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

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5225

DATE COMPLAINT FILED: 08/03/01

DATES OF NOTIFICATION: 08/10/01
and 08/23/01

DATE ACTIVATED: 12/07/01

EXPIRATION OF SOL: 02/03/05

COMPLAINANT:

Peter F. Paul

RESPONDENTS:

Peter F. Paul
New York Senate 2000 and Andrew Grossman,
as treasurer
Hillary Rodham Clinton for U.S. Senate Committee,
Inc. and Harold Ickes, as treasurer¹
Senator Hillary Rodham Clinton
William Jefferson Clinton
David Rosen
Edward G. Rendell
Stephanie L. Berger
James H. Levin
Stan Lee Media, Inc.
Stan Lee

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 431
2 U.S.C. § 434(b)
2 U.S.C. § 441a
2 U.S.C. § 441b(a)
11 C.F.R. § 102.17
11 C.F.R. § 104.3
11 C.F.R. § 104.13(a)
11 C.F.R. § 106.6(d)

¹ William Cunningham, III, served as treasurer of this committee during the time of the activity in question.

INTERNAL REPORTS CHECKED:

Disclosure Reports
Contributor Indices

FEDERAL AGENCIES CHECKED:

Department of Justice

I. INTRODUCTION

Complainant Peter F. Paul primarily alleged that he spent \$1.9 million of his personal funds to host an August 12, 2000 fundraising event – a “Hollywood Tribute to President William Jefferson Clinton” – and that the Hillary Rodham Clinton for U.S. Senate Committee, Inc. (“Clinton for Senate”) and a joint fundraising committee, New York Senate 2000, failed to properly report his in-kind contributions.² Based on the responses and disclosure reports, the event appears to have been sponsored by New York Senate 2000 with Clinton for Senate and the Democratic Senatorial Campaign Committee (“DSCC”) as its participants.

DOJ’s investigation followed criminal indictments filed in 2001 in federal courts in New York and California, charging Mr. Paul and certain business associates with securities, bank and mail fraud.³ Some of the companies that Mr. Paul used to facilitate his alleged fraud

² On August 16, 1999, New York Senate 2000, then known as Victory in New York 2000, filed a Statement of Organization with the Secretary of the Senate as a joint fundraising committee of the DSCC and the Hillary Rodham Clinton for U.S. Senate Exploratory Committee (later Clinton for Senate). Later, on April 27, 2000, another amendment to the Statement of Organization was filed, this time adding the New York State Democratic Committee as a participating committee.

³ The charges included the alleged misrepresentation of stock value of Stan Lee Media, Inc., an Internet-based entertainment company Mr. Paul founded along with Stan Lee, the comic book icon, to transform Mr. Lee into a universally recognized brand name. A June 20, 2002 news article reported that Judicial Watch claims that, on May 30, 2002, the Federal Bureau of Investigation (“FBI”) raided a California storage facility and seized documents belonging to Mr. Paul, including “[r]ecords relating to New York Senate 2000, the Hollywood Gala Salute to President William Jefferson Clinton [and] the Federal Election Commission” “Judicial Watch: FBI Seizes Documents in Criminal Investigation of Hillary Clinton Campaign; Storage Facility Raided,” *U.S. Newswire*, June 20, 2002. Two months prior to this article, the *New York Post* reported that senior officials from DOJ traveled to (Footnote continues on following page)

1 schemes may be the same companies that, as indicated in documents attached to the complaint,
2 financed the August 12, 2000 fundraiser.

3 On January 22, 2003, the Commission voted to hold this matter in abeyance. In
4 September 2003, Peter Paul was extradited from Brazil, and he is currently incarcerated in a
5 federal facility in Brooklyn, New York.

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7
8
9 Accordingly, this Office makes reason-to-believe recommendations in this Report and outlines
10 an investigation plan to be implemented as circumstances warrant.

11 Based on the complaint, responses, and publicly available information, it appears that
12 New York Senate 2000 may have knowingly and willfully failed to report the receipt of at least
13 \$628,223.90 in in-kind contributions from several corporate entities associated with Mr. Paul.
14 This Office therefore recommends the Commission find reason to believe that New York Senate
15 2000 knowingly and willfully violated the relevant provisions of the Act and regulations.
16 Regarding the remaining respondents in this matter, this Office recommends that the
17 Commission find no reason to believe that William Jefferson Clinton, Edward G. Rendell,
18 Stephanie L. Berger or James H. Levin violated the Act, and recommends that the Commission
19 take no action at this time with regard to Clinton for Senate, Hillary Rodham Clinton, Peter F.
20 Paul, David Rosen, Stan Lee and Stan Lee Media, Inc.

Brazil for two days in August and two days in October of 2001 in order to interview Mr. Paul "about his financial dealings with Bill and Hillary Clinton" Al Guart, "Feds Probing Hill: Bizman: She Lied on Campaign \$-Raiser," *New York Post*, April 28, 2002. The article stated that the officials offered Mr. Paul "a deal in which he would plead guilty to outstanding federal charges in New York and California and become a 'cooperating witness' into Clinton fund-raising and 'other matters.'"

1 **II. FACTUAL AND LEGAL ANALYSIS**⁴

2 **A. Complaint**

3 Complainant Peter F. Paul alleged, *inter alia*, that he “made cash and in-kind
4 contributions to the federal election campaign of Hillary Rodham Clinton for the U.S. Senate
5 seat representing the State of New York, totaling almost \$2 million” Complaint at 5.
6 Complainant further alleged that his cash and in-kind contributions “have been improperly
7 and/or inaccurately reported by Mrs. Clinton and her federal election campaign committees.” *Id.*
8 at 4. In support of his allegations, Complainant submitted five exhibits: (1) Letters to Mr. Paul
9 from Hillary Rodham Clinton and then-President Bill Clinton; (2) FEC disclosure information
10 showing a \$2,000 contribution from Mr. Paul reported as received by New York Senate 2000 in
11 June of 2000 and refunded six weeks later; (3) a newspaper article reporting on Mr. Paul’s
12 contribution and refund; (4) copies of checks, bank statements, invoices, and receipts; and (5) a
13 three-page letter from Mr. Paul to Senator Hillary Clinton.

14 **1. Complaint Letter**

15 The complaint letter alleged in its opening summary that Senator Hillary Rodham
16 Clinton, Clinton for Senate, New York Senate 2000, former Clinton for Senate finance director
17 David Rosen, former Democratic National Committee (“DNC”) chair Edward Rendell, former
18 DNC Regional Finance Director Stephanie Berger, Democratic fundraiser James Levin, and

⁴ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission’s regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission’s promulgation of any regulations under BCRA

former President William Jefferson Clinton "appear to be in violation of" 2 U.S.C. §§ 431, *et seq.* and 434(b) and 11 C.F.R. §§ 104.3, 110.9(a), and 110.9(b).⁵ Complaint at 1.

Peter F. Paul described himself in the complaint as "an acclaimed Hollywood executive with extensive experience in event production, entertainment marketing, and media positioning," and co-founder of Stan Lee Media, Inc., which by early 2000 "enjoyed a market capitalization of approximately \$350 million." *Id.* at 2. Complainant sought to "build" Stan Lee, the creator of several well-known comic book figures for Marvel Comics, "into a major cultural and branded entertainment figure." *Id.* Complainant stated that he believed "one way to achieve this goal was through politics." *Id.*

According to the complaint, Mr. Paul was approached by a former protégé, event producer Aaron Tonken, "about elevating Stan Lee's public profile, recognition and acceptance by contributing money to the Democratic Party." *Id.* The complaint alleged, "Tonken induced Mr. Paul to contribute \$30,000 to the DNC" in connection with a February 17, 2000 event at Café Des Artistes in Hollywood, California.⁶ *Id.* Complainant described his role as both a contributor and a "co-host" of the event. *Id.*

⁵ This Office has included titles or descriptions based on the complaint, the responses and news searches of the respondents. *See, e.g., Los Angeles Times*, February 24, 2002; *Chicago Tribune*, October 30, 2000. The complaint described David Rosen as "Director of Finance for Mrs. Clinton's Senate campaign" or Senator Clinton's "National Campaign Finance Director;" Mr. Rosen's response did not list his title or position. The complaint described Edward Rendell as "DNC Chairman;" Mr. Rendell's response stated that he "served for a time as General Chairperson" of the DNC. The complaint described Stephanie Berger as "DNC Southern California Finance Chairwoman" or "California DNC Finance Chairwoman," Ms. Berger's response stated that she "served on the staff of the DNC's Finance Department as a full time employee. Her title was Regional Finance Director, and she held responsibility for DNC fundraising efforts in the western states of the U.S. especially California and particularly Southern California." The complaint described James Levin as "a friend and fundraiser for President and Mrs. Clinton from the Chicago area;" Mr. Levin did not file a response

⁶ There is no record in reports filed with the Commission of a \$30,000 contribution to the DNC from Complainant in 2000. However, the DNC Non-Federal Corporate account reported a non-federal contribution of \$30,000 from "Excelsior Production" of Encino, California, dated 3/15/00. Excelsior Productions Inc. appears to be connected to Stan Lee Media, Inc. through Complainant, as his signature appears on checks issued by Excelsior Productions Inc., copies of which were attached to the complaint. His name also appears in the account name (payor) on four checks issued by Excelsior Productions Inc., copies of which were attached to the complaint. (Footnote continues on following page)

1 Based on his discussions with DNC officials Edward Rendell and Stephanie Berger,
2 Complainant believed "his substantial contribution to the DNC would enable [him] to better
3 position himself to enlist [then-President Clinton's] support for recognizing Stan Lee's
4 significant contributions to literacy and global popular culture, including a Kennedy Center
5 Honor and a White House presentation of a Presidential Medal of Freedom." *Id.* Complainant
6 stated that he "was prepared to commit a significant portion of his family share holdings in SLM
7 [Stan Lee Media, Inc.], then valued at approximately \$90 million, in order to achieve his strategy
8 of elevating Stan Lee's public profile, recognition and acceptance through the good offices of
9 The White House," and therefore was "induced to become a major contributor." *Id.*

10 The complaint further alleged that "California DNC Finance Chairwoman Stephanie
11 Berger and David Rosen, the Director of Finance for Mrs. Clinton's Senate campaign, asked
12 Mr. Paul to make a \$150,000 commitment to co-host a luncheon for Mrs. Clinton at Spago
13 [restaurant] in Beverly Hills on June 9, 2000." *Id.* at 3. Complainant stated that he "agreed to
14 support Mrs. Clinton's U.S. Senate campaign, however, by making a \$55,000 payment towards
15 satisfying a \$150,000 commitment to co-host the June 9, 2000 luncheon and tea with Stan Lee."⁷
16 *Id.*

Further, the address listed for "Excelsior Production" in the DNC's report is nearly identical to the address of record for Stan Lee Media, Inc., and Stephen Gordon, the agent for service of process of Excelsior Productions Inc. and Stan Lee Media, Inc., is a co-defendant with Complainant in federal indictments. *See discussion infra*

⁷ Disclosure reports filed by New York Senate 2000 and Clinton for Senate indicate that a June 9, 2000 fundraising event conducted by New York Senate 2000 may have raised approximately \$41,500 for Clinton for Senate. New York Senate 2000 reported receiving approximately 60 contributions on June 9, 2000, the majority of which were from California. Clinton for Senate disclosed in memo entries that 67 contributions, all dated June 9, 2000, were transferred to it from New York Senate 2000. The seven-contribution difference consists of six contributions to New York Senate 2000 exceeding the \$1,000 limitation, which were split into two contributions for primary and general by Clinton for Senate, and one contribution of \$200 from Christopher Holabird reported by Clinton for Senate but not by New York Senate 2000.

A letter attached to the complaint referenced a \$55,000 contribution by Complainant to "an abortion rights group" in connection with the "Spago lunch." Mr. Paul's October 14, 2003 civil complaint, discussed *infra*, (Footnote continues on following page)

1 The complaint further alleged, "On July 11, 2000, Mr. Paul participated in a conference
2 call with Rosen and other fundraisers for Mrs. Clinton to discuss Mr[.] Paul's and Stan Lee's
3 sponsoring a fundraiser for Mrs. Clinton just prior to the Democratic National Convention in Los
4 Angeles, California." *Id.* Complainant allegedly "suggested a Hollywood Tribute to the
5 President, the proceeds of which would be used to elect Mrs. Clinton to the U.S. Senate." *Id.*

6 The complaint stated that this event "was to be held on the grounds of the home of radio magnate
7 Ken Roberts, in Brentwood, California." *Id.* Complainant alleged that he "agreed to finance the
8 Hollywood Tribute fundraiser. All funds raised from persons attending the fundraiser would
9 constitute net contributions to Mrs. Clinton's U.S. Senate campaign." *Id.* Complainant stated
10 that his "sole and exclusive intention was to influence the outcome of Mrs. Clinton's U.S. Senate
11 campaign, not any other election campaign." *Id.* The complaint further alleged, "The President
12 and Mrs. Clinton knew this to be the case because Mr. Paul was specifically induced by the
13 President and his agents to assist and boost Senator Clinton's campaign as a favor to the
14 President." *Id.*

15 Additional details of the July 11, 2000 conference call were included in a civil complaint
16 filed by Complainant on October 14, 2003 in the Superior Court of California, County of Los
17 Angeles, against former President Clinton, Senator Clinton, Clinton for Senate, New York
18 Senate 2000, Aaron Tonken and David Rosen alleging, *inter alia*, fraud and unjust enrichment:⁸

clarified that the contribution was in the form of a transfer of Stan Lee Media, Inc. stock in "mid- to late September 2000" to "The Working Families Party, . . . a political party, not a women's rights organization." On December 13, 2003, the *Los Angeles Times* reported that

The [Working Families] [P]arty had agreed to support Hillary Clinton under the New York system of "fusion" voting, which permits a candidate to appear on the ballot for more than one party. The . . . *Times* previously reported that a Stan Lee Media executive said he instructed Merrill Lynch to transfer shares, although a spokeswoman for Working Families said no shares were received.

⁸ The civil complaint contained a detailed account of Mr. Paul's alleged arrangement with former President Clinton to associate himself with Stan Lee Media, Inc. in exchange for Mr Paul's assistance with the August 12, (Footnote continues on following page)

[] The conference call was organized by Rosen and Levin. Tonken participated as well. Plaintiff [Peter F. Paul], Rosen, Levin and Tonken were physically present in Plaintiff's office while they spoke, via telephone conference, to officials with [Clinton for Senate] in New York, including campaign spokesman Howard Wolfson.

[] During the . . . conference call, Rosen represented to Plaintiff that [Clinton for Senate] wanted to hold a fundraiser in the Los Angeles area to coincide with the Democratic National Convention, which was only four weeks away. Plaintiff was asked to underwrite and produce the event.

[] During the conference call, Plaintiff discussed contributing a maximum of \$525,000 to underwrite the Hollywood Tribute and serving as executive producer of the event. Plaintiff also discussed securing world class artists to perform at the event, at his sole expense, to enable [Clinton for Senate] to raise additional funds.

[] The Hollywood Tribute was to include a reception, a \$25,000 per couple gala dinner and a \$1,000 per person concert.

Complainant stated that he became concerned as the cost of the event exceeded

\$1 million and complained to Messrs. "Rosen, Levin, and others repeatedly about the cost"

Complaint at 3. The complaint alleged, "Rosen told Mr. Paul not to discuss the mounting costs of the fundraiser because, for public relations purposes, Mrs. Clinton's U.S. Senate campaign did not want the true cost of the fundraiser to become known." *Id.* Furthermore, Complainant alleged that Mr. Rosen told him "that certain fundraising ratios required by federal campaign finance laws would be skewed if the true cost of the fundraiser became known." *Id.*

Complainant's civil complaint contained further details of these discussions:

[] [I]n meetings in Plaintiff's [Peter F. Paul's] office between July 11, 2000 and August 12, 2000, as well as in telephone conversations during this same period, Rosen repeatedly promised and represented to Plaintiff that he and [Clinton for Senate] would make sure Plaintiff's contributions were allocated and reported to federal election authorities in a manner that was consistent with Plaintiff's donative intent and complied with all applicable laws and regulations. Rosen also repeatedly promised and represented to Plaintiff during these meetings and telephone conversations that he would sit down with Plaintiff to review his contributions and determine how they would be reported. Rosen also advised Plaintiff that

1 the reporting did not need to be done until after the November 2000
2 election.

3
4 Complainant alleged, "At all times, President Clinton, Mrs. Clinton, Levin, Rosen and
5 many others knew that Mr. Paul, not SLM [Stan Lee Media], Stan Lee, or anyone else, was
6 paying for the Hollywood Tribute fundraiser." Complaint at 3. Complainant stated that he
7 "repeatedly told Rosen that this was the case, as did SLM Chief Executive Officer and President
8 Ken Williams. SLM General Counsel Ric Madden also told Rosen that SLM could not and
9 would not incur any costs for the fundraiser." *Id.* Further, the complaint alleged, "Rosen also
10 witnessed Mr. Paul writing checks for costs associated with the fundraiser, and in fact had
11 Mrs. Clinton join in negotiating [a] production fee of \$850,000 on behalf of Mr. Paul." *Id.* at 3-
12 4. As described in the civil complaint, Mr. Paul allegedly retained a particular producer at the
13 specific request of the Clintons:

14 [] [T]he Clintons, by and through Rosen, requested that Plaintiff [Peter F. Paul]
15 retain Gary Smith, a CBS producer and friend of the Clintons, to produce the
16 concert portion of the event. Smith and his production company, Smith-Hemion
17 production, had produced President Clinton's first Inaugural Ball and were
18 producing the August 2000 DNC Convention, as well as a gala fundraiser for
19 Vice President Gore to be held after his presidential nomination. At Rosen's
20 request, Plaintiff agreed to negotiate with Smith.

21 [] [O]n or about July 14, 2000 . . . Smith represented to Plaintiff that he would
22 require a "turn key" fee of \$850,000, inclusive of all expenses, to produce the
23 concert portion of the Hollywood Tribute and an edited videotape of the concert
24 When Plaintiff objected to this amount, Rosen represented to him that Smith
25 was a close friend of Mrs. Clinton and that Mrs. Clinton would intervene to get
26 Smith to lower his fee.

27 [] The following day, Rosen represented to Plaintiff that Mrs. Clinton had called
28 Smith and, as a result of Mrs. Clinton's direct intervention, Smith had agreed to
29 lower his fee to \$800,000. . . .
30

31 Complainant claimed that the Hollywood Tribute fundraiser took place on August 12,
32 2000, and that on August 14, 2000, "Mrs. Clinton called Mr. Paul at home to thank him for
33 paying for the Hollywood Tribute fundraiser. In fact, the President and Mrs. Clinton had made

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several calls to Mr. Paul to encourage his support and to thank him for the event." Complaint at 4. Complainant alleged that he "conceived, designed, organized, produced, conducted and paid for the August 12, 2000 Hillary Rodham Clinton fundraising event" *Id.* Complainant placed the total spent at "approximately \$1.9 million of his own personal funds for the Hollywood Tribute fundraiser, which Mr. Paul was told netted Senator Clinton approximately \$1.5 million . . . in direct contributions for her campaign." *Id.* The complaint stated, "There is clear and compelling evidence that Mrs. Clinton and her staff intentionally failed to report direct 'in-kind' contributions, in accordance with federal law." *Id.*

2. Complaint Exhibits

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1 Exhibit 2 references a contribution of \$2,000 by Peter Paul to New York Senate 2000
2 dated 6/30/00 and a refund of \$2,000 itemized by New York Senate 2000 dated 8/16/00.

3 Exhibit 3 consists of a newspaper article dated August 17, 2000. Lloyd Grove, "Jerry
4 Springer Drops in on 'A Silly Show,'" *The Washington Post*, August 17, 2000, at C1. The
5 article states, "Senate candidate Hillary Rodham Clinton's press secretary misspoke – and
6 convicted felon Peter Paul apparently misremembered – when they told us this week that Paul
7 produced Saturday's star-glutted million-dollar fundraiser but didn't personally give money to
8 Clinton's campaign." The article reported that Complainant had contributed \$2,000 "to
9 Clinton's campaign" and that the check had been returned. The article then described
10 Complainant's criminal record and his activities since prison. The article further stated, "Paul
11 said producer Aaron Tonken, who helped organize the fundraiser at businessman Ken Roberts'
12 Brentwood estate, must have sent candidate Clinton the money on Paul's behalf. 'Aaron had me
13 write checks for a lot of things, and I didn't pay attention,' Paul said." The article quoted
14 Complainant as saying he was paid "a nominal fee" for his production services for the event.
15 The article reported that Howard Wolfson, referred to as a "Clinton spokesman," stated that
16 Stan Lee donated \$100,000 towards the expenses for the event and that the remainder "of the
17 estimated \$1 million-plus cost . . . 'was an in-kind contribution . . . and not a check.'"

18 Exhibit 4 is a compilation of numerous checks, bank statements, invoices, and receipts.
19 Many of the check copies lack signatures, dates, memo descriptions, and payees, and several
20 others are not completely copied (*e.g.*, the payee and amount are copied but the account name
21 and check number are not). All of the checks appear to be drawn on corporate accounts. The
22 total amount of all checks, including duplicates, unsigned checks, and checks marked "not
23 negotiable," exceeds \$2 million. However, as described *infra* in section C.1., after adjustments

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1 are made to avoid double-counting any event costs, the amount of expenses represented by

2 Complainant's submission actually totals \$1,094,788.59.

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B. Responses¹⁰

1. New York Senate 2000

The response of New York Senate 2000 acknowledged that Complainant Peter F. Paul helped New York Senate 2000 “organize an August 12, 2000, fundraising event in Los Angeles, California.” The response further stated that New York Senate 2000 reported “nonfederal in-kind contributions totaling \$366,564.69 from Stan Lee Media, Paul’s firm, in connection with the event,” which was reported on its amended October 2000 Quarterly Report.

The response included press releases from DOJ describing the indictment of Complainant in the Eastern District of New York on two felony counts of securities fraud, as well as the indictment against Complainant in California federal district court for bank fraud and mail fraud. The response contended that the Commission should exercise its prosecutorial discretion in this matter. The response stated, “Paul filed this complaint as a fugitive in order to use the Commission as a weapon. Specifically, he has used the threat of Commission enforcement to extract up to \$2 million from the respondents in this matter.” The response continued, “There is ample reason to believe that Paul’s letter and complaint are intended to continue the fraud of which two grand juries have accused him.” According to the response, New York Senate 2000 “received nonfederal in-kind contributions from Stan Lee Media, the company that Paul allegedly defrauded. By falsely claiming that he – and not Stan Lee Media – made the contributions in question, Paul seeks to obtain a ‘refund’ of someone else’s money.”

The response stated that the copies of checks “prove his intent to deceive” because “[n]ot a single one of the 201 checks indicates a payment of his personal funds.” The response further stated that, although Complainant alleged that he “personally financed ‘the entire event’ in

¹⁰ The only respondents who did not file a response were James H. Levin and Stan Lee Media, Inc.

1 question,” New York Senate 2000’s reports “show that the Committee directly paid \$100,000 to
2 the event promoter.” The response also noted that Complainant’s “purported largesse changes
3 throughout the complaint.” The response stated that New York Senate 2000 “reported nearly
4 half a million dollars in expenses associated with the August 12 event.” The response explained
5 that New York Senate 2000 “paid \$100,000 directly to Black Ink Productions” and “also
6 disclosed in-kind contributions from Stan Lee Enterprises totaling \$366,564.69 for other event
7 expenses, including \$200,000 paid to Black Ink Productions above and beyond” New York
8 Senate 2000’s direct \$100,000 payment to Black Ink Productions, Inc. The response stated that
9 Complainant’s allegation that the event raised approximately \$1.5 million but cost nearly
10 \$2 million “strains credulity.” According to the response, Stan Lee Media, Inc. was the “true
11 source of in-kind contributions in connection with the event.” The response stated that
12 Complainant “presents no credible reason to doubt what the Committee disclosed on its reports –
13 that Stan Lee Media made in-kind contributions totaling \$366,564.69 in connection with the
14 event.”

15 The response noted that New York Senate 2000 was only mentioned “in a laundry list of
16 eight respondents” and never mentioned again, with the exception of “only four pages of the
17 attachments, which simply document the Committee’s refund of \$2,000 to Paul.” The response
18 contended, “If Paul wants to claim that New York Senate 2000 broke the law, then he must do so
19 directly.” The response claimed that the Commission “cannot relieve him of this burden by
20 presuming that he refers to New York Senate 2000, a joint fundraising committee with multiple
21 participants, every time he mentions Senator Hillary Rodham Clinton or her campaign.”
22

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2. Senator Hillary Rodham Clinton, Clinton for Senate, and former President William Jefferson Clinton

Senator Hillary Rodham Clinton, Clinton for Senate and former President William Jefferson Clinton jointly filed a response stating that the “complaint does not provide a basis for finding a reason to belief [sic] that a violation” of the Act occurred. The response stated that, although Complainant allegedly made contributions to Clinton for Senate, the complaint conceded that the fundraising event he allegedly financed was a New York Senate 2000 fundraiser. The response continued, “Quite simply, the Complainant fails to set forth a single piece of evidence to support the wild assertion that he spent ‘\$1.9 million of his own personal funds’ to make ‘cash and in-kind direct contributions’” to Clinton for Senate.

The response acknowledged that Complainant “assisted” with an August 12, 2000 fundraising event to benefit New York Senate 2000. According to the response, “The joint fundraising committee raised approximately \$1 million in direct contributions in connection with this event and reported event costs of more than \$500,000, including in-kind contributions.” New York Senate 2000 actually disclosed fundraising expenses totaling \$523,794.43 for the August 12, 2000 event. The response continued, “The 50% ratio of event expenses to funds raised is extremely high, well beyond the usual and customary amount associated with events designed to raise funds for a political campaign,” and pointed out that Complainant claimed to have spent \$1.9 million on this event, or almost \$1 million more than the fundraiser raised.

The response contended that New York Senate 2000 “properly reported receiving \$366,564.69 in non-federal in-kind contributions from Stan Lee Media to cover costs associated with the fundraiser,” which “included a \$200,000 payment by them to Black Ink Productions, the event producer, to pay for costs associated with the event.” The response stated that New York

Senate 2000 "also made a direct payment of \$100,000 to Black Ink Productions for event costs that was properly recorded." The response summarized the reports as follows,

In total, New York Senate 2000 reported August 12 event costs of \$519,077.39 (\$401,419 non-federal in-kind contributions received and \$117,658 in direct expenditures made by the committee).^[11] The event raised approximately \$1,473,434 (including the \$401,419 non-federal in-kind contributions) with a net of \$1,072,015 in direct contributions.

The response further stated, "In light of the amount raised and the event costs reported by the joint fundraising committee (including \$300,000 in payments to Black Ink Productions) there was no reason to believe that the Complainant spent \$1, let alone '\$1.9 million of his own personal funds,' to pay for this event," and "Complainant failed to provide the Commission with a single personal check or bank statement to support his claim that he 'personally financed the entire event.'" As described *infra* in section C.1., the checks submitted as evidence by Complainant appear to be written on accounts of incorporated entities associated with him.

The response included summaries of the indictments of Complainant for the securities fraud, bank fraud, and mail fraud violations. The response stated, "When Judicial Watch filed this complaint . . . Complainant was a fugitive hiding from prosecution on these charges in South America."^[12] He apparently even signed the complaint before a notary in Sao Paolo, Brazil."^[13]

¹¹ The \$117,658 amount for direct expenditures does not appear to include a \$4,717.04 disbursement to "BGI Shared Services" on June 30, 2001 for "Travel Expenses," which was reported as an August 12, 2000 event cost on the 2001 Mid-Year Report of New York Senate 2000. Accordingly, New York Senate 2000 appears to have reported a total of \$523,794.43 in expenses (\$4,717.04 plus the \$519,077.39 in total expenses listed above) in connection with the August 12 event.

¹² The response cited to the Statement of Reasons in MUR 4960 of Commissioners Mason, Sandstrom, Smith, and Thomas in stating, "Judicial Watch is known to abuse the Federal Election Commission's complaint process by making 'purely speculative charges.'" The response stated that in this matter Judicial Watch "resorted to using an international fugitive facing separate criminal charges in New York and Los Angeles as their weapon of choice to attack Respondents in this matter before the Commission."

¹³ The response questioned whether the complaint met the Act's standards since it was notarized in Brazil. There is no requirement in the Act or the Commission's regulations that the notarizations appear in English or that (Footnote continues on following page)

1 The response's discussion section began with the contention that the Commission should apply
2 the fugitive disentitlement doctrine in this matter, including as "Exhibit A" the certified copy of
3 the arraignment against Complainant for the charges against him in New York, identifying
4 Complainant as a fugitive. The response included as "Exhibit B" the press release stating that
5 Complainant was arrested in Brazil. According to the response, "Since Complainant is a
6 fugitive, the Commission would be unable to subpoena documents from him, depose him, or
7 otherwise take any investigative action related to him."

8 The response explained, "Complainant's personal financial records would be important if
9 any of the allegations were true. Yet, Complainant failed to include any of them in the
10 documents that he produced with the Complaint." The response claimed that Complainant's

11 failure to provide the personal financial records and the
12 Commission's inability to obtain them through its routine
13 investigative powers unfairly places Respondents in the position
14 of having to defend themselves against his claims regarding
15 which the Respondents have no information and the Commission
16 would be unable to verify.

17
18 The response argued that even if Complainant made contributions financing the event,
19 there would not be any contribution to Clinton for Senate. "Neither Senator Clinton, nor her
20 campaign committee were responsible for reporting contributions made to New York Senate
21 2000. And New York Senate 2000 would not be responsible for reporting contributions from
22 Complainant that were not made."

23 The response also addressed the allegations against former President Clinton and Senator
24 Clinton. According to the response, "President Clinton was not a candidate in 2000. He was
25 simply an attendee at a joint fundraising event. Complainant failed to provide any evidence upon

the notarizations occur within the United States. Moreover, Complainant has been notified of the Commission's acceptance of the complaint and the respondents have also been notified and filed responses.

1 which one could reasonably conclude that President Clinton violated any provision of the Act.”
2 The response further stated that, although Senator Clinton’s campaign committee was a
3 participant in the joint fundraising event, “Complainant failed to provide any evidence upon
4 which one could reasonably conclude that [Senator Clinton] violated any provision of the Act.”

5 **3. Stephanie Berger**

6 Stephanie Berger, whom Complainant referred to as the DNC’s Southern California
7 Finance Chairwoman, filed a response stating that, under the Act and the regulations, and
8 according to the alleged violations in the complaint, Ms. Berger did not violate the Act.
9 According to the response, other than the inclusion of Ms. Berger in the “laundry list of persons
10 Mr. Paul presumes to name as respondents, the complaint contains no allegation that Ms. Berger
11 committed any violations of” the Act. The response claimed, “As a matter of law, there are no
12 circumstances under which an individual who is not a candidate for Federal office could commit
13 a violation of” 2 U.S.C. §§ 431, *et seq.* and 434(b) and 11 C.F.R. § 104.3, the first three
14 provisions named in the complaint’s list of violations. The response stated that the last two
15 provisions cited in the complaint’s list of violations “place obligations on any ‘candidate or
16 political committee,’ any ‘officer or employee of a political committee,’ and any ‘person who is
17 a candidate for Federal office or an employee or agent of such a candidate.’ 11 C.F.R. §
18 110.9(a)&(b).”

19 The response stated that the only committee of which Ms. Berger could have been an
20 officer, employee, or agent was the DNC, “which even the complainant does not identify as a
21 purported respondent.” The response continued, “During the entire 2000 election campaign,
22 Ms. Berger served on the staff of the DNC’s Finance Department as a full-time employee.” The
23 response stated that Ms. Berger “was Regional Finance Director, and she held general

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1 responsibility for DNC fundraising efforts in the western states of the U.S., especially California
2 and particularly Southern California.” However, “Ms. Berger has never held the title of ‘DNC
3 Southern California Finance Chairwoman,’ in fact, there is no such position among the DNC’s
4 officers, staff, or volunteer solicitors.” The response claimed that this “significant misstatement
5 of Ms. Berger’s title and overall role in the entirety of Democratic fundraising in Southern
6 California” by the complaint “belies its otherwise unsupported allegation that Ms. Berger could
7 be held to have entered into the legal relationship of agency with the Clinton for Senate
8 campaign.”

9 The response stated that Complainant did not “allege that he made any unreported
10 contributions to the DNC, the only committee with which Ms. Berger has any kind of legal
11 relationship or obligation to help account for contributions.” The response concluded, “In short,
12 even if each factual allegation in Mr. Paul’s complaint is assumed to be true (despite the obvious
13 falsity of several of his allegations), there is no set of circumstances described in the complaint
14 which would support a finding that Stephanie Berger” violated the Act.

15 **4. David Rosen**

16 David Rosen, referred to by Complainant as Director of Finance and National Campaign
17 Finance Director for Senator Clinton’s campaign, filed a response stating, “First, the
18 complainant, Peter Paul, is a fugitive from justice,” and therefore “[t]he Commission should use
19 its prosecutorial discretion to invoke the fugitive disentitlement doctrine and bar Paul from using
20 this Commission to pursue his administrative claim. . . . Second, the complaint simply fails to
21 set forth any evidence that Rosen has violated any provision of the Act or the Commission’s
22 regulations.”

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1 The response noted that, "On June 12, 2001, Paul was indicted in the U.S. District Court
2 for the Eastern District of New York on two felony counts of securities fraud." The response
3 included copies of Complainant's indictment and related press releases. The response cited
4 several Supreme Court and Circuit Court decisions upholding the "fugitive disentitlement
5 doctrine," including *Prevot v. Prevot*, 59 F.3d 556, 562 (6th Cir. 1995) and *Degen v. United*
6 *States*, 517 U.S. 820, 824 (1996). The response stated, "While no court has specifically
7 addressed the right of an administrative agency to refuse to hear a complaint filed by a fugitive,
8 courts have declined, in certain circumstances, to entertain claims brought by a fugitive
9 challenging administrative action." The response cited *Doyle v. U.S. Department of Justice*,
10 668 F.2d 1365 (D.C. Cir. 1981) (per curiam), *cert. denied*, 455 U.S. 1002 (1982) and *Brin v.*
11 *Marsh*, 596 F. Supp. 1007 (D.D.C. 1984) for support of this proposition. The response further
12 stated that the "Commission has prosecutorial discretion with respect to the use of its
13 investigative resources." The response contended, "In this case, the Commission should exercise
14 its discretion not to devote its limited resources to pursuit of a complaint filed by an individual
15 who has refused to face justice in the United States."

16 The response contended that the reports filed by New York Senate 2000 "show that
17 NY Senate 2000 received an in-kind contribution in the amount of \$366,564.69, from Stan Lee
18 Media, consisting of a payment by Stan Lee Media in connection with the event." The response
19 also stated that the reports indicated "that NY Senate 2000 paid \$100,000 directly to Black Ink
20 Productions as well, for such production costs." According to the response, "It is Rosen's
21 understanding that the in-kind contribution reported by NY Senate 2000 reflects precisely what
22 NY Senate 2000 was told by Paul himself, both as to the source and amount of the contribution."

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1 The response contended that Complainant's assertions about Mr. Rosen's knowledge of
2 the cost of the event and who was paying for it are "patently false." The response concluded,
3 "none of [Complainant's allegations] would establish a violation by Rosen, personally, of any
4 provision of the Act or the Commission's regulations."

5 **5. Edward G. Rendell**

6 The response of Edward G. Rendell, who appears to have served as DNC chair during the
7 activities at issue, stated, "Preliminarily, the complaint contains almost no facts concerning
8 Mr. Rendell other than that in February, 2000, he urged Mr. Paul to continue to support DNC
9 events." According to the response, "The focus of Mr. Paul's complaint is the handling of
10 contributions Mr. Paul allegedly made, directly or indirectly, . . . in connection with: (1) a
11 fundraiser at Spago in Beverly Hills on June 9, 2000 and (2) a Hollywood tribute to the President
12 on August 12, 2000." The response stated, "Mr. Rendell had nothing whatsoever to do with
13 either the arrangements or the solicitation of contributions for the [June 9 or August 12, 2000]
14 events," and "Mr. Paul sets forth no facts in his complaint to the contrary." The response further
15 stated that the complaint alleged unreported contributions to the Clinton campaign and/or New
16 York Senate 2000 but not to the DNC.

17 Although the response acknowledged that Mr. Rendell met Complainant at various DNC
18 events in 2000, "Mr. Paul's complaint contains no factual allegations that, at these DNC events,
19 or at any other time, Mr. Rendell discussed with Mr. Paul the possibility of his supporting any
20 fundraiser for the Senate campaign of Hillary Rodham Clinton or New York Senate 2000." The
21 response stated that Mr. Rendell had no such discussion with Complainant. The response
22 concluded, "[E]ven if all of Mr. Paul's allegations . . . were true, there are none against Edward
23 G. Rendell personally that would amount to any violation of the Act."

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6. Stan Lee

Stan Lee filed a response stating that the complaint "sets forth absolutely no allegations of violations of federal election laws, or any wrongdoing whatsoever, by Mr. Lee. Further, the complaint does not set forth any facts which, if proven true, would constitute a violation of federal election laws by Mr. Lee." The response contended, "Thus, there is no basis for Mr. Lee's classification as a respondent in MUR 5225, and, more significantly, no possible basis for the Commission to find reason-to-believe that Mr. Lee violated federal election laws in this matter."

C. Analysis

As a preliminary matter, because Mr. Paul has been extradited to the United States, the "fugitive disentitlement doctrine" is no longer at issue.¹⁴ The central issue in this matter is whether the costs of an August 12, 2000 fundraising event – billed as a "Hollywood Tribute to President William Jefferson Clinton" – were reported in accordance with the Act and the Commission's regulations. The available information supports reason-to-believe findings that New York Senate 2000 knowingly and willfully violated the Act and regulations by failing to

¹⁴ The fugitive disentitlement doctrine, also known as the "fugitive from justice" rule, *see, e.g., Barnett v YMCA*, 268 F.3d 614, 616 (8th Cir. 2001), *Empire Blue Cross & Blue Shield v Finkelstein*, 111 F.3d 278, 280 (2nd Cir. 1997), has been held as available to both Article III and Article I courts. *See Daccarett-Ghia v CIR*, 70 F.3d 621, 625 (D.C. Cir. 1995). The cases cited by the respondents for the proposition that the fugitive disentitlement doctrine prevents a fugitive from raising a claim in court challenging an administrative action, *Doyle v U S Department of Justice*, 668 F.2d 1365 (D C Cir 1981) (per curiam), *cert denied*, 455 U.S. 1002 (1982) and *Brin v Marsh*, 596 F. Supp. 1007 (D.D C 1984), are strictly limited to matters before courts. Accordingly, even if Mr. Paul were a "fugitive" at the time he filed the complaint, the doctrine does not act as a bar to Commission action in this matter, as it is employed only by courts to bar private claims by plaintiffs and has never served as a bar to matters before public administrative agencies. Moreover, the policy rationale underlying the doctrine is inapplicable in situations such as this matter. Although a person who believes a violation of the Act has occurred may file an administrative complaint with the Commission, *see* 2 U.S.C. § 437g(a)(1), such a complaint does not present a private legal claim in the manner of a plaintiff's complaint filed in court. In the latter situation, the complainant is a direct party to the action calling upon a court to adjudicate his or her private claims. By contrast, while an FEC complainant may trigger an enforcement action by the Commission, his or her legal status is not germane to enforcement decisions made by the Commission.

1 disclose in-kind contributions from several entities that appear to have paid for the majority of
2 event expenses.¹⁵ Further investigation and analysis should reveal the scope of these violations.

3 **1. New York Senate 2000**

4 Based on the available information, it appears that New York Senate 2000 served as the
5 fundraising representative for the August 12, 2000 event and that Clinton for Senate and the
6 DSCC served as the fundraising participants. In a July 30, 2001 response to a Request for
7 Additional Information from the Commission's Reports Analysis Division, New York Senate
8 2000 claimed that it "raised \$363,465 federal funds and \$708,550 non-federal funds" from the
9 event. Because the DSCC's non-federal account was legally permitted to accept what would be
10 impermissible funds under the Act, New York Senate 2000 appears to have set up a non-federal
11 account to accept non-federal contributions pursuant to 11 C.F.R. § 102.17(c)(3)(i) ("the
12 participants may either establish a second depository account for contributions received from
13 prohibited sources or they may forward such contributions directly to the non-federal
14 participants").

15 Complainant primarily alleged that he provided approximately \$1,900,000 of his personal
16 funds to pay for the August 12 event. New York Senate 2000 reported expenses totaling
17 \$523,794.43 for the same event in its Schedule H4. Complainant submitted copies of over 200
18 checks totaling in excess of \$2 million, as well as various bank statements and invoices, to
19 support his allegations. However, the checks appear to be drawn from corporate accounts,
20 contradicting Complainant's claim that he used "personal" funds to finance the event. Further,

¹⁵ Complainant cites to, *inter alia*, 11 C.F.R. § 110.9(b), which prohibits candidates or their agents from fraudulently misrepresenting themselves as acting on behalf of another "candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof." Complaint at 1. Because there are no facts in the complaint, responses or other available information that are related to this issue, it is not discussed further in the analysis. If the recommended investigation reveals any such facts, this Office will return to the Commission with appropriate recommendations.

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1 some of the checks appear to be duplicates of other checks, and the expense amounts are skewed
2 because one of the corporations involved, Black Ink Productions, Inc., is also named as the payee
3 on several checks from another entity, Paraversal Inc. After making the appropriate adjustments
4 so as to avoid double-counting any expenses, this Office believes the table below accurately
5 reflects the disbursements that, based on Complainant's document submission, appear to have
6 been made by these corporations:

Black Ink Productions, Inc.	\$612,544.95
Paraversal Inc.	\$229,888.32
Excelsior Productions Inc.	\$126,981.29
Celebrity Enterprises Inc.	\$17,399.21
Hollywood Holdings Corp.	\$14,954.04
Cyberia Inc.	\$5,790.00
Continental Entities Inc.	\$44,275.27
<u>Jennings, Levy, Steine & Co.</u>	<u>\$42,955.51</u>
TOTAL:	\$1,094,788.59

7
8 Attachment 1 provides a more detailed breakdown of these expenses, including dates, payors,
9 payees, signature information, check notes, bank deposits and patterns of payments to common
10 vendors.¹⁶

¹⁶ Whenever possible, this Office has attempted to include information in Attachment 1 as it appears on the checks, including legible handwritten notes and signatures. Notations such as "unk signature" or "???" indicate that this Office was unable to decipher the handwriting or printing, or that only a portion of the document was copied. Black Ink Productions, Inc., the payor of the majority of expenses listed in Attachment 1, is described in a letter attached to the complaint as the producer of the "concert part of the event." Although Complainant described Black Ink Productions, Inc. as the "lend-out company" of Gary Smith, a Dun & Bradstreet search has revealed that Black Ink Productions, Inc. is actually owned by Allan Baumrucker, who also signed all of the checks from the company. Some of the checks were made out to "Smith-Hemion Productions," of which Gary Smith is a principal. The \$42,955.51 amount listed in the above table is based on a single unsigned check made out to "The Travel Authority." The name of the account (printed in the upper left corner of the check) is "Aaron Tonken, c/o Jennings, Levy, Steine & Co." Attachment 1 at 14. Mr. Tonken was described in the complaint as having assisted in producing the August 12 event. Jennings, Levy, Steine & Co. appears to be an accounting firm based in Los Angeles and currently operating under the name "Jennings, Steine & Co., Certified Public Accountants." See <<http://kepler.ss.ca.gov/corpdata/ShowList>> (California Secretary of State "Business Portal" – accessed on Nov. 24, 2003). The other corporations in the above table are listed as they are identified on checks submitted by Complainant, Dun & Bradstreet searches and other business and news searches have revealed little about them, but there appear to be links between many of these corporations.

Complainant's civil complaint alluded to other possible event expenses and payment arrangements not specified in his FEC complaint. The investigation will clarify whether these items and transactions were accounted (Footnote continues on following page)

1 Although the relationship between Complainant and these corporations has not been fully
2 established, the available information suggests that he may be connected to most of them. For
3 example, news reports have indicated that Complainant "controls" Paraversal Inc., *see*
4 <www.benberkowitz.com/article39.html> (accessed Nov. 25, 2003), and he appears to have
5 signed all of the checks from Paraversal Inc., as well as the checks from Hollywood Holdings
6 Corp. and Celebrity Enterprises Inc. In addition, Complainant appears to have used Excelsior
7 Productions Inc., to make a \$30,000 contribution to a non-federal account of the DNC. *See*
8 footnote 6. In addition, Paraversal Inc., Excelsior Productions Inc., Celebrity Enterprises Inc.,
9 Hollywood Holdings Corp., Cyberia Inc. and Continental Entities Inc. were described in
10 Complainant's criminal indictment in the Eastern District of New York as having owned stock in
11 Stan Lee Media, Inc.¹⁷

12 Finally, much of the payment documentation provided by Complainant appears, on its
13 face, to relate to the types of expenses – music, food, security, portable toilets, seating, legal,
14 transportation, lighting, etc. – that would be expected for a large fundraiser, and the checks,

for in his document submissions. For example, the civil complaint references a \$50,000 payment to a former "Clinton White House staffer" to assist with organizing the event, and payments of \$12,500 and \$5,000 for videotapes of the event. The civil complaint also states that Complainant "had arranged for [Aaron] Tonken to borrow approximately \$600,000 from a margin account at Merrill Lynch to underwrite expenses associated with" the event "and other DNC fundraising activities in which Tonken was engaged."

¹⁷ It is possible that these so-called corporations may be, in reality, alter-egos of Mr. Paul, rather than separate entities with any separate existence. According to the criminal complaint filed by the United States Attorney for the Eastern District of New York in June 2001, Complainant and two co-defendants used "nominee" accounts held in the names of these and several other entities "in order to hide their control and ownership of Stan Lee Media stock and to manipulate and to disguise their manipulation of the price of the stock." The criminal complaint suggests that many of the same entities that allegedly paid for the August 12 fundraiser were also involved in alleged fraud schemes. Among other things, it is possible that these companies may have acted primarily as depositories for Complainant's (and possibly others') holdings of Stan Lee Media, Inc. stock and as vehicles by which to buy and sell stock. If true, this may explain why Complainant considered the assets of these corporations his "personal funds." As indicated *supra* at footnote 16, our research has revealed very little about these entities; however, the mere fact that their names include the designations "Inc." or "Corp." is probably sufficient to refer to them as incorporated entities at this time. During the investigation, we will attempt to resolve the discrepancies between Complainant's assertions that he paid for the event with personal funds and the numerous financial documents attached to the complaint that indicate the funds actually came from these entities.

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1 invoices and bank statements are dated within a reasonable time period before and after the
2 event. Accordingly, Complainant's financial documentation indicates that disbursements
3 totaling \$1,094,788.59 may have been made in connection with the August 12, 2000 fundraiser.

4 The response of New York Senate 2000 contended that Complainant "presents no
5 credible reason to doubt" its reported amounts, but did not deny that the corporations involved
6 paid the amounts listed above in connection with the August 12 event. For example, the
7 response did not specifically deny the validity of signed checks totaling \$612,544.95, all listing
8 the payor as "BLACK INK PRODUCTIONS, INC. HOLLYWOOD TRIBUTE TO PRES.
9 CLINTON."

10 Based on this Office's review of New York Senate 2000's itemized disbursements for the
11 event, it appears that as much as \$466,564.69 of total reported expenses of \$523,794.43 may be
12 included in the \$1,094,788.59 amount supported by Complainant's financial documentation.
13 First, New York Senate 2000 reported receiving an in-kind contribution of \$366,564.69 from
14 Stan Lee Media, Inc., which, according to Complainant, actually came from him. Second, New
15 York Senate 2000 reported a \$100,000 disbursement of federal funds to "Black Ink Productions"
16 on July 28, 2000, which is the same amount reported as a deposit by Black Ink Productions, Inc.
17 on August 1, 2000. Attachment 1 at 11. New York Senate 2000's remaining itemized
18 disbursements, totaling \$57,229.74, appear to be separate from any of the amounts indicated by
19 Complainant's documents.

20 Accordingly, it appears that the August 12, 2000 fundraising event may have cost
21 approximately \$1,152,018.33 (\$1,094,788.59 based on Complainant's documents plus
22 \$57,229.74 in separate reported expenses) and that, if that cost is accurate, New York Senate
23 2000 failed to report at least \$628,223.90 (\$1,152,018.33 in total costs minus \$523,794.43 in

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1 reported costs) of these expenses, in violation of 2 U.S.C. § 434(b). New York Senate 2000
2 would have been required to report any such expenses both as contributions received and as
3 expenditures made, *see* 11 C.F.R. § 104.13(a),¹⁸ and to report the contributions as memo entries
4 in its disclosure reports. *See* 11 C.F.R. § 102.17(c)(8)(i)(A).¹⁹ If the alleged unreported in-kind
5 contributions are added, the allocation ratio used by New York Senate 2000 (35% federal and
6 65% non-federal) would necessarily change, and New York Senate 2000 would have violated the
7 Commission's allocation regulations by failing to timely and accurately revise its allocation
8 ratio. *See* 11 C.F.R. § 106.6(d).²⁰

9 The complaint includes unrefuted allegations that the failure to disclose the true costs of
10 the event involved knowing and willful activity; specifically, that Clinton for Senate's finance
11 director, David Rosen, was aware of these costs and told Complainant not to discuss them
12 because, "for public relations purposes, Mrs. Clinton's U.S. Senate campaign did not want the
13 true cost of the fundraiser to become known."²¹ As indicated in New York Senate's 2000's

¹⁸ "Each in-kind contribution shall be reported as a contribution in accordance with 11 C.F.R. § 104.3(a)
[E]ach in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported
on the appropriate expenditure schedule, in accordance with 11 C.F.R. § 104.3(b)." 11 C.F.R. § 104.13(a)(1)-(2).

¹⁹ "The fundraising representative shall report the total amount of contributions received from prohibited
sources during the reporting period, if any, as a memo entry." 11 C.F.R. § 102.17(c)(8)(i)(A)

²⁰ A committee collecting federal and non-federal funds during a joint fundraising event "shall allocate its
direct costs of fundraising . . . according to the funds received method " 11 C.F.R. § 106.6(d)(1). No later than 60
days after a fundraising event, the committee "shall adjust the allocation ratio . . . to reflect the actual ratio of funds
received " 11 C.F.R. § 106.6(d)(2). New York Senate 2000 reported its revised 65%/35% allocation ratio in its
Amended 2000 October Quarterly Report filed on July 30, 2001, almost one year after the event.

²¹ The Act provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g.
The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v.
John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N.J. 1986). A knowing and willful violation may
be established by "proof that the defendant acted deliberately and with knowledge that the representation was false."
United States v. Hopkins, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful violation may
be drawn "from the defendant's elaborate scheme for disguising" his actions and that they "deliberately conveyed
information they knew to be false to the Federal Election Commission." *Id.* at 214-215 "It has long been
recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade lawful
obligations.'" *Id.* at 214, *citing Ingram v. United States*, 360 U.S. 672, 679 (1959).

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1 disclosure reports, Mr. Rosen appears to have worked directly for the joint fundraising
2 committee around the time of the fundraising event.²² As an agent of New York Senate 2000,
3 his knowledge of the unreported expenses can be charged to that committee.²³

4 Accordingly, this Office recommends that the Commission find reason to believe that
5 New York Senate 2000 and Andrew Grossman, as treasurer, knowingly and willfully violated
6 2 U.S.C. § 434(b), 11 C.F.R. §§ 104.13(a), 102.17(c)(8)(i)(A) and 106.6(d).²⁴

²² On its October 2000 Quarterly Report, New York Senate 2000 disclosed "salary" payments to Mr. Rosen totaling \$12,611.28 (six payments of \$2,101.88).

²³ Although the Act does not generally define an "agent," Commission regulations define "agent" for the purpose of determining whether an expenditure is attributable to a candidate's campaign or is an independent expenditure. See 11 C.F.R. § 109.1(b)(5) (defining agent as one who exercises "actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate" or who occupies a position that third parties would reasonably believe to confer such authority). As such, committee staff who are authorized to make expenditures and/or to conduct business for the committee are considered agents of the committee for purposes of the Act. Even if Mr. Rosen had not worked directly for New York Senate 2000, his role as an agent of Clinton for Senate is sufficient to attribute his knowledge of the event costs to New York Senate 2000 (Mr. Rosen's response did not list his title, but the complaint described his position as Clinton for Senate's "Director of Finance", Clinton for Senate's FEC reports do not list his title but disclose "wages" paid to him in 2000), since New York Senate 2000 was established by Clinton for Senate and the DSCC to serve as their fundraising representative. See 11 C.F.R. § 102.17(b)(2); see also amended Statement of Organization filed by New York Senate 2000, dated Sept. 28, 2003 (listing Clinton for Senate as an affiliated committee).

²⁴ Based on New York Senate 2000's disclosure reports, it appears that it sponsored approximately 60 fundraising events between October 1999 and December 2000, and distributed fundraising proceeds totaling \$4,675,000 to Clinton for Senate, \$4,600,000 to the DSCC's federal account, \$6,879,461 to several DSCC non-federal accounts and \$15,000 to the New York State Democratic Committee's non-federal account. Given the frequency of these events during 2000, it is not possible at this time to determine which contributions itemized in New York Senate 2000's reports were received in connection with the August 12, 2000 event; nor is it possible to determine how the proceeds were allocated among the participating committees (the Commission's regulations require a "unique identifying title or code" to be assigned to fundraising expenses in a committee's reports, see 11 C.F.R. § 104.10(a)(1), but this rule does not extend to the distribution of fundraising proceeds). Based on Internet news accounts and documents attached to the complaint, it appears that perhaps 800 or more persons attended the concert portion of the event at \$1,000 per person, and that over 100 persons attended a \$25,000 per couple dinner portion of the event. See, e.g., <www.wswn.org/articles/2000/aug2000/dnc-a17.shtml>; <www.jewishworldreview.com/cols/simon081800.asp>; <http://www.senac.com/nb/2182/bin/16.html> (all of these web pages were accessed on Nov. 24, 2003). The amounts referenced in these news accounts suggest that the event raised more funds from individuals than New York Senate 2000 has claimed, but as of yet this Office's examination of FEC disclosure reports and databases has not supported these news accounts. For example, one Internet article suggested that "Hillary's Senate campaign" received \$800,000 from the event and identified 23 attendees at the dinner portion of the event, but a search of the FEC contributor database shows that only two of these attendees contributed to Clinton for Senate in 2000. We anticipate further investigation will shed more light on these discrepancies.

2. Clinton for Senate

As stated, Clinton for Senate participated with the DSCC in the August 12, 2000 fundraiser sponsored by New York Senate 2000. Pursuant to 11 C.F.R. § 102.17(c)(7)(i)(A), New York Senate 2000 was required to calculate the share of each participating committee's expenses for the cost of a fundraising event based on the percentage of the total receipts each participant had been allocated. Expenses for the event in question were allocated to the federal participants – Clinton for Senate and the DSCC's federal account – and the non-federal participant – the DSCC's non-federal account – based on a ratio of 35% to 65%, respectively.

Any potential liability of Clinton for Senate under the Act would appear to be based on the possible "advancement" of impermissible funds from the DSCC's non-federal account to the federal participants to pay for the event. *See* 2 U.S.C. §§ 441a(f) and 441b(a); 11 C.F.R. § 102.17(b)(3)(ii) ("the amount advanced which is in excess of the participant's proportionate share [of fundraising costs] shall not exceed the amount that participant could legally contribute to the remaining participants"). At this juncture, it is unclear how the alleged unreported contributions might impact the allocation ratio for the August 12, 2000 event. If more federal money than required was used to pay for the event costs, there would be no violation of the Act by Clinton for Senate, because the regulations expressly permit committees (such as New York Senate 2000) to pay for both federal and non-federal expenses "entirely from funds subject to the prohibitions and limitations of the Act" *See* 11 C.F.R. § 106.6(a); *see also* AO 1993-3 ("The allocation regulations have always allowed federal accounts to pay all committee expenses, if desired").

During this Office's investigation of New York Senate 2000, we will attempt to determine whether Clinton for Senate incurred any liability in connection with the event.

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1 Accordingly, this Office recommends that the Commission take no action at this time with
2 regard to Hillary Rodham Clinton for U.S. Senate Committee, Inc. and Harold Ickes, as
3 treasurer.

4 **3. Senator Hillary Rodham Clinton and former President**
5 **William Jefferson Clinton**
6

7 Complainant alleged that he intended that his funds for the August 12, 2000 event be
8 used to support only the election campaign of Senator Clinton. She is described in the complaint
9 as having personal knowledge of Complainant's role in funding the event, going so far as to
10 "personal[ly] intervern[e]" on behalf of Complainant to reduce "by \$50,000" an \$850,000
11 production fee charged by Black Ink Productions, Inc. If true, then it would appear that Senator
12 Clinton knew that the event cost, at a minimum, \$800,000, which alone exceeded by
13 \$276,205.57 New York Senate 2000's reported event expenses of \$523,794.43.

14 Attached to the complaint was a letter allegedly sent to Senator Clinton in July 2001, in
15 which Complainant "serve[d] . . . notice" to Senator Clinton of the amount of his in-kind
16 contributions, and which appears to have included financial documentation of his asserted
17 funding of the event. Clinton for Senate and New York Senate 2000 do not appear to have filed
18 any amended disclosure reports reflecting this information.

19 Senator Clinton's response did not specifically deny Complainant's allegations, stating
20 simply that Complainant "failed to provide any evidence upon which one could reasonably
21 conclude that [Senator Clinton] violated any provision of the Act." During this Office's
22 investigation of New York Senate 2000, we will attempt to determine whether Senator Clinton

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1 incurred any liability in connection with the event. Accordingly, this Office recommends that
2 the Commission take no action at this time with regard to Hillary Rodham Clinton.²⁵

3 Although former President Clinton appears to have attended the August 12, 2000 event
4 and sent a "thank you" letter to Complainant expressing his appreciation for the "boost" the
5 event provided to Senator Clinton's campaign, the available information does not indicate that he
6 had any personal role or specific knowledge concerning the funding of the event. Further, he
7 was not a candidate for any federal office at the time, and he does not appear to have held any
8 position with any of the respondent committees or corporations. The complaint and other
9 available information do not provide any possible basis of liability for President Clinton under
0 the Act. Accordingly, this Office recommends that the Commission find no reason to believe
1 that William Jefferson Clinton violated any provision of the Act or regulations in connection
2 with this matter, and close the file as to him.

3 **4. Complainant Peter F. Paul**

4 Although Complainant Peter F. Paul alleged that he spent \$1.9 million of his personal
5 funds on the August 12, 2000 event, as previously discussed, the documents attached to the
6 complaint are inconsistent with his claims, as they appear to show that the funds came from
7 accounts with corporate names and total just over \$1 million. It is not clear at this time whether
8 Mr. Paul ever served as an officer or director of any of these entities; however, as discussed
9 *supra*, the available information indicates that he controlled at least one of them, Paraversal Inc.,
0 and also signed all of its checks, which appear to represent corporate contributions made in

²⁵ Any potential liability of Senator Clinton would be based on whether she knowingly accepted in-kind corporate contributions. See 2 U.S.C. § 441b(a); MUR 4064 (Morgan) (Commission found reason to believe that candidate accepted in-kind corporate contribution by using motor home for campaign purposes; his campaign committee did not pay any rental fees to the corporate owner). See analysis of Clinton for Senate, *supra*. If the investigation reveals that the in-kind contributions were excessive rather than corporate in nature, then any potential liability would result in Senator Clinton's knowing acceptance of excessive contributions from Peter F. Paul. See 2 U.S.C. § 441a(f) and footnote 17, *supra*.

1 connection with the August 12 event. During this Office's investigation of New York Senate
2 2000, we will attempt to determine whether Complainant incurred any liability in connection
3 with the event.²⁶ Accordingly, this Office recommends that the Commission take no action at
4 this time with regard to Peter F. Paul.

5 **5. Stan Lee Media, Inc. and Stan Lee**

6 Although New York Senate 2000 disclosed a \$366,564.69 non-federal in-kind
7 contribution from Stan Lee Media, Inc., the complaint asserted that Stan Lee Media, Inc. made
8 no such contribution and that all costs of the event were borne by Complainant. Complainant's
9 assertion that he and Stan Lee co-founded Stan Lee Media, Inc. is supported by various news
10 reports. *See, e.g., New York Post*, April 28, 2002 Stan Lee Media, Inc. did not respond to the
11 complaint and Stan Lee, as noted earlier, claimed that the complaint did not set forth any facts
12 that would constitute a violation by him. During this Office's investigation of New York Senate
13 2000, we will attempt to determine whether Stan Lee Media, Inc. or Stan Lee incurred any
14 liability in connection with the event.²⁷ Accordingly, this Office recommends that the
15 Commission take no action at this time with regard to Stan Lee or Stan Lee Media, Inc.

16 **6. Other Individual Respondents**

17 The complaint alleged that Clinton for Senate finance director David Rosen had intimate
18 knowledge of Complainant's asserted funding of the August 12, 2000 event, warning

²⁶ If the entities are in fact corporations, Mr. Paul's possible liability would stem from his position as an officer or director of those that appear to have funded the event, *see* 2 U.S.C. § 441b(a), depending on whether the investigation shows that any of these corporate contributions were received by the New York Senate 2000's federal account. *See* analysis of Clinton for Senate, *supra*.

²⁷ Stan Lee Media, Inc.'s potential liability would be based on the possible making of prohibited contributions to New York Senate 2000's federal account *See* analysis of Clinton for Senate, *supra*. Stan Lee may incur liability if he consented to the making of such contributions as an officer or director of Stan Lee Media, Inc. *See* 2 U.S.C. § 441b(a)

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1 Complainant "not to discuss the mounting costs of the fundraiser because, for public relations
2 purposes, Mrs. Clinton's U.S. Senate campaign did not want the true cost of the fundraiser to
3 become known." The complaint also alleged that Mr. Rosen was familiar with "federal
4 campaign finance laws" and warned Complainant that required "fundraising ratios . . . would be
5 skewed if the true cost of the fundraiser became known." Mr. Rosen's response did not
6 acknowledge that he played any role in the August 12 event or even whether he ever worked for
7 Clinton for Senate; instead, the response stated only that Complainant's allegations are "patently
8 false." During this Office's investigation of New York Senate 2000, we will attempt to
9 determine whether Mr. Rosen incurred any liability in connection with the event.²⁸ Accordingly,
10 this Office recommends that the Commission take no action at this time with regard to David
11 Rosen.

12 The remaining individual respondents – Edward G. Rendell, Stephanie L. Berger, and
13 James H. Levin – do not appear to have served in any official capacity with any of the joint
14 fundraiser participants. While they appear to have had some knowledge of Complainant's role in
15 funding the August 12, 2000 event, their personal involvement appears to have been limited and
16 there is no indication that any of these individuals accepted any corporate contributions in this
17 matter. Accordingly, this Office recommends that the Commission find no reason to believe that
18 Edward G. Rendell, Stephanie L. Berger, or James H. Levin violated any provision of the Act or
19 regulations in this matter, and close the file as to them.

20 **III. PROPOSED DISCOVERY**

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²⁸ David Rosen's potential liability would be based on the possible knowing acceptance of in-kind corporate contributions as an agent of Clinton for Senate and New York Senate 2000. See 2 U.S.C. § 441b(a).

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IV. **RECOMMENDATIONS**

1. Find reason to believe that New York Senate 2000 and Andrew Grossman, as treasurer, knowingly and willfully violated 2 U.S.C. §§ 434(b), and 11 C.F.R. §§ 102.17(c)(8)(i)(A), 104.13(a) and 106.6(d).
2. Take no action at this time with regard to Hillary Rodham Clinton for U.S. Senate Committee, Inc. and Harold Ickes, as treasurer.
3. Take no action at this time with regard to Peter F. Paul.
4. Take no action at this time with regard to Hillary Rodham Clinton.
5. Take no action at this time with regard to David Rosen.
6. Take no action at this time with regard to Stan Lee.
7. Take no action at this time with regard to Stan Lee Media, Inc.
8. Find no reason to believe that William Jefferson Clinton violated any provision of the Act or regulations in connection with this matter and close the file as to him.
9. Find no reason to believe that Edward G. Rendell violated any provision of the Act or regulations in connection with this matter and close the file as to him.
10. Find no reason to believe that Stephanie L. Berger violated any provision of the Act or regulations in connection with this matter and close the file as to her.
11. Find no reason to believe that James H. Levin violated any provision of the Act or regulations in connection with this matter and close the file as to him.
- 12.

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- 13. Approve the appropriate factual and legal analysis.
- 14.

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15. Approve the appropriate letters.

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6 1/23/04
7 Date

Lawrence H. Norton
Lawrence H. Norton
General Counsel

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12 Rhonda J. Voedingh
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14 Associate General Counsel
15 for Enforcement
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18 Sidney Rocke
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