



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 4756

DATE FILMED 7/19/98 CAMERA NO. 4

CAMERAMAN EES

98043893597



DEFENSE CONTRACT AUDIT AGENCY

8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

OAL 730.4.2.4

7 AUG 1997

Ms. Louise Lerner
Associate General Counsel for Enforcement
Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

Pre-MUR 351

AUG 12 5 07 PM '97

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SUBJECT: Suspected Irregularity, Illegal Political Contributions
O'Brien-Kreitzberg, Inc.
San Francisco, CA (DCAA Case No. 97-027)

Dear Ms. Lerner:

This office has been designated as the Agency fraud monitor under DoD Joint Policy Memorandum Number 2 (Coordination by Audit and Investigative Organizations involving Allegations of Fraud). Please provide us with your case control number, the investigating agent's name, telephone number and address, and any information regarding significant events in the investigation. In any event, we would appreciate being informed of the disposition of this case.

The DCAA point of contact for clarification of matters in this referral is Ms. Joan M. Beck, Branch Manager, whose phone number is (510) 713-0586. Should audit assistance be required in a follow-up investigation, the point of contact is Ms. Patricia Tranberg, Regional Investigative Support Division Chief, whose phone number is (714) 228-7030. The DCAA Headquarters point of contact for fraud matters is Mr. Clyde Wray, Justice Liaison Auditor (acting), who can be reached at (703) 767-2278.

Sincerely,

Russell J. Richards
Assistant Director
Operations

Enclosure

DCAA Case No. 97-027

Copy furnished:

RD, Western Region (w/o encl)

BM, East Bay Branch Office (w/o encl)

FOR OFFICIAL USE ONLY

980433598

SUSPECTED IRREGULAR REFERRAL FORM

FOR HEADQUARTERS USE ONLY

DCAA CASE NO:

77-027

Name of DCAA Employee Submitting Referral (Print)	FAO Manager's Approval
Faye Mendelsohn	Name (Print) Joan M. Beck
Employee Location	Signature <i>Joan M. Beck</i>
East Bay Branch Office	Date 6/30/97
39510 Paseo Padre Parkway, Suite 210	FAO's Name East Bay Branch Office
Fremont, California 94538-2300	RORG Code 4141
Phone No. (510) 713-0586	Phone No. (510) 713-0586

Instructions

Auditor - Information which suggests a reasonable basis for suspicion of fraud, corruption, or unlawful activity affecting Government contracts must be reported promptly. DCAA employees are encouraged to use this form.

This form is designed to identify the type of information typically needed by an investigator. Although you may not be able to supply all the information, be as thorough as possible in order to assist the investigator in understanding the possible irregularity.

You are required to discuss your suspicions and your written submission with your supervisor to ensure that adequate information has been developed.

Supervisor/FAO Manager - Process the form in accordance with DCAA Instruction 7460.16. If there is any question as to whether or not this referral should be made, discuss it with the investigative office or your regional audit manager. The FAO manager should sign and date the form before forwarding it to Headquarters, DCAA (DAL), or making other required distributions. The FAO manager's signature indicates that the information contained in the Form 2000-0 is complete and accurate and that (s)he believes the facts presented raise a reasonable suspicion of fraud, corruption, or other unlawful activity affecting Government contracts.

Classification of Irregularity

To assist in the evaluation of the material presented, please check each type of irregularity you have reason to believe may have occurred. Check all that apply. Check the primary irregularity. For example, mischarging allowable advertising costs into a supplies account in a certified overhead proposal would be described by checking 5c, identifying it as a false incurred cost certification, and checking 4a (FAR unallowables).

<p>1. Defective Pricing</p> <p><input type="checkbox"/> a. Pattern of Activity</p> <p><input type="checkbox"/> b. Other: _____</p> <p>2. Billing Irregularities</p> <p><input type="checkbox"/> a. Progress Payments</p> <p><input type="checkbox"/> b. Public Vouchers</p> <p><input type="checkbox"/> c. Other: _____</p> <p>3. Labor Irregularities</p> <p><input type="checkbox"/> a. Timekeeping Irregularities</p> <p><input type="checkbox"/> b. IR&D/BS/P Mischarging</p> <p><input type="checkbox"/> c. Other Mischarging: _____</p> <p>4. Accounting Mischarging</p> <p><input type="checkbox"/> a. FAR 31/CAS 405 Violations</p> <p><input type="checkbox"/> b. Improper Transfer</p> <p><input type="checkbox"/> c. Unallowable Costs</p> <p><input type="checkbox"/> d. Other: _____</p> <p>5. False Claims and Certifications</p> <p><input type="checkbox"/> a. Equitable Adjustment Claims</p> <p><input type="checkbox"/> b. Termination Settlements</p> <p><input type="checkbox"/> c. Indirect Cost Certification</p> <p><input type="checkbox"/> d. Other: _____</p>	<p>6. Consultants & Subcontractors</p> <p><input type="checkbox"/> a. Consultant Irregularities</p> <p><input type="checkbox"/> b. Subcontracting Irregularities</p> <p>7. Materials</p> <p><input type="checkbox"/> a. Product Substitution</p> <p><input type="checkbox"/> b. MMAS</p> <p><input type="checkbox"/> c. Other: _____</p> <p>8. Ethical Violations</p> <p><input type="checkbox"/> a. Kickbacks</p> <p><input type="checkbox"/> b. Gratuities</p> <p><input checked="" type="checkbox"/> c. Political Contributions</p> <p><input type="checkbox"/> d. Foreign Corrupt Practices Act</p> <p><input type="checkbox"/> e. Bribery</p> <p><input type="checkbox"/> f. Restraints of Trade</p> <p><input type="checkbox"/> g. Other: _____</p> <p>9. Other Irregular Activity</p> <p><input type="checkbox"/> a. Conspiracy</p> <p><input type="checkbox"/> b. Obstruction of an Audit (but see CAM 4-708)</p> <p><input type="checkbox"/> c. Other: _____</p>
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NOTE: Certain types of irregularity should not be reported on the Form 2000-0. These include: matters already known to the Government such as suspected irregularities referred to DCAA for audit evaluation by another Government agency (e.g. Hotline referrals); contractor voluntary disclosures (CAM 4-707); qui tam complaints (CAM 4-708); unsatisfactory conditions (CAM 4-800), especially 4-803, "Serious Weaknesses on the Part of Contractor or Government Personnel;" and violations of DoD Standards of Conduct by DCAA employees (DCAAR 5500.2). Additionally, nothing contained on this form should be interpreted as requiring the referral of routine audit findings or disagreements with contractors or contracting officers for investigation.

98043893599

PART I - Contractor, Contracts, and Program Involved

a. Name of Contractor

O'Brien Kreitzberg, Inc.

Division

City, State, Zip

San Francisco, California

Location of Incident

b. Contracts Affected. Is contractor 8(a) business? Y ☐ N ☐ If spec contract is identified, please provide the information below on the largest of these:

Contract Number

Contract Type

Amount

If only general categories of contracts can be identified, provide whatever information is available on their type and value below:

All contracts with the federal government. Approximately \$4 million per year. During fiscal year 1996, O'Brien Kreitzberg was performing on federal contracts with the U.S. Postal Service, GSA, Army Corps of Engineers, etc. Approximately 50 percent of the contracts are flexibly priced and 50 percent fixed price.

c. Is there a pending contract modification, adjustment, claim resolution or agreement that relates in any way to the suspected irregularity?

Explain:

O'Brien Kreitzberg, Inc. is in the process of negotiating a not to exceed \$10 million indefinite quantity firm fixed price contract with Naval Engineering Field Activity Mediterranean. The overhead rates, based on fiscal year 1996 indirect costs, include the illegal political contributions.

d. Name of affected major acquisition program, if any.

None

e. Organization and location which administers the (sub)contract(s).

Unknown

f. Organization and location which awarded the (sub)contract(s).

Unknown but see I.b. above

PART II - Suspected Irregularity

Answer the following questions as fully as possible. Additional sheets of paper may be used to answer any of the questions if necessary.

a. Description of irregularity-Provide a thorough description of the suspected irregularity or irregularities identified in the checklist on page 2, including reference, when known, to any regulatory provision(s) you believe may have been violated. Attach copies of any documents you believe are necessary to assist in understanding the irregular activity and why it is suspected. If documents are attached, be sure that they are referenced in your description.

O'Brien Kreitzberg, Inc. paid an invoice to Burton L. Bruggeman, Attorney at Law, which included charges for a \$1,000 campaign contribution to the Clinton Gore, #5070, campaign and a \$500 campaign contribution to the Mary Johnson, # 5163, campaign. This appears to violate Title 2 U.S.C. 441c, Disclosure of Federal Campaign Funds. In addition, it appears to violate subchapter 441f. The applicable portion of the invoice, a copy of the check, and a copy of the law are attached.

5. What information suggests that the suspected irregularity was not accidental or inadvertent?

The nature of the irregularity

c. Identify the means by which the irregularity was accomplished (e.g., altered or falsified time cards, bogus invoices, deceit by suppression of the truth, theft).

Campaign contribution funnelled through contractor's attorney

d. How was the irregularity identified (tip; overheard conversation, inference from audit evidence (describe), etc.)

The irregularity was discovered during transaction testing of professional services expenses included in the overhead pools.

e. Provide a full description of the books and records which are pertinent to the irregularity along with the contractor's nomenclature for these books and records.

The attached invoice was provided to support entries into the contractors general ledger.

f. Name, position, and location (of individuals) who provided information or who may have relevant information.

Pat Courtney, Controller, San Francisco, California (point of contact during audit)

g. Estimate the loss or impact to known Government contracts with this contractor. If loss or impact can only be measured on one contract, then estimate that amount. Also estimate that amount.

Unknown

h. Describe the extent of the questionable practices, including the time span involved and whether it is an isolated incident or a pattern.

Unknown

i. Position and name of person(s) involved.

Pat Courtney, Controller (signed check paid to law firm who in turn made political contributions)

j. Indicators of involvement of upper management.

None

k. If irregularity Category 9b (Obstruction of an Audit) was checked, briefly describe the difficulties experienced.

Not applicable

PART III- Related Audit Activity

a. Type of audit being performed when suspected irregularity was detected. (Also provide the audit assignment number.)

Burdened rate proposal assignment number 97S23000004.

b. Is continued audit effort planned for this audit assignment and/or does the FAO plan to extend, expand, or redirect audit effort in

No

List the audit assignment number(s) for new audit efforts.

Not applicable

c. Are there any other in-process audits or completed audits related in any way to the suspected irregularity? List the audit assignment number(s)

No

PART IV - Distribution of Form 2000-0

Please check all organizations to which distribution of this referral is being made.

- ☒ DCAA Headquarters (ATTN: OAL)
☐ Defense Criminal Investigation Service (DCIS)
☐ Army Criminal Investigative Command (CID)
☐ Naval Investigative Service (NIS)
☐ Air Force Office of Special Investigations (AFOSI)
☐ Administrative Contracting Officer (ACO) (unless advised to the contrary by the investigative organization)

Identify: _____

- ☐ Procurement Contracting Officer (PCO) (unless advised to the contrary by the investigative organization)

Identify: _____

- ☒ Other: Federal Election Commission (thru OAL - see CAM 4-706.4)

98043893602

98043893603

O'Brien-Kreitzberg Inc.
185 The Embarcadero
San Francisco, CA 94105

Sub 1 of 1
Check Date: 09/20/95
NO. 00298551

INVOICE NO.	DATE	DESCRIPTION	GROSS	DEDUCTIONS	AMOUNT PAID
14	03/28	Legal Fee, 03/95	1,510.96		1,510.96
15	04/24	Legal Fee, 04/95	1,633.71		1,633.71
16	07/24	Legal Fee, 07/95	6,753.10		6,753.10
			9,897.77		9,897.77

VENDOR
91133 Burton L. Bruggeman

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK CERTIFICATION SEAL ON THE BACK. HOLD AT ANGLE TO VIEW SEAL.

O'Brien-Kreitzberg Inc.
185 The Embarcadero
San Francisco, CA 94105

NO. 00298551

VENDOR 91133 DATE 09/20/95 AMOUNT \$9,897.77

PAY NINE THOUSAND EIGHT HUNDRED NINETY SEVEN AND 77/100

TO
THE
ORDER
OF
Burton L. Bruggeman
Attorney At Law
2121 Lakeside Drive
Orlando, FL 32803

B. L. Bruggeman

UNIVERSITY MICROFILMS
SERIALS ACQUISITION
300 N ZEEB RD
ANN ARBOR MI 48106

002

853857851

th
cl

July 24, 1995

			<u>Hours</u>	<u>Amount</u>
		Seminole Courthouse		
	BLB	Telephone conference with Pat Warren, County Commissioner Seminole Courthouse	0.20	35.00
	BLB	Telephone conference with Jack Gonzalez. Travel to Sanford and meet with Pat Warren. Seminole Courthouse	2.50	437.50
	BLB	Prepare memo regarding Pat Warren and Jane Hames Seminole Courthouse	0.25	43.75
5/12/95	BLB	Attend meeting with Randy Morris - fax memo to team Seminole Courthouse	1.50	262.50
5/17/95	BLB	Telephone conference with Mike Jones, attorney for Dick Van der Weide. Seminole Courthouse	0.20	35.00
5/18/95	BLB	Attend Pat Warren Breakfast Seminole Courthouse	1.50	262.50
5/26/95	BLB	Travel to and attend fund raiser for Darryl McClain. Prepare memo to Jim Devine. Seminole Courthouse	1.50	262.50
7/10/95	BLB	Telephone conference with Darryl McClain regarding Seminole project. Letter to Jim Devine Seminole Courthouse	0.20	35.00

For professional services rendered

May, June, July

78.87 \$13,801.66

~~\$150,500/mo~~ \$4,500.00

Additional charges

5/3/95	Parking at Airport	2.00
6/1/95	Long Distance charges from AT&T 5/7/95	✓ 24.51
6/3/95	Parking at OIA	2.00
7/6/95	Long Distance telephone calls from AT&T 6/7/95	✓ 18.14
7/8/95	Long distance charges from AT&T, Bellsouth Mobility, Southern Bell of July 8, 1995	✓ 61.12
7/11/95	Photocopies of Master Plan Briefing Slides, Minutes May 17 and June 21	✓ 7.74

Costs related to long distance charges, faxes and other delayed items will be billed when received.

90043893604

July 24, 1995

	<u>Amount</u>
7/12/95 Copies of Master Plan at Kinko's	✓ 379.06
5/3/95 Parking at Airport OIA Project	2.00
5/7/95 Parking at OIA OIA Project	2.00
5/22/95 Parking at airport for Pena Luncheon OIA Project	2.00
Campaign Contribution to Clinton / Gore #5070 OIA Project	✓ 1,000.00
6/16/95 Federal Express to Jim Devine 2181010204 OIA Project	23.00
Federal Express to George Vittas 2181010182 OIA Project	23.00
7/3/95 Parking at board meetings OIA Project	3.00
7/13/95 Campaign Contribution to Mary Johnson # 5163 OIA Project	✓ 500.00
7/14/95 Parking at presubmittal meeting OIA Project	8.00
7/17/95 Federal Express to Nat King 2464346264 - 19.75 Ernest J. Naples - 2464346275 - 19.75 Steve Burke - 2464346253 - 19.75 OIA Project	59.25
7/18/95 Copies of Presubmittal July 14, 1995 Conference at Kinko's OIA Project	✓ 46.53
Federal Express to Steve Burke with Presubmittal conference copy 2464346231 OIA Project	✓ 16.00
7/20/95 Federal Express to Nat King and Steve Burke through Kinko's OIA Project	20.00
5/18/95 Campaign contribution for Pat Warren Seminole Courthouse	✓ 100.00

Costs related to long distance charges, faxes and other delayed items will be billed when received.

98043893605

July 24, 1995

5/26/95 Campaign contribution for Darryl McLain
Seminole Courthouse

Amount
✓ 100.00

Total costs

Allowable ~~\$2,399.35~~
\$2,253.10

Total time and expense charges

~~\$16,201.02~~
\$6,753.10

Balance due

~~\$24,902.49~~

RECEIVED
SEP 12 1995
OKA SF-A/P

O'Brien-Kreitberg

RECEIVED BY Jms
CHK'D & APPROVED BY Jms
JOB # CHARGED P 50526
INVOICE PAID P. C. [Signature]

98043893606

riticular candidates. *U.S. v. Lewis Ford*, 1, C.A.Cal.1966, 366 F.2d 710.

• Most questions

Where basis of election controversy arises after the election and where the dispute likely to recur, the case will not be found not, even where prospective relief alone is sought. *Ash v. Cori*, C.A.Pa.1974, 496 F.2d 6, reversed on other grounds 95 S.Ct. 2080.

• Instructions

Jury should have been instructed in presence of union and its officers for conspiring violate former section 610 of Title 18 prohibiting union from making contribution expenditures in connection with federal election with respect to issue of voluntariness payments to fund, and giving instructions mixing jury to convict without finding 1 donations to fund had been actual or active dues or assessments was plain error. *Officers Local Union No. 362 v. U.S.*, Mo. 2, 92 S.Ct. 2247, 407 U.S. 383, 33 L.Ed.2d

Damages

There was no indication in legislative history of former section 610 of Title 18 which suggested a congressional intent to vest in private shareholders a federal right to damages for violation of said section. *Cori v. U.S.*, Pa.1975, 95 S.Ct. 3080, 422 U.S. 66, 45 L.Ed.2d 26.

Injunctions

Injunction in stockholder's suit, brought on behalf of himself and of corporation, that still would not be irreparably harmed by denial of his request for preliminary injunction to enjoin corporation from furnishing to the publication and dissemination of each made by the corporation's president not clearly erroneous despite contention such publication and dissemination violated former section 610 of Title 18. *Ash v. U.S.*, C.A.Pa.1973, 470 F.2d 811.

Action brought by the Federal Election Commission charging a corporation and its executive officer with violations of former section 610 of Title 18, plaintiff's demand injunctive relief was not subject to dismissal. *Federal Election Commission v. U.S.*, D.C.N.Y.1975, 462 F.Supp. 243. Here suit against corporation for direct action for violation of former section 610 of Title 18 was dismissed because no private of action existed for direct damages and as plaintiff stockholders failed to satisfy fictional amount requirement, additional for injunctive relief could not be maintained under the doctrine of pendent jurisdiction. *Miller v. American Tel. & Tel. Co.*,

Pa.1975, 294 F.Supp. 58, affirmed 530 F.2d 964.

45. Disbarment or suspension from practice Engaging in covert, doubtful activities on behalf of reelection of President of United States, designed to sow confusion among candidates of opposing party, and convictions of conspiracy and distributing political campaign material not containing name of distributing person or organization warrants suspension for two years, probation for three subsequent years and passing professional responsibility examination. *Segretti v. State Bar*, Cal. 1976, 544 P.2d 929, 126 Cal.Rptr. 793.

46. Scope of review

Evidence was required to be viewed in light most favorable to the government on appeal from conviction of labor union and officers for conspiring to violate former section 610 of Title 18 prohibiting labor organizations from making contributions and expenditures to candidates for federal office. *U.S. v. Pipefitters Local Union No. 362*, C.A.Mo.1970, 434 F.2d 1116, adhered to 434 F.2d 1127, reversed in part, vacated in part on other grounds 92 S.Ct. 2247, 407 U.S. 383, 33 L.Ed.2d 11.

47. Issues available

Appellant would be allowed to challenge constitutionality of provision of this section despite his failure to do so in district court proceedings for enforcement of Commission subpoena. *Federal Election Commission v. Lance*, C.A.Ga.1981, 635 F.2d 1132, appeal dismissed, certiorari denied 101 S.Ct. 3151, 453 U.S. 917, 69 L.Ed.2d 999.

On appeal from dismissal of stockholders' derivative action against corporation and certain of its directors for failure to collect debt owed corporation by national committee of political party for communication services furnished by the corporation, direct federal cause of action would not be implied in favor of stockholders against directors for alleged violation of prohibition of former section 610 of Title 18 against corporate campaign spending and section 202(a) of Title 47 where federal law claim was not included in complaint and there was no indication that question had ever been presented to district court. *Miller v. American Tel. & Tel. Co.*, C.A.Pa. 1974, 507 F.2d 759, on remand 394 F.Supp. 58.

§ 441c. Contributions by government contractors

(a) Prohibition

It shall be unlawful for any person—

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) Separate segregated funds

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organi-

zation, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 441b of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 441b of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) "Labor organization" defined

For purposes of this section, the term "labor organization" has the meaning given it by section 441b(b)(1) of this title.

(Pub.L. 92-225, Title III, § 317, formerly § 322, as added Pub.L. 94-283, Title I, § 112(2), May 11, 1976, 90 Stat. 492, renumbered Pub.L. 96-187, Title I, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

Historical Note

References in Text. Section 441b of this title, referred to in subsecs. (b) and (c), read in the original "section 321" meaning section 321 of Pub.L. 92-225 which is classified to section 441g of this title. In view of the renumbering of section 321 as section 316 by

section 105(5) of Pub.L. 96-187, the reference has been translated as reading "section 316" to reflect the probable intent of Congress.

Legislative History. For legislative history and purpose of Pub.L. 94-283, see 1976 U.S. Code Cong. and Adm. News, p. 929.

Cross References

Penalties for violation of this section, see section 437g of this title.

§ 441d. Publication and distribution of statements and solicitations; charge for newspaper or magazine space

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication--

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee, or

(2) if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee;

(3) if not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with such candidate's

in *lit.* *Worle v. Williams*, D.C.Pa.
2, 351 F.Supp. 628.

Defenses

Unsuccessful congressional candidate, who
charged with publishing or disseminating
anonymous written campaign materials, in-
cluding the printing and distribution of
oper stickers which did not contain attri-
bution clause prescribed by former section
of Title 18, was inadequately apprised by
visions of said section of the culpable na-
ture of his conduct at time the charged of-
fense occurred, where there was complete
ignorance in both said section and legislative
history concerning bumper stickers, where a
usual practice had prevailed among feder-
al candidates in not affixing attribution clause
on bumper stickers, and where, over many
years, no such prosecution had been brought.
v. Innes, C.A.Fla.1974, 496 F.2d 204.

Questions for jury

Under former section 612 of Title 18 which
prohibited distribution without an attribution
statement of any "writing or other statement"
related to a candidate for Congress,
her bumper sticker which bore only the
names of two candidates constituted a "state-
ment" was for the truth of facts. *U.S. v.*
W.D.C.Fla.1973, 365 F.Supp. 1308.

Contributions

Contributions directly or through any
other thing of value, or
make any such contribution, in
office or in connection with any
aid to select candidates for any
it, accept, or receive any such

"Sign national" means--

is defined by section 611(b) of
national" shall not include any
of the United States and who is
evidence, as defined by section

, as added Pub.L. 94-283, Title 1,
§ 112(2), May 11, 1976, 90 Stat. 494, renumbered Pub.L. 96-187, Title 1, § 105(5),
Jan. 8, 1980, 93 Stat. 1354.)

Code of Federal Regulations

Contributions and expenditures, limitations and prohibitions upon, see 11 CFR 110.1 et seq.

§ 441f. Contributions in name of another prohibited

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

(Pub.L. 92-225, Title III, § 320, formerly § 325, as added Pub.L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stat. 494, renumbered Pub.L. 96-187, Title 1, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

Historical Note

Legislative History. For legislative history
and purpose of Pub.L. 94-283, see 1976 U.S.
Code Cong. and Adm. News, p. 929.

§ 441g. Limitation on contribution of currency

No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed \$100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

(Pub.L. 92-225, Title III, § 321, formerly § 326, as added Pub.L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stat. 494, renumbered Pub.L. 96-187, Title 1, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)

Historical Note

Legislative History. For legislative history
and purpose of Pub.L. 94-283, see 1976 U.S.
Code Cong. and Adm. News, p. 929.

§ 441h. Fraudulent misrepresentation of campaign authority

No person who is a candidate for Federal office or an employee or agent of such a candidate shall--

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other 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; or

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

(Pub.L. 92-225, Title III, § 322, formerly § 327, as added Pub.L. 94-283, Title 1, § 112(2), May 11, 1976, 90 Stat. 494, renumbered Pub.L. 96-187, Title 1, § 105(5), Jan. 8, 1980, 93 Stat. 1354.)



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1997

Russell J. Richards
Assistant Director of Operations
Defense Contract Audit Agency
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

RE: Pre MUR 351

Dear Mr. Russell:

This is to acknowledge receipt of your letter dated August 7, 1997, advising us of the possibility of a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") by O'Brien-Kreitzberg, Inc. We will review the matter and advise you of the Commission's determination.

Pursuant to 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A), the Commission's review of this matter shall remain confidential until the file has been closed.

If you have any questions or additional information, please contact Jennifer Henry on our toll-free number, (800)-424-9530. Our local number is (202) 219-3690. Our file number for this matter is Pre-MUR 351.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "Lois G. Lerner", is written over the typed name of the Associate General Counsel.

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION

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

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COMMISSION
SECRETARY

JUN 3 11 25 AM '98

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

Pre-MUR # 351

Date Activated: May 20, 1998

Staff Member: Tony Buckley

SOURCE: INTERNALLY GENERATED

RESPONDENTS: O'Brien-Kreitzberg, Inc.
Burton L. Bruggeman
P. Clay Baldwin
Fred C. Kreitzberg
Pat Courtney

RELEVANT STATUTES: 2 U.S.C. § 431(11)
2 U.S.C. § 441b(a)
2 U.S.C. § 441c(a)(1)
2 U.S.C. § 441e
2 U.S.C. § 441f
11 C.F.R. § 110.4(a)(3)
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED: Dun & Bradstreet
Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On August 7, 1997, the Defense Contract Audit Agency ("DCAA") submitted a letter advising this Office of certain apparent violations of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), which had been committed by O'Brien-Kreitzberg, Inc. ("the Corporation"), a corporation performing on several contracts for the Federal government. These apparent violations had been discovered by the DCAA during a normal audit of the contractor. It appears that the Corporation made one contribution of \$1,000 to the Clinton/Gore '96 Primary

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Committee, Inc. ("the Clinton/Gore Committee"), and that the Corporation made this contribution in the name of its attorney, Burton L. Bruggeman.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any corporation to make a contribution in connection with any Federal election, or for any officer or director of any corporation to consent to any contribution by the corporation. Pursuant to 2 U.S.C. § 441c(a)(1), it is unlawful for any person who has entered into a contract with any department or agency of the United States to make any contribution of money to any political party, committee or candidate.¹ The term "person" includes corporations. See 2 U.S.C. § 431(11).

Pursuant to 2 U.S.C. § 441f, no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution. This section also prohibits any person from knowingly helping or assisting any person in making a contribution in the name of another. See 11 C.F.R. § 110.4(b)(1)(iii).

B. Background

DCAA has provided a copy of an invoice submitted by Burton L. Bruggeman, an attorney, to the Corporation for professional services rendered. The invoice is addressed to P. Clay Baldwin, the Corporation's Executive Vice President - Eastern Division. On page 10 of the invoice, in a list of items for which Mr. Bruggeman requires reimbursement, is the following notation: "5/22/95 Campaign Contribution to Clinton Gore #5070 \$1,000." The last page of the

¹ The statutory language suggests that this prohibition applies to contributions at not only the Federal level, but at the State and local level as well. The Commission's regulations, however, state that this prohibition does not apply to contributions at the State or local level. See 11 C.F.R. § 115.2(a).

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invoice bears the Corporation's stamp and certain initials in spaces marked "RECEIVED BY" and CHK'D & APPROVED BY." The signature of P. Clay Baldwin appears near this stamp.

A corporate check for \$9,897.77 is also attached. The check is signed by Fred C. Kreitzberg, the Corporation's Chief Executive Officer, and Pat Courtney, the Corporation's Controller. The amount of the check, as evidenced by the check stub and invoice portion accompanying it, appears to comprise reimbursement for legal fees and costs incurred in March through July of 1995. The amount of the check also appears to encompass the \$1,000 contribution to the Clinton/Gore Committee.² The Clinton/Gore Committee reported the receipt on May 25, 1995 of a \$1,000 contribution from Burton L. Bruggeman on its 1995 July Quarterly report.³

C. Analysis

O'Brien-Kreitzberg, Inc. reimbursed Burton L. Bruggeman for a \$1,000 contribution made to the Clinton/Gore '96 Primary Committee. Thus, the Corporation appears to have violated 2 U.S.C. § 441f by making a contribution in the name of Burton L. Bruggeman, and Burton L. Bruggeman appears to have allowed his name to be used by the Corporation to make a

² The check stub contains entries showing costs incurred of \$1,510.96 billed on March 28, 1995; costs incurred of \$1,633.71 billed on April 24, 1995; and costs incurred of \$6,753.10 billed on July 24, 1995. These three items add up to the check amount of \$9,897.77.

The \$6,753.10 is further explained on the portion of the invoice accompanying the referral. On page 9 of the invoice, a notation indicates that \$4,500 is owed for professional services rendered in the months of May through July, 1995. The remaining \$2,253.10 of the \$6,753.10 appears to be comprised of the "Additional charges" which have a check mark next to them on pages 9-11 of the invoice. The Clinton/Gore Committee contribution is one of these charges.

³ The invoice supplied by DCAA suggests that the Corporation also reimbursed Bruggeman for contributions to Mary Johnson, Pat Warren and Darryl McClain. However, none of these three persons appears to have been a candidate for Federal office; none appears in the Commission's database as a candidate registered with the Commission. Accordingly, no recommendations are made regarding this activity.

contribution, also in violation of 2 U.S.C. § 441f. Moreover, because the Corporation is a Federal contractor, it also appears to have violated 2 U.S.C. §§ 441b(a) and 441c(a)(1).

In addition, certain officers of the Corporation appear to have been involved in the transaction. P. Clay Baldwin, the Corporation's Executive Vice President - Eastern Division, apparently received and approved the request for reimbursement of the contribution. Fred C. Kreitzberg, the Corporation's Chief Executive Officer, signed the reimbursement check. Thus, both P. Clay Baldwin and Fred C. Kreitzberg appear to have violated 2 U.S.C. § 441b(a) by consenting to the Corporation's contribution, and also to have violated 2 U.S.C. § 441f by assisting the Corporation in making a contribution in the name of Burton L. Bruggeman.

Although it is unclear whether he is an "officer" for purposes of section 441b(a), Pat Courtney, the Corporation's Controller, also signed the reimbursement check. Thus, it appears that Pat Courtney violated 2 U.S.C. § 441f by assisting the Corporation in making a contribution in the name of Burton L. Bruggeman.

Accordingly, this Office recommends that the Commission find reason to believe that O'Brien-Kreitzberg, Inc. violated 2 U.S.C. §§ 441b(a), 441c(a)(1) and 441f; that Fred C. Kreitzberg and P. Clay Baldwin each violated 2 U.S.C. §§ 441b(a) and 441f; and that Pat Courtney and Burton L. Bruggeman each violated 2 U.S.C. § 441f.

III. DISPOSITION OF THE MATTER

Although this matter involves serious conduct warranting the reason to believe findings recommended by this Office, given the small sum of money involved this Office does not believe that the matter merits further use of Commission resources. Accordingly, this Office recommends that the Commission take no further action against the respondents and close the

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file. In notifying the respondents of the Commission's decisions, this Office will include admonishment language regarding the Act's requirements.

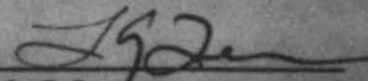
IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that O'Brien-Kreitzberg, Inc. violated 2 U.S.C. §§ 441b(a), 441c(a)(1) and 441f.
3. Find reason to believe that Fred C. Kreitzberg and P. Clay Baldwin each violated 2 U.S.C. §§ 441b(a) and 441f.
4. Find reason to believe that Pat Courtney and Burton L. Bruggeman each violated 2 U.S.C. § 441f.
5. Take no further action against O'Brien-Kreitzberg, Inc., Fred C. Kreitzberg, P. Clay Baldwin, Pat Courtney and Burton L. Bruggeman.
6. Approve the appropriate letters.
7. Close the file.

Lawrence M. Noble
General Counsel

98043893615
Date 6/2/98

BY:


Lois G. Lerner
Associate General Counsel

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) Pre-MUR 151
O'Brien-Kreitsberg, Inc.;)
Burton L. Bruggeman;)
P. Clay Baldwin;)
Fred C. Kreitsberg;)
and Pat Courtney.)

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 8, 1998, the Commission decided by a vote of 5-0 to take the following actions in Pre-MUR 351:

1. Open a MUR.
2. Find reason to believe that O'Brien-Kreitsberg, Inc. violated 2 U.S.C. §§441b(a), 441c(a)(1) and 441f.
3. Find reason to believe that Fred C. Kreitsberg and P. Clay Baldwin each violated 2 U.S.C. §§ 441b(a) and 441f.
4. Find reason to believe that Pat Courtney and Burton L. Bruggeman each violated 2 U.S.C. § 441f.
5. Take no further action against O'Brien-Kreitsberg, Inc., Fred C. Kreitsberg, P. Clay Baldwin, Pat Courtney and Burton L. Bruggeman.

(continued)

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6. Approve the appropriate letters, as recommended in the General Counsel's Report dated June 2, 1998.
7. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

6-10-98
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., June 03, 1998 11:25 a.m.
Circulated to the Commission: Wed., June 03, 1998 4:00 p.m.
Deadline for vote: Mon., June 08, 1998 4:00 p.m.

vfv

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUN 19 1998

Russell J. Richards, Assistant Director, Operations
Defense Contract Audit Agency
8725 John J. Klingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

RE: MUR 4756
DCAA Case No. 97-027

Dear Mr. Richards:

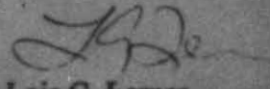
This is in reference to the matter involving O'Brien-Kreitzberg, Inc., which your office referred to the Federal Election Commission ("the Commission").

On June 8, 1998, the Commission found that there was reason to believe that O'Brien Kreitzberg, Inc. violated 2 U.S.C. §§ 441b(a), 441c(a)(1) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). In addition, the Commission also found reason to believe that Fred C. Kreitzberg and P. Clay Baldwin each violated 2 U.S.C. §§ 441b(a) and 441f; and that Pat Courtney and Burton L. Bruggeman each violated 2 U.S.C. § 441f. However, on that same date, after considering the circumstances of this matter, the Commission determined to take no further action against all respondents, and closed the file. At the same time, the Commission admonished all respondents regarding their specific violations.

We appreciate your cooperation in helping the Commission meet its enforcement responsibilities under the Act. If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosures
General Counsel's Report
Certification

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 19 1998

Richard Sklar, President-Chief
Operating Officer
O'Brien-Kreitzberg, Inc.
50 Fremont Street, 24th Floor
San Francisco, CA 94105

RE: MUR 4756
O'Brien-Kreitzberg, Inc.

Dear Mr. Sklar:

On June 8, 1998, the Federal Election Commission ("the Commission") found reason to believe that O'Brien-Kreitzberg, Inc. violated 2 U.S.C. §§ 441b(a), 441c(a)(1) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is unlawful for a Federal contractor to make a contribution to a candidate for Federal office. It is also unlawful for a corporation to make a contribution to a candidate for Federal office from corporate treasury funds, and for any person to reimburse another person for a contribution made to a Federal candidate. You should take steps to ensure that such activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you

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Richard Sklar, President-Chief
Operating Officer
MUR 4756
Page 2

wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUN 19 1998

P. Clay Baldwin, Executive Vice
President-Eastern Division
O'Brien-Kreitzberg, Inc.
50 Fremont Street, 24th Floor
San Francisco, CA 94105

RE: MUR 4756

Dear Mr. Baldwin:

On June 8, 1998, the Federal Election Commission ("the Commission") found reason to believe that you violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is unlawful for a corporate officer to consent to a contribution by that corporation to a candidate for Federal office. In addition, it is unlawful for any person to assist another person, including a corporation, in making a contribution in the name of another. You should take steps to ensure that such activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 19 1998

Fred C. Kreitzberg, Chief Executive Officer
O'Brien-Kreitzberg, Inc.
50 Fremont Street, 24th Floor
San Francisco, CA 94105

RE: MUR 4756

Dear Mr. Kreitzberg:

On June 8, 1998, the Federal Election Commission ("the Commission") found reason to believe that you violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is unlawful for a corporate officer to consent to a contribution by that corporation to a candidate for Federal office. In addition, it is unlawful for any person to assist another person, including a corporation, in making a contribution in the name of another. You should take steps to ensure that such activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
GC Report

98043893622



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

JUN 19 1998

Pat Courtney, Controller
O'Brien-Kreitzberg, Inc.
50 Fremont Street, 24th Floor
San Francisco, CA 94105

RE: MUR 4756

Dear Mr. Courtney:

On June 8, 1998, the Federal Election Commission ("the Commission") found reason to believe that you violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is unlawful for any person to assist another person, including a corporation, in making a contribution in the name of another. You should take steps to ensure that such activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
GC Report

98043893623



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 19 1998

Burton L. Bruggeman, Esq.
2121 Lakeside Drive
Orlando, FL 32803

RE: MUR 4756

Dear Mr. Bruggeman:

On June 8, 1998, the Federal Election Commission ("the Commission") found reason to believe that you violated 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that it is unlawful for any person to knowingly allow his name to be used by another person to make a contribution to a candidate for Federal office. You should take steps to ensure that such activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4756
DATE FILMED 7/9/98 CAMERA NO. 4
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