasurer.

The Supreme Court has consistently held that the purpose of the Act is to prevent corruption in the taking and expenditure of campaign contributions, or the appearance of corruption, and that those are the sole legitimate and compelling governmental interests that provide Constitutional justification for regulation of campaign finance by the Federal Elections Commission. Federal Election Commission v. National Conservative Political Action Committee, 470 U.S. 480, 496-497, 105 S.Ct. 1459, 1468 (1985). Disclosure, not the mechanical process whereby checks are put in a bank, is what Congress intended to use to control the evils in campaign finance that the Act was designed to prevent. Buckley v. Valeo, 424 U.S. 1, 83, 84, 96 S. Ct. 612, 665 (1970).

There is nothing in the fact that the "wrong" person deposited a contribution to the Committee that impacts in any way whatsoever Congress' goals and the primary purpose of the Act, to require and facilitate the disclosure of campaign contributions so that the public has that information. Buckley, 424 U.S. at 26-27, 45, 66-67, 96 S.Ct. at 638-639, 647, 657, California Medical Association v. Federal Election Commission, 453 U.S. 182, 197-198, 101 S.Ct. 2712, 2722 (1981).

The General Counsel's view of the matter is hypertechnical and completely inconsistent with this plain meaning of the Act. The purpose of designating the Treasurer

of the Committee to be handed and to deposit checks was to fix responsibility for the reporting process and to facilitate its accuracy, not to monitor the mechanics of the process or to make it the subject of enforcement actions simply because a political opponent runs to the newspapers and another sends a clipping to the Commission.

In point of fact, General Counsel's position flies in the face of reality.

It is routine in just about all campaigns for volunteers to open the mail, take out the checks, fill out the deposit slips and deposit those checks into the bank. In just about every case, none of those checks is "forwarded" to the Treasurer and, indeed, almost invariably the Treasurer never sees them at all. According to the General Counsel's analysis, however, each of those volunteers has violated section 432(b) and, in fact, each such volunteer has violated the technical language of the law.

The fact that the Chair of the California Republican Party chose to send the Commission a newspaper clipping that was based upon a personal attack on respondent by political opponents within his own party does not change that reality. Were this Commission to prosecute every person in every campaign in which the fingerprints of the Treasurer were not found on every contribution, the business of enforcing the Act would come to a complete standstill. If it became known that

this ordinary and customary practice would trigger the enforcement process this Commission would probably spend its entire budget dealing with the deluge.

It is, of course, not a defense to a claim of law breaking that "everyone does it" and respondent does not mean to suggest that that is his argument here. But it <u>is</u> the case that where "everyone does it" <u>and</u> the consequence of everyone doing it does not even remotely affect the goals and purposes of the law, then there is no basis to proceed any further.

The ends of section 432(b) of the Act were satisfied when the check was received, acknowledged and deposited in an account of the Committee. The technical inconsistency in the manner in which those ends were accomplished in this case cannot be deemed a prosecutable violation of section 432(b). There is no probable cause to believe that there was a violation of section 432(b) within the meaning of the Act compatible with the purposes and intent of Congress as articulated repeatedly by the Supreme Court.

Respondent therefore respectfully requests that the Commission dismiss the matter.

Dated: June 7, 1999

Respectfully submitted,

JAMES TOLEDANO
Respondent