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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5366
DATE COMPLAINT FILED: May 30, 2003
DATE OF NOTIFICATION: June 6, 2003
DATE ACTIVATED: September 24, 2003

EXPIRATION OF STATUTE
OF LIMITATIONS: February 26, 2008

COMPLAINANT:

David A. Keene
American Conservative Union

RESPONDENTS:

The Honorable John Edwards
Edwards for President and Julius Chambers, as
treasurer

Howarth & Smith

Robinson, Calcagnie & Robinson
Shernoff, Bidart & Darras LLP
Turner & Associates
Wilkes & McHugh

Michelle Abu-Halimeh
Donna Hosea
Don Howarth
Robert Kern
Stacy Kern

Linda Moen
Elaine Reeves
Vikki Sanchez
Suzelle Smith
Tab Turner

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**RELEVANT STATUTES AND
REGULATIONS:**

2 U.S.C. § 441b
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED:

I. INTRODUCTION

The American Conservative Union submitted a complaint alleging that individuals were reimbursed for their contributions to John Edwards's presidential campaign. The allegations are based on media reports that identified six law firms located across the country whose employees reportedly made questionable contributions. *See* Complaint, Exs. A-F. Most specifically, the *Washington Post* reported that a paralegal in the Arkansas law firm of Turner & Associates received assurances from her boss that she would be reimbursed for her contribution to John Edwards's principal campaign committee, Edwards for President ("the Edwards Committee"). *See* Attachment 1; Complaint, Ex. A.¹ According to the *Post*, Tab Turner, the principal of the firm, responded, "[S]he is not going to be reimbursed. She apparently cannot be reimbursed under some rule relating to campaign finance." Attachment 1.

Following the *Post* article, *The Hill* reported on a supposed pattern of contributions to the Edwards Committee by low-level employees at law firms. *See* Complaint, Ex. D. *The Hill* identified a number of law firm employees who purportedly were of limited financial means, had no prior record of making political contributions, were in some instances registered Republicans, yet contributed \$2,000 to the Edwards Committee. *Id.* Nonetheless, *The Hill* noted that there is no direct evidence of illegal or improper activity by these individuals or their law firms.

¹ The first *Post* article to report on the contributions is attached to this Report; the *Post*'s follow-up story is attached to the complaint.

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Furthermore, neither *The Hill* nor any other media article attached to the complaint reported that the Edwards Committee knew of or participated in any conduit scheme.

II. FACTUAL AND LEGAL ANALYSIS

If law firms reimbursed their employees for contributions to the Edwards Committee, then the law firms, their employees, and the Edwards Committee all may have violated the Act. The Act prohibits any person from making or accepting a contribution in the name of another person. *See* 2 U.S.C. § 441f. Likewise, persons are prohibited from knowingly permitting their names to be used to effect contributions made in the name of another person and from knowingly assisting in making such contributions. *See id.*; 11 C.F.R. § 110.4(b)(1)(iii).

In addition to facing potential liability for making contributions in the name of another, the respondents may also be subject to the Act's prohibition on corporate political activity. Corporations are prohibited from making contributions or expenditures from their general treasury funds in connection with any election of any candidate for federal office, and candidates are similarly prohibited from knowingly accepting such contributions. *See* 2 U.S.C. § 441b(a). The Act also prohibits any officer or director of any corporation from consenting to any contribution or expenditure by the corporation. *See id.*

Due to the inherently deceptive nature of conduit schemes, the respondents may have committed knowing and willful violations of the Act. *See* 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is violating the law. *See Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (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 act

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1 may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at
2 214-15.

3 As detailed in the following sections, the available evidence supports opening an
4 investigation only into a limited number of the complaint's allegations. The allegations meriting
5 further attention involve Turner & Associates, the Arkansas law firm on which the complaint
6 most prominently focuses

7 As for the other law firms and
8 individuals who were named as respondents, the available evidence does not support further
9 investigation. Likewise, there is insufficient evidence available at this time to demonstrate that
10 Senator Edwards or his committee knowingly accepted prohibited contributions.

11 **A. Turner & Associates**

12 Turner & Associates, led by attorney Tab Turner, is a litigation firm based in Little Rock,
13 Arkansas. See <http://www.tturner.com>. The complaint cites a *Washington Post* report that
14 employees of this firm were promised reimbursements for their contributions. According to
15 disclosure reports, on March 3, 2003, the Edwards Committee received four contributions of
16 \$2,000 each from four individuals who listed their employer as Turner & Associates. All of
17 these individuals listed their occupation as legal assistant, and none appears to have contributed
18 to a federal candidate before that time. Three days before the employees made these
19 contributions, Tab Turner himself contributed \$2,000 to the Edwards Committee.

20 Tab Turner and his law firm did not directly respond to the complaint.

21
22 Michelle

23 Abu-Halimeh, the Turner paralegal who reportedly told the *Post* that she expected to be

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1 reimbursed for her contribution, submitted a one sentence response to the complaint through her
2 attorney stating that "any involvement she may have had in this matter has been corrected."

3 Given the complaint's specific allegations of a reimbursement scheme by Turner, and
4 given the reported comments from paralegals that Turner promised them reimbursements for
5 their contributions, further investigation into this matter is warranted. Additionally, because
6 Turner, his firm, and the named paralegal have not substantively responded to the complaint,
7 there are material unanswered questions that need to be addressed.

8 Tab Turner's apparent attempt to conceal the true source of his contributions by
9 organizing a reimbursement scheme indicates that his conduct may have been knowing and
10 willful. Although Turner reportedly asserted that he did not know about the Act's prohibition on
11 contributions made in the name of another, the inherent deceptive nature of conduit schemes
12 merits an investigation into whether his conduct was knowing and willful. Furthermore,
13 according to public records from the Arkansas Secretary of State, Tab Turner's firm appears to
14 be a for-profit corporation. Thus, in addition to potentially making contributions in the name of
15 another, Tab Turner and his law firm may have made prohibited corporate expenditures. *See*
16 2 U.S.C. § 441b(a). Therefore, this Office recommends that the Commission find reason to
17 believe that Tab Turner and Turner & Associates knowingly and willfully violated 2 U.S.C.
18 §§ 441b and 441f.²

19 In addition to investigating Turner and his firm for possibly making prohibited
20 contributions in the name of another, there is sufficient support to investigate whether all four
21 legal assistants at Turner's firm knowingly permitted their names to be used to effect the

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1 contributions. Although the complaint did not specifically name each paralegal at the firm who
2 contributed to the Edwards Committee, the complaint did allege of a pattern of illegal
3 contributions. Moreover, media articles indicate that the paralegals were aware that their
4 contributions would be reimbursed. Therefore, this Office recommends that the Commission
5 find reason to believe that Michelle Abu-Halimeh, Amy Parker, Diana Harcourt, and Jennifer
6 Keylon violated 2 U.S.C. § 441f.³

7 **B.**

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³ Only Abu-Halimeh has been notified of the complaint; the other employees will be internally generated as respondents.

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C. Other Law Firms

The remaining respondents include four law firms, which appear to specialize in personal injury matters, and eight employees or relatives of employees who work at those firms. Citing to the article in *The Hill*, the complaint alleges that these firms and employees may have made conduit contributions to the Edwards Committee. There is no direct evidence, however, that any of these law firms actually reimbursed its employees for their contributions to the Edwards Committee. Rather, the premise of the article was simply to note a perceived pattern of \$2,000 contributions by low-level employees at law firms. After examining publicly available information and reviewing the responses to the complaint, this Office finds no basis to support an investigation of the remaining respondents.

every other law firm and individual mentioned in *The Hill* has explicitly denied that anyone promised or provided reimbursement for the contributions to the Edwards Committee. Indeed, these denials, most of which were in the form of sworn affidavits, also refuted the article's other assumption—that the contributors were low-level

1 employees. To the contrary, the contributions were made by high-level firm administrators,
2 according to the responses. In fact, the salaries of the named respondents range from a low of
3 \$77,000 per year to a high of \$194,000 per year. Thus, while not dispositive, the high salaries of
4 the respondents weaken the underlying factual premise of the complaint, which is that the
5 contributors did not have the financial means to contribute.

6 Although *The Hill* correctly reports that some of the contributors had never previously
7 given to a federal candidate before, the responses to the complaint credibly argue that employees
8 at personal injury law firms identified with Senator Edwards, a former personal injury attorney.
9 Additionally, while the employees cited in the article all made contributions the same day as
10 other firm employees, this pattern alone does warrant the Commission devoting resources to
11 investigate this matter.⁵ Therefore, this Office recommends that the Commission find no reason
12 to believe that any of the following respondents violated the Act in this matter and close the file
13 as it pertains to them: Howarth & Smith, Don Howarth, Suzelle Smith, Robert Kern, and Stacy
14 Kern; Robinson, Calcagnie & Robinson, Donna Hosea, and Linda Moen; Shernoff, Bidart &
15 Darras LLP and Vikki Sanchez; and Wilkes & McHugh and Elaine Reeves.

16 **D. The Edwards Committee**

17 The complaint alleges that John Edwards and his committee have engaged in a pattern of
18 illegal activity by accepting prohibited contributions. Accordingly, whether the Edwards
19 Committee violated the Act in this matter depends on whether it knowingly accepted
20 contributions made in the name of another or whether its treasurer fulfilled his duty of examining
21 contributions for evidence of legality. *See* 11 C.F.R. § 103.3(b).

⁵ The article notes some other factors, such as the voting history, party registration, and financial records of certain individuals. While these factors add to the totality of the circumstances, they are relatively unpersuasive in this matter.

Contributions that present genuine questions as to whether they were made by legal sources may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer shall make his or her best efforts to determine the legality of the contribution. *See* 11 C.F.R. § 103.3(b)(1). In the present situation, the Edwards Committee claims that it had no knowledge of any illegality at the time it received the contributions. Moreover, the Edwards Committee contends that the contributions from the employees at Turner & Associates were not solicited by anyone associated with the campaign.

If at the time a contribution was received a committee determines that it did not appear to be made in the name of another, but later discovers that it is illegal based on new evidence not available at the time of receipt, the treasurer must refund the contribution within thirty days of the date on which the illegality was discovered. *See* 11 C.F.R. § 103.3(b)(2). Here, the Edwards Committee asserts that it did not become aware that the contributions by Turner employees may have been reimbursed until after the media reported the issue in early April 2003. According to its disclosure reports, the Edwards Committee refunded the contributions to the Turner employees on April 7, 2003. Consequently, the Edwards Committee appears to have complied with the Act and regulations.

As to contributions received from employees of other firms cited in the complaint, the Edwards Committee disputes any illegality, arguing that a pattern of giving by employees on the same day does not violate the Act. Although the Edwards Committee states that its representatives attended fundraising events to collect contributions, that fact alone does not justify an investigation. Additionally, neither the complaint nor publicly available information evidences any facts showing that the Edwards Committee was involved in reimbursement schemes by law firms. Accordingly, because no information currently exists to show that

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1 Senator Edwards or his committee may have violated the Act, this Office does not recommend
2 investigating them. Nonetheless, because an investigation of Turner & Associates
3 may uncover new evidence regarding Senator Edwards or his committee,
4 this Office recommends that the Commission take no action at this time against them.

5 **III. PROPOSED DISCOVERY**

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IV. RECOMMENDATIONS

1. Find reason to believe that Tab Turner and Turner & Associates knowingly and willfully violated 2 U.S.C. §§ 441b and 441f;
2. Find reason to believe that Michelle Abu-Halimeh, Amy Parker, Diana Harcourt, and Jennifer Keylon violated 2 U.S.C. § 441f;
- 3.
- 4.
5. Take no action at this time against John Edwards and Edwards for President and Julius Chambers, as treasurer;
6. Find no reason to believe that any of the following respondents violated the Act in this matter and close the file as it pertains to them: Howarth & Smith; Robinson, Calcagnie & Robinson; Shernoff, Bidart & Darras LLP; Wilkes & McHugh; Donna Hosea; Don Howarth; Robert Kern; Stacy Kern; Linda Moen; Elaine Reeves; Vikki Sanchez; and Suzelle Smith;
7. Approve the appropriate factual and legal analyses;
- 8.
9. Approve the appropriate letters.

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Lawrence H. Norton
General Counsel

4/8/04
Date

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Mark D. Shonkwiler
Mark D. Shonkwiler
Assistant General Counsel

Brant S. Levine
Brant S. Levine
Attorney

Attachments:

1. *Washington Post* article
- 2.

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Edwards Returns Law Firm's Donations

By Thomas B Edsall and Dan Balz

Washington Post Staff Writers

Friday, April 18, 2003; Page A01

The presidential campaign of Sen. John Edwards (D-N.C.) announced yesterday it will return \$10,000 to employees of a Little Rock law firm after a law clerk said she expected her boss to reimburse her for a \$2,000 donation.

Federal election laws prohibit a person from funneling donations through someone else to conceal their source. Such practices would enable the reimbursor to exceed the legal contribution limit for individuals, recently raised to \$2,000 from \$1,000 per election.

"The Edwards campaign is committed to operating under the highest ethical standards," spokeswoman Jennifer Palmieri said. "Once we learned of the irregularities associated with donations from this law firm, we returned all the contributions received from employees of this firm. Senator Edwards is a firm believer in our campaign finance system."

Although \$10,000 is a pittance in modern presidential fundraising, yesterday's announcement could embarrass the Edwards campaign, already criticized by opponents for its heavy reliance on trial lawyers' money. It also underscores the intense pressure on campaigns to raise large sums of money early -- both to demonstrate their viability and to pay for the staff, ads and other tools needed to survive the flood of early caucuses and primaries starting in January.

In an interview yesterday with The Washington Post, Michelle D. Abu-Halmeh, a law clerk at the Little Rock firm Turner & Associates PA, said she had not found it difficult to send \$2,000 to the Edwards campaign. She said her boss, Tab Turner, "asked for people to support Edwards," assuring them that "he would reimburse us."

The Post, which called numerous clerks and paralegals who gave money to Edwards, could contact Turner only through e-mail. He replied: "The answer to your direct question is no, she is not going to be reimbursed. She apparently cannot be reimbursed under some rule relating to campaign finance."

Four law clerks at his firm each gave Edwards \$2,000, according to the campaign's disclosure report required by federal law. One other clerk, Diana Harcourt, could be reached for comment yesterday. Initially, she indicated that she would be reimbursed, answering "right" when asked if her boss would cover the cost of her contribution. Then, she said that she "provided that," referring to the contribution.

Harcourt then put the caller on hold. When she returned, she said: "I don't know anything about that. I just know that I really don't care to discuss it. . . . This conversation is over with."

The pressure on candidates to raise money from those willing to give substantial sums increased this year, when the new McCain-Feingold law doubled, to \$2,000, the amount an individual can donate. Nearly all the major Democrats vying for the right to challenge President Bush next year have relied heavily on \$2,000 checks, according to the recent finance reports filed by Edwards, Sen. John F. Kerry (Mass.), Sen. Joseph I. Lieberman (Conn.) and Rep. Richard A. Gephardt (Mo.).

In Edwards's case, 66 percent of his \$7.4 million total was in amounts of \$2,000 each. For Lieberman and Kerry, it was 59 percent, and for Gephardt, 61 percent.

Edwards's first-quarter report showed that his campaign received \$4.5 million from lawyers, most of them members of the plaintiffs' bar, and from persons employed by or related to members of law firms. Edwards was a prominent plaintiffs' lawyer in North Carolina before running for the Senate in 1998.

Twenty people who were identified on Edwards's report as "paralegal" employees each gave \$2,000, as did nine persons described as "legal assistants."

Palmieri said the Edwards campaign has no plans to examine the legality of other contributions. "We don't have any reason to presume irregularities elsewhere," she said. "If presented with information about that, we will look into it and take appropriate action."

Over the years, several state and federal candidates have been cited for receiving donations in the names of people who did not supply the money. Sources close to the Edwards campaign supplied documents showing that Kerry, in his 1996 Senate campaign, returned nearly \$8,000 reportedly supplied by Johnny Chung, who allegedly disguised the money as contributions from four people.

Most of the clerks and paralegals contacted yesterday by The Post said they had given their own money to Edwards and were not reimbursed. Monica Garza, a paralegal at the law firm of Owen & Associates in Corpus Christi, Tex., said she contributed \$2,000 from her savings after seeing Edwards at an event this year.

"He's just very charismatic," she said. "I don't follow politics very often, but every so often I get struck with someone. The sincerity on his face struck me. I'm a single parent. I liked his views on education and children's welfare."

Lane Murray, a paralegal at the Shannon Law Firm in Hazelhurst, Miss., said he makes "pretty damn good money" and decided to give Edwards \$2,000 because "I think he's the man for the job." Murray said he has been politically active over the years, having attended inaugural ceremonies for former presidents Richard M. Nixon, Ronald Reagan, Jimmy Carter and Bill Clinton. Despite having contributed to Edwards, he said he believes Bush "is doing a fantastic job."

Staff writer Christopher Lee and database editors Sarah Cohen and Dan Keating contributed to this report.