



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel **KES**

DATE: June 21, 1999

SUBJECT: MUR 4830 & 4845-First General Counsel's Report

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

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 4830 & 4845

DATE COMPLAINT FILED: 10/22/98

DATE OF NOTIFICATION: 10/30/98

DATE ACTIVATED: 1/26/99

STAFF MEMBER: Eugene H. Bull

COMPLAINANTS:

Republican Party of New Mexico
John Dendahl, Chairman

RESPONDENTS:

Udall For Us All Committee and Timothy L. Garcia, Treasurer
Tom Udall

Jill Z. Cooper

Jerome Kessler

Stuart Woods

Barrie Bergman

Marie Ridder

Arlene Bergman

Susan McGreevy

Helen Kornblum

Philip Smith

Suzanne Fisher

Susan Simons

Carl Sheppard

Yogi Bhajan

Allan Kurtzman

Winiford Carlile

Marsha Mason

William Kilgarin

Robert Mang

Philip Hertzman

Valerie Jean Fairchild

Robert Martinez

Stewart Udall

Rudolph Rasin

Lee Udall

John Clark

Michael Traynor

George E. Coleman

Dr. Edward Steinberg

Curtis Boyd

Jay Stein

L. Jane Schreiber

John D. Wirth

Jessica Catto

Joyce Melander-Dayton

Charles Zemach

Thomas Dee Frasier

Daniel Haft

Thomas Keesing

Edith Pierpont

Jacqueline Hoefer

Marjorie Miller Engel

Brook Glaefke

Donald Salazar

Marion Noel

Georgia Webster

Don Henley

Sharon Henley

Michael Rosenberg	Wendy Rockefeller
Rosemaria Ellis Clark	Lynn Udall
Neil Rolde	
New Democratic Network	
Transport Political Education League	
AFSCME PAC	
DRIVE Political Fund	
IBEW-COPE	
South Bay Voter Registration PAC and Susan Burnside, Treasurer	

RELEVANT STATUTE(S):

- 2 U.S.C. § 431(11)
- 2 U.S.C. § 434b
- 2 U.S.C. § 441a(a)(1)(A)
- 2 U.S.C. § 441a(a)(2) and (a)(4)
- 2 U.S.C. § 441a(a)(6)
- 2 U.S.C. § 441a(f)
- 2 U.S.C. § 441b
- 11 C.F.R. § 102.5(b)(1)(i)
- 11 C.F.R. § 103.3(b)(3)
- 11 C.F.R. § 110.1(b)

INTERNAL REPORTS CHECKED: Disclosure Reports
Contributor Indices

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Republican Party of New Mexico (the "RPNM"), by and through its Chairman, John Dendahl, filed a complaint and amended complaint on October 22 and October 28 of 1998, respectively, alleging that certain persons and entities violated sections of the Federal Election Campaign Act of 1971, as amended (the "Act") and the Commission's regulations.

Specifically, the October 22nd complaint alleges that Tom Udall—a candidate in New Mexico's Democratic primary election for the 3rd Congressional District—through Udall for Us All Committee and Timothy L. Garcia, as treasurer (the "Udall Committee" or "Committee") received 1,687 contributions that were earmarked for non-existent primary election debt, 142

days after the primary election. The complaint alleges that the improper contributions totaled \$485,236.81, and specifically names 58 individuals and entities who allegedly gave improper contributions. It further alleges that Udall, through the Udall Committee, accepted a single contribution that was up to 80 times the permissible Federal limit from his wife, Jill Z. Cooper, in the form of a \$30,000 loan on May 22, 1998, and a \$50,000 loan on September 15, 1998; and states that one of the loans was not properly reported.

After the Udall Committee filed a letter and two amended disclosure reports with the Commission which indicated that large amounts of general election contributions had been designated as primary election contributions due to a clerical error, the RPNM filed an amended complaint in this matter on October 28, 1998. Since the Udall Committee's amended disclosure reports apparently account for nearly the entire \$485,236.81 in allegedly improper contributions mentioned in the original complaint, the amended complaint appears to drop this larger allegation. However, the amended complaint alleges that South Bay Voter Registration PAC and Susan Burnside, as treasurer ("SBVR")—one of the contributors named in the RPNM's original complaint—is not a registered Federal committee, and thus, made an excessive contribution when it gave \$5,000 to the Udall Committee. The amended complaint also alleges that, irrespective of the explanation and amended disclosure reports provided to the Commission by the Udall Committee on October 23, 1998, the Committee nonetheless received some post-primary election contributions in excess of its existing primary election debt.

II. FACTUAL AND LEGAL ANALYSIS

A. Responses

The responses to the complaint are divisible into four main sets. First, there is the Udall Committee's response to the complaint and amended complaint which the Commission received on November 30, 1998. The response states the Committee's belief that by filing amended reports on October 23, 1998, it corrected the misreporting of general election contributions as primary contributions, and "cured any defects that may have been the basis of naming individual contributors" in the complaint. The response acknowledges that the \$30,000 loan —initially reported as having come from Tom Udall and his wife, Jill Cooper—was not properly shown on the first page of the Udall Committee's 1998 July 15 Quarterly Report, but points out that the amount was otherwise listed on the Detailed Summary at page two, and on Schedule C of the report. The response also avers that the \$30,000 loan, and a later \$50,000 loan, were improperly reported as having been made by Tom Udall and Jill Cooper. It asserts that, in fact, the loans were made from Tom Udall's half of funds jointly controlled by the candidate and his wife. Amendments to the Udall Committee's 1998 July 15 Quarterly Report, filed to correct the misreporting of the loan, are attached to the response.

After reiterating that a clerical error resulted in the reversal of primary and general election designations for a large number of contributions reported on the Udall Committee's 1998 October 15 Quarterly report, the response contends that the remaining contributions made for debt retirement after the primary election were lawful, because the debt and obligations incurred for the primary election exceeded the post-primary contributions made to retire primary election debt.

The response further contends that the Udall Committee mistakenly accepted the \$5,000 contribution from South Bay Voter Registration PAC. According to the Udall Committee's response, as soon as the error was discovered, the improper contribution was returned.

This allegedly improper contribution places the South Bay Voter Registration PAC in a separate category from the other contributors to the Udall Committee, since even if the Udall Committee had sufficient primary debt to receive the post-primary contributions it received for primary debt, the SBVR contribution apparently would still have resulted in a violation of the Act. (See analysis, *infra*). SBVR's response does not deny or otherwise contest the allegation that it made an improper contribution. The response simply states that the organization was approached by the Udall Committee and asked for a contribution. It then made a \$5,000 contribution that was later returned.

Beyond SBVR, some individuals and committees are named in the complaint solely because of the Udall Committee's clerical error that resulted in some general election contributions being reported as primary election contributions. The set of responses submitted on behalf of these persons and committees detail information related to the dates and amounts of their contributions—and in some instances provide documentation—which indicates that the contributions were not excessive. The remaining set of contributors' responses generally aver that the Udall Committee sent a solicitation letter requesting contributions to retire its primary debt and argue that the contributors were not in a position to know whether in fact there was primary debt, even—in some cases—after due diligence had been performed.

B. Applicable Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), specifically provides that the contribution limitations shall apply separately with respect to each election. 2 U.S.C. § 441a(a)(6). Contributors to candidates are encouraged to designate their contributions in writing for particular elections. 11 C.F.R. § 110.1(b)(2)(i). In cases where a contribution is not designated in writing by the contributor for a particular election, the contribution is considered to be in connection with the next election for that Federal office after the contribution is made. 11 C.F.R. §§ 110.1(b)(2)(ii) and 110.2(b)(2)(ii). Contributions which are designated for a particular election, but made after the date of that election, may only be accepted to the extent the contributions do not exceed a committee's "net debts outstanding" for that election. 11 C.F.R. §§ 110.1(b)(3)(i) and 110.2(b)(3)(i). Net debt outstanding is calculated as of the day of election and means, the total amount of unpaid debt and obligations incurred with respect to an election, less the sum of: the total available cash on hand to pay those debts and obligations, and the total amount owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, etc. See 11 C.F.R. § 110.1(b)(3)(ii). Accordingly, if net debts outstanding do exist, then as additional funds are received and expenditures made, the amount of net debts outstanding shall be adjusted. 11 C.F.R. § 110.1(b)(3)(iii). Conversely, if net debts outstanding do not exist after an election, then a committee may not lawfully accept any post-election contributions for any purpose. Candidates who participate in both the primary and general elections may pay primary election debts and obligations with funds which represent contributions made with respect to the general election. 11 C.F.R. § 110.1(b)(3)(iv).

Pursuant to 11 C.F.R. §§ 110.1(b)(3)(i) and 110.2(b)(3)(i), when a treasurer of a campaign committee receives post-election contributions in the absence of, or in excess of, net debts outstanding, then within ten days of receipt, the treasurer must either deposit the contribution or return it to the contributor. If deposited, the treasurer has sixty (60) days from the date of receipt to obtain a reattribution or redesignation of the contribution to cure the illegality. 11 C.F.R. §§ 103.3(b)(3) and 110.1(b). Those contributions not reattributed or redesignated must be refunded to the contributor within sixty (60) days. 11 C.F.R. § 103.3(b)(3).

Section 110.10(a) allows candidates to make unlimited contributions from personal funds. For the purposes of this section, *personal funds* includes any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either (i) legal and rightful title, or (ii) an equitable interest. 11 C.F.R. § 110.10(b)(1)(i) and (ii). A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. 11 C.F.R. § 110.10(b)(2). The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. *Id.* If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate. *Id.*

The Act contemplates loans to a political committee as receipts which must be reported pursuant to Section 434(b). *See also* 11 C.F.R. § 104.3(a)(4)(iv). While all loans to a political committee must be reported pursuant to Section 434(b), some loans are exempted from the definition of a "contribution." Specifically, a loan of money from a State bank, a federally

chartered depository institution or depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation (FDIC), the Federal Savings and Loan Insurance Corporation (FSLIC), or the National Credit Union Administration (NCUA) is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. 11 C.F.R. § 100.7(11).

Corporations and labor organizations are prohibited from making any contribution or expenditure in connection with Federal elections. 2 U.S.C. § 441b. The Act also makes it unlawful for any political committee or federal candidate to receive such a contribution. *Id.* An organization that does not qualify as a political committee under the Act, which makes contributions or expenditures, must establish a separate account to which only funds subject to the prohibitions and limitations of the Act shall be deposited, and from which contributions, expenditures, and exempted payments shall be made. *See* 11 C.F.R. § 102.5(b)(1)(i).

No person may make a contribution to a candidate for Federal office, and his authorized campaign committee, in excess of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The term "person" includes committees other than multicandidate political committees. *See* 2 U.S.C. §§ 431(11) and 441a(a)(2). Multicandidate political committees are political committees which have been registered under Section 433 of the Act for a period of not less than 6 months, which have received contributions from more than 50 persons, and, except for any State political party organization, have made contributions to 5 or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). Pursuant to 2 U.S.C. § 441a(f), candidates and political committees are prohibited from knowingly accepting any contribution in violation of the provisions of Section 441a.

C. Analysis

Some contributors and "1,687 contributions" are mentioned in the complaint solely because, at one time, the Udall Committee was mistakenly reporting general election contributions as primary election contributions. The Committee subsequently amended its disclosure reports to correctly report these contributions as general election contributions. Further, information provided by a few of the named contributors, as well as Commission records, clearly demonstrate that certain contributors should never have been parties to this matter, as their contributions to the Udall Committee were lawfully made. Therefore, this Office recommends that the Commission find no reason to believe these contributors to the Udall Committee violated the Act with respect to this matter.¹

On the other hand, the Committee may have violated the Act in connection with the allegedly improper post-primary election contributions it received from other contributors to retire primary debt in 1998. While the Committee is apparently correct that many of the general election contributions it received were indeed erroneously designated on the Committee's disclosure report as relating to the primary election, the RPNM also appears to be accurate when it claims that even after a reattribution of improperly designated contributions, the available information continues to suggest that the Udall Committee received some post-primary election

¹ These respondents are Arlene Bergman, Barrie Bergman, Yogi Bhajan, Curtis Boyd, Winiford Carlile, Jessica Catto, John Clark, Rosmaria Clark, Marjorie Engel, Suzanne Fisher, Thomas Dee Frasier, Daniel Haft, Phillip Hertzman, Thomas Keesing, Jerome Kessler, Helen Kornblum, Allan Kurtzman, Robert Mang, Robert Martinez, Marsha Mason, Susan McGreevy, Joyce Melander-Dayton, New Democratic Network and Simon Rosenberg, as treasurer, Edith Pierpont, Rudolph Rasin, Marie Ridder, Neil Rolde, Michael Rosenberg, Donald Salazar, Jane L. Schrieber, Carl Sheppard, Susan Simons, Philip Smith, Jay Stein, Dr. Edward Steinberg, Transportation Political Education League and Roger D. Griffith, as treasurer, Michael Traynor, Lee Udall, Stewart Udall, John Wirth, Stuart Woods, and Charles Zemach.

contributions for the primary election, at a time when there was no existing primary election debt.

A review of the Udall Committee's 1998 July 15 Quarterly Report and amendments suggests that, with the exception of the reported \$30,000 loan and an additional \$4,761.25 in obligations that appeared in an amendment to the July 15 Quarterly Report, as of June 30, 1998, the Committee had retired all outstanding debts or accounts payable from the primary election. The Committee apparently lawfully retired outstanding primary election debts or accounts payable, other than the reported \$34,761.25 in obligations, with funds raised in connection with the upcoming general election. See 11 C.F.R. § 110.1(b)(3)(iv). Having done so, the Udall Committee could no longer accept post-primary election contributions in excess of the \$34,761.25 remaining primary debt. See MUR 4750 (Harvey Gantt for Senate Campaign Committee). However, the Committee's disclosure reports indicate that during the remainder of 1998 the Committee received primary election refunds, and additional contributions to primary debt that exceeded this amount by September 17, 1998, and resulted in the receipt of excessive contributions by the Committee. See attachment 1. As Udall for Us All Committee and Timothy L. Garcia, as treasurer, accepted contributions for primary election debt at a time when all primary election debts were extinguished, and did not refund or seek redesignations for these contributions; and, as several of the improper contributions to primary debt were made by persons or entities that otherwise made the maximum allowable contribution to the Udall Committee's general election campaign, this Office recommends that the Commission find reason to believe the Committee violated 2 U.S.C. § 441a(f).

With the exception of the South Bay Voter Registration PAC, this Office does not recommend that the Commission make reason to believe findings against any of the named contributors who apparently made post-primary contributions for non-existent primary debt. Several of these contributors' responses to the complaint make it plain that potential contributors were informed by the Committee's solicitation letter that their contribution was requested to retire outstanding primary debt, and they relied on that information. Apparently, without access to the Committee's books, these contributors had no means to verify the accuracy of the solicitation letter; nor did they have an opportunity to correct the improper contributions, once made, pursuant to 11 C.F.R. § 110.1(b)(2). In view of these circumstances—with the exception of the SBVR—this Office recommends that the Commission take no action with respect to the contributors who made post-primary contributions to the Udall Committee to retire non-existent primary debt.²

Because the SBVR is not a multicandidate political committee pursuant to the Act, it can not make contributions in excess of \$1,000 per election to a political candidate. *See* 2 U.S.C. § 441a(a)(1)(A). Therefore, the SBVR violated the Act's contribution limitations by making a \$5,000 contribution to the Udall Committee.³ Moreover, the organization is registered

² These respondents are the American Federation of State, County, and Municipal Employees PAC, George Coleman, DRIVE Political Fund, Valerie Jean Fairchild, Brook Glaefke, Don Henley, Sharon Henley, Jacqueline Hoefer, International Brotherhood of Electrical Workers-COPE, William Kilgarlin, Marion Noel, Wendy Rockefeller, Lynn Udall, and Georgia Webster.

³ Apparently, the Commission could make a finding against SBVR pursuant to 2 U.S.C. § 431(4) [definition of a political committee]. However, because the Udall Committee solicited the contribution from SBVR, and because the \$5,000 was SBVR's only federal contribution on record and was returned, this Office does not recommend the Commission pursue this course of action.

with the California Fair Political Practices Commission, and not at all with the Federal Election Commission. As California law remains uncertain with respect to individual contribution limits, but permits PACs to accept corporate and labor contributions, the SBVR's \$5,000 contribution to the Udall Committee's primary election campaign may have contained impermissible funds. See *Service Employees Int'l Union v. Fair Political Practices Comm'n*, 955 F.2d 1312 (9th Cir. 1992), *cert denied*, 112 S.Ct. 3056-57; see also California Government Code §§ 85102(b) and (c), and 85305(c)(1). On the basis of the foregoing, regardless of whether the Udall Committee had outstanding primary debt, the SBVR's \$5,000 contribution to the Committee apparently violated the Act. Thus, this Office recommends that the Commission find reason to believe the South Bay Voter Registration PAC and Susan Burnside, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441b in connection with making this contribution, and the Udall for Us All Committee and Timothy L. Garcia, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b by receiving it. However, this Office also recommends that the Commission admonish this respondent but take no further action. The contribution at issue is the only federal contribution on record for this organization, the contribution was returned, and a recommendation of take no action has been made with respect to the other respondents who made post-primary contributions to retire non-existent primary debt in response to the Udall Committee's solicitation.

Another allegation in the complaint involves the Udall Committee's purported receipt of an excessive contribution from Jill Cooper in the form of two loans, one of which was improperly reported. The Committee's response to the complaint, at Exhibit G, provides copies of Merrill Lynch Priority Cash Management Account statements for May and September of 1998. The brokerage margin account reflected in the statements is in the names of Tom S. Udall

and Jill Z. Cooper, as joint tenants with rights of survivorship. The statements of account show that on May 26, 1998, a check in the amount of \$30,000 was drawn on the account, and on September 17, 1998, a check in the amount of \$50,000 was drawn on the account.⁴ Both times the Udall Committee was the designated payee. It is these checks to the Udall Committee which the RPNM alleges resulted in excessive contributions by Jill Cooper to her husband, Tom Udall; and in the instance of the \$30,000 check, a reporting violation.

With respect to the allegation that Jill Cooper loaned or guaranteed either some or all of the \$80,000 in loans the Committee received from the joint brokerage account owned by the candidate and his wife, this Office is persuaded on the basis of the available evidence that the loans to the Committee were based entirely on Tom Udall's half of assets jointly controlled with Jill Cooper. The starting and closing portfolio values for the account at issue between April 30, 1998 and May 29, 1998, were _____ respectively; between August 31, 1998 and September 30, 1998, the starting and closing portfolio values for this account were _____

Thus, it appears that Tom Udall's share of the assets in the account on May 26, 1998 and September 17, 1998—the dates the \$30,000 and \$50,000 checks were drawn on the account, respectively—was more than sufficient to guarantee the proceeds of the loans. The Committee has provided an explanation and amended its disclosure reports to reflect that at all times, Tom Udall—and not Udall *and* his wife—was the sole source of the loans. As there appears to be no persuasive reason in the record to doubt that the loans were, at least, guaranteed by Tom Udall's share of assets in the account, this Office recommends that the Commission find there is no reason to believe Jill Cooper and the Udall for Us All Committee and Timothy L.

⁴ The complaint in this matter focuses on the date the checks were written, whereas the analysis herein focuses on the date the checks cleared or were actually drawn against the

Garcia, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f), respectively, in connection with the loans made to the Committee.

However, the Committee may have violated Sections 441b and 434(b) in connection with receiving the loans. A review of Tom Udall's brokerage account statements that focuses on the dates the \$30,000 and \$50,000 checks were drawn—i.e., May 26, 1998 and September 17, 1998—indicates that on those dates the account had cash balances of respectively. Therefore, there was insufficient cash in the account to cover the dollar amount of the checks on the dates they cleared, thereby resulting in debit cash balances in the account on those dates. In fact, the debit cash balances created in Tom Udall's and Jill Cooper's joint brokerage margin account as a result of the May 26 and September 17, 1998 overdrafts were respectively. These debit balances were, in effect, loans by Merrill Lynch to the Committee through candidate Udall. *See* 2 U.S.C. § 432(e)(2).

The Act exempts only loans from State banks, federally chartered depository institutions, and institutions with deposits insured by the FDIC, FSLIC, or NCUA from the definition of a contribution found in 2 U.S.C. § 431(8)(A)(i). *See* 2 U.S.C. § 431(8)(B)(vii) and 11 C.F.R. § 100.7(11). Since it is only in this context that the Commission's regulations state that overdrafts made on a checking or savings account may not be considered a contribution by the bank or institution when certain conditions are met, it follows that in other contexts, overdrafts result in a contribution by the institution which advances the funds. *Id.* *See also* MUR 3499 (Barnard). Thus, the debit balances resulting from overdrafts written against Tom Udall's share of brokerage assets were prohibited contributions to the

brokerage account.

Committee by Merrill Lynch, in violation of 2 U.S.C. § 441b. Accordingly, this Office recommends that the Commission find reason to believe that Udall for Us All Committee and Timothy L. Garcia, as treasurer, violated 2 U.S.C. § 441b. As for the candidate, because he knew the terms of the corporate loans and wrote the checks that drew the loan funds, and because his personal securities guaranteed the loans, this Office recommends that the Commission find reason to believe that Tom Udall violated 2 U.S.C. § 441b. *See, e.g.,* MUR

4340 (TWEEZERMAN: candidate liable for accepting prohibited contributions from corporation where he was also president).

Nothing in the evidence suggests that Merrill Lynch knew or should have known that Tom Udall was taking loans against his brokerage account to finance his candidacy for federal office, and this Office notes that brokerage margin accounts are set up such that an account holder is able to write overdrafts up to predetermined limits without case-by-case approval. In addition, Merrill Lynch has not been notified as a respondent in this matter. Consequently, this Office makes no recommendation with respect to it.⁵

As already noted, the Udall Committee may also have violated Section 434(b) in connection with receiving the loans from Merrill Lynch. The complaint alleges that the Committee failed to list the \$30,000 loan on the first page of its 1998 July 15 Quarterly Report in

⁵ In MUR 3499, while the Commission adopted the General Counsel's reason to believe recommendation with respect to the Committees' violation of 2 U.S.C. § 441b—i.e., by receiving the brokerage loans—it voted to "take no action at this time" with respect to this Office's recommendations that it find reason to believe the brokerages also violated Section 441b. this Office did not subsequently seek a Commission finding against the brokerages. *See*

General Counsel's Report in MUR 3499, dated December 3, 1993, at page 2 and footnote 5.

the space designated for debts and obligations owed by the Committee. Even though this same information is provided on page 2 of the report where the amount is shown as a loan made or guaranteed by the candidate, the \$30,000 loan was not further itemized on the report's Schedule C as a candidate loan until the Committee filed an amendment to the 1998 July 15 Quarterly Report on October 23, 1998. The Committee's failure to put the loan information in each place where it was required apparently compromised the utility of the disclosure report, as itemization involves recording important, specific information. The utility of the Committee's 1998 October 15 Quarterly Report was also compromised because the Committee incorrectly checked off general election contributions as having been made for the primary election. Further, the analysis of the loans, *supra*, suggests that portions of the \$30,000 and \$50,000 loans should have been reported as originating from Merrill Lynch and not candidate Udall. In light of these problems with the Committee's reporting of its financial activity, this Office recommends that the Commission find reason to believe that the Udall for Us All Committee and Timothy L. Garcia, as treasurer, violated 2 U.S.C. § 434(b).

III. DISCUSSION OF CONCILIATION

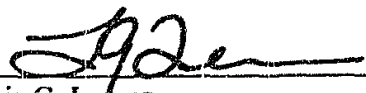
IV. RECOMMENDATIONS

1. Find reason to believe that the Udall for Us All Committee and Timothy L. Garcia, as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f), and 441b.
2. Find reason to believe that Tom Udall violated 2 U.S.C. § 441b.
3. Find reason to believe that the South Bay Voter Registration PAC and Susan Burnside, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A) and 441b, but take no further action and close the file as to this respondent.
4. Find no reason to believe that Jill Cooper violated 2 U.S.C. § 441a(a)(1)(A), and close the file as to this respondent.
5. Find no reason to believe that Arlene Bergman, Barrie Bergman, Yogi Bhaajan, Curtis Boyd, Winiford Carlile, Jessica Catto, John Clark, Rosmaria Clark, Marjorie Engel, Suzanne Fisher, Thomas Dee Frasier, Daniel Haft, Phillip Hertzman, Thomas Keesing, Jerome Kessler, Helen Kornblum, Allan Kurtzman, Robert Mang, Robert Martinez, Marsha Mason, Susan McGreevy, Joyce Melander-Dayton, New Democratic Network and Simon Rosenberg, as treasurer, Edith Pierpont, Rudolph Rasin, Marie Ridder, Neil Rolde, Michael Rosenberg, Donald Salazar, Jane L. Schrieber, Carl Sheppard, Susan Simons, Philip Smith, Jay Stein, Dr. Edward Steinberg, Transportation Political Education League and Roger D. Griffith, as treasurer, Michael Traynor, Lee Udall, Stewart Udall, John Wirth, Stuart Woods, and Charles Zemach violated the Act with respect to this matter, and close the file as to these respondents.

6. Take no action with respect to the American Federation of State, County, and Municipal Employees PAC, George Coleman, DRIVE Political Fund, Valerie Jean Fairchild, Brook Glaefke, Don Henley, Sharon Henley, Jacqueline Hoefer, International Brotherhood of Electrical Workers-COPE, William Kilgarlin, Marion Noel, Wendy Rockefeller, Lynn Udall, and Georgia Webster, and close the file as to these respondents.
7. Enter into conciliation with Tom Udall and the Udall for Us All Committee and Timothy L. Garcia, as treasurer, prior to a finding of probable cause to believe.
8. Approve the attached Factual and Legal Analyses (2) and Conciliation Agreement.
9. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

6/21/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Chart showing running tally of primary debt/excessive contributions.
2. Factual and Legal Analyses (2).
3. Conciliation Agreement.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: JUNE 25, 1999

SUBJECT: MUR 4830 & 4845 - General Counsel's Report
dated June 21, 1999.

The above-captioned document was circulated to the Commission
on Tuesday, June 22, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	<u>XXX</u>
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	<u>XXX</u>
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, July 13, 1999. Please notify us who will represent your Division
before the Commission on this matter