

AUG 23 2006

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)
Earl Allen Haywood, in his official)
and personal capacities)
Dole North Carolina Victory Committee,)
Inc. and Mike Mitchell, in his)
official capacity as treasurer)

MUR 5610
AR 05-11

2006 AUG 23 P 4: 41

SENSITIVE

GENERAL COUNSEL'S REPORT #2: MUR 5610

FIRST GENERAL COUNSEL'S REPORT: AR 05-11

DATE OF REFERRAL: November 29, 2005

DATE ACTIVATED: December 6, 2005

STATUTE OF LIMITATIONS: July 2007

I. ACTIONS RECOMMENDED

1. Find reason to believe Earl Allen Haywood, in his official and personal capacities, knowingly and willfully violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b).
2. Merge AR 05-11 into MUR 5610.
3. Take no further action with respect to Earl Allen Haywood, in his official and personal capacities, and the Dole North Carolina Victory Committee and Mike Mitchell, in his official capacity as treasurer, pertaining to alleged violations of 2 U.S.C. § 432(h)(1).
- 4.

1 **II. BACKGROUND**

2 This matter arose out of a referral from the Department of Justice regarding alleged
3 violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and a
4 Commission audit of the Dole North Carolina Victory Committee, Inc. ("DNCVC" or
5 "Committee"), a joint fundraising committee of the Dole 2002 Committee Inc. and the North
6 Carolina Republican Party.¹ The Department of Justice ("DOJ") referred this matter to the
7 Commission after Earl Allen Haywood, the Committee's Assistant Treasurer, entered a guilty
8 plea to mail fraud charges in federal criminal court involving his theft of funds from the DNCVC
9 and the North Carolina's Salute to George W. Bush Committee, Inc.² See First General
10 Counsel's Report, at 4 ("FGCR"). The information available at that time indicated that, as
11 Assistant Treasurer, Haywood was responsible for processing and depositing contributions,
12 making disbursements, maintaining the Committee's bank account, and completing and signing
13 disclosure reports and filing them with the Commission. Whether anyone assisted Haywood
14 with any of these duties or supervised his work was unclear, as was the reason for his theft of
15 campaign funds, which occurred over the course of over one year before anyone involved with
16 the committees discovered it. Based on the referral from DOJ, the Commission found reason to
17 believe that Haywood knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c)(5), (h)(1),

¹ The facts that are the subject of this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub L. No. 10-55, 116 Stat. 81 (2002). BCRA did not substantively alter the provisions of the Act relevant to the facts in this matter. All statements of the law that are written in the present tense shall be construed to be either in the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations thereunder.

² Haywood was sentenced to serve 18-months in federal prison. He was released on November 2, 2005 and is currently under supervised probation for 3 years.

28044183780

1 434(b)(4)(H)(v), (6)(B)(v) and 439a(b), and that the Committee violated 2 U.S.C. §§ 432(c)(5),
2 (h)(1), 434(b)(4)(H)(v) and (6)(B)(v), and 441b(a).³

3 In addition, prior to the Commission's reason to believe findings, the Commission had
4 authorized the Audit Division ("Audit") to conduct an audit of the DNCVC's activities pursuant
5 to 2 U.S.C. § 438(b). On October 7, 2005, the Commission issued a Final Audit Report
6 ("FAR"). An audit finding that the Committee had accepted corporate contributions in 2002, and
7 untimely deposited them in 2003, was referred to us for possible enforcement. FAR at 4. The
8 FAR also noted that "the lack of basic internal controls (e.g., separation of duties) and oversight
9 by DNCVC created an environment that contributed to the misappropriation of funds and the
10 misreporting to the Commission." FAR at 2. The corporate contributions referred to in the FAR
11 were already part of this enforcement action, and the Commission has already found reason to
12 believe the Committee violated 2 U.S.C. § 441b. We now recommend that the Commission also
13 find reason to believe that Haywood violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b).

14 Since the Commission's earlier reason to believe determination, evidence obtained during
15 our investigation has confirmed our initial information and the FAR conclusions, and has also
16 clarified the amounts of money at issue for each violation. Therefore, we recommend that the
17 Commission approve entering into pre-probable cause conciliation with both Respondents.

18

³ The Commission also found reason to believe another committee, North Carolina's Salute to George W. Bush Committee, Inc., a joint fundraising committee that raised funds for the Dole 2002 Committee, Inc., the North Carolina Republican Party, and Hayes for Congress ("Salute Committee") violated the Act but voted to take no further action with respect to this committee because it was terminated on May 23, 2003, prior to our becoming aware of Haywood's activities. Therefore, nothing in this report addresses the Salute Committee unless explicitly stated.

28044183781

1 **III. RESULTS OF INVESTIGATION**⁴

2 Between March 2002 and May 2003, while serving as Assistant Treasurer of the DNCVC
3 and the Salute Committee, Haywood wrote checks totaling approximately \$174,725 from both
4 committees' accounts, designating himself as payee. Approximately \$155,750 of that amount
5 was taken from the DNCVC account ⁵ See Attachment 2, Disbursements to Haywood.
6 Haywood failed to report \$128,250 of those disbursements.

7 Haywood had been hired to perform the compliance functions for the DNCVC. Haywood
8 Letter dated Jan. 25, 2005 Neal Rhoades Affidavit dated January 18, 2005, at
9 para. 17 ("Rhoades Affidavit"). Officially, as Assistant Treasurer, Haywood's duties included
10 maintaining the Committee's financial and bank records, filing disclosure reports with the
11 Commission, and reattributing/redesignating funds. See Memorandum dated May 24, 2002
12 ("Procedures Memo"), Attachment 1. However, Haywood's duties expanded after the first
13

4!

⁵ Haywood claimed that the Committee funds that he disbursed to himself constituted his salary for his work on that committee. He claimed that, throughout the course of the year, he attempted to negotiate a salary with a number of staff members from the participating committees. Despite our requests, neither the Committee, nor any of the relevant staff of the participating committees, has confirmed or denied whether Haywood actually approached anyone to discuss his salary. See Committee Reason to Believe Response ("RTB Response") at 11, OGC Letter dated Feb. 4, 2005, at 2, Committee Letter dated April 4, 2005, at 2.

All parties have acknowledged that Haywood was paid in full for his work for the Salute Committee, but he also stole funds from that committee. Thus, we do not consider the alleged salary dispute as a mitigating factor or an excuse for Haywood's actions. Further, on May 20, 2003, Haywood wrote himself a check from the DNCVC's account in the amount of \$19,001.30, but returned the funds the next day. See Attachment 2. That figure is excluded from the total amount in violation stated above and from the calculation of the proposed civil penalty.

28044183782

1 fundraising event Neither Haywood nor the Committee's counsel disputes that
2 after that point, for all intents and purposes, Haywood served as the Committee's *de facto*
3 treasurer.

4 It appears that even from the Committee's inception, Haywood was expected to act as *de*
5 *facto* treasurer for the DNCVC. In an affidavit, Michael Mitchell, the Committee's named
6 treasurer, explained that he had no knowledge of or experience with campaign finance, and only
7 agreed to serve as treasurer for the DNCVC after he was assured by Neal Rhoades, a consultant
8 with the North Carolina Republican Party and the DNCVC, that a professional with expertise in
9 campaign finance would be hired to perform all of the treasurer's functions. Affidavit of
10 Michael Mitchell, at paras. 4, 6-7, 9, and 12 ("Mitchell Affidavit"). Mitchell explained that
11 Haywood's job was "to manage the financial affairs of the committee, including tracking receipts
12 and contributions, expenses and disbursements of the committee, writing checks and disbursing
13 funds to the participating committees, and reporting information to the FEC." *Id.* at para. 13.
14 Haywood also confirmed that he "was acting as Treasurer in the daily operations of the joint
15 committee [DNCVC] and prepared and filed the reports." Haywood Letter dated March 15,
16 2005, at p. 15. Mitchell was not involved in the reporting process in any way, despite his name
17 appearing on several of the Committee's reports; Haywood signed the FEC reports using his or
18 Mitchell's electronic filing passwords at various times. *Id.* at 10.

19 It also appears that no one supervised Haywood in his work. Haywood Letter dated
20 March 15, 2005, at 9, RTB Response at 4. Mitchell and Haywood were the only staff for the
21 Committee; all other persons who performed work for the Committee were either outside
22 vendors or staff members from the participating committees.

28044183783

1 Further, Haywood was based in Washington, DC and all staff for the participating
2 committees was based in North Carolina. *See* Haywood Letter dated Jan. 25, 2005, at 2

3
4 The Committee's Procedures Memo outlines the functions purportedly assigned to
5 Haywood and other individuals performing work for the Committee. *See* Attachment 1 and RTB
6 Response at 4. According to these written procedures, contributions were to be deposited by
7 someone other than Haywood, and then copies of those contributions were to be sent to Haywood
8 so that he could complete his reporting and recordkeeping duties. Attachment 1. Theodore
9 Koch, treasurer for the Salute Committee and compliance officer in charge of FEC reporting for
10 the Dole 2002 Committee, Inc., one of the DNCVC's participating committees, assisted with the
11 DNCVC's first fundraiser by depositing the contributions from that event into the Committee's
12 account at a bank located in North Carolina. He then photocopied and sent
13 copies of the checks to Haywood in Washington, DC. *Id.* However, Koch and Haywood both
14 confirm that after the first fundraising event, the protocol outlined in the Procedures Memo was
15 abandoned, and Haywood assumed responsibility over the processing and depositing of
16 contributions for the DNCVC.⁶ From that point on, contribution checks were
17 sent directly to Haywood in Washington, DC for processing and deposit. Haywood Letter dated
18 March 15, 2005 at 3.

A. EARL ALLEN HAYWOOD

1. Haywood Acknowledges Violating the Act

Although the Committee had a named treasurer at all times relevant to this matter, Haywood was the assistant treasurer and was hired and expected to perform the duties of the treasurer. Haywood issued unauthorized payments to himself and failed to account for those disbursements in Committee records or to include them in the Committee's disclosure reports. Haywood Letter dated Jan. 25, 2005, pp. 3-4. In addition, Haywood wrote unauthorized Committee checks made payable to himself beginning in March 2002, and deposited those checks into his personal bank accounts through May 2003, when his actions were discovered by the Committee.⁷ *Id.*, pp. 7-8. Haywood admitted to the Commission, and in federal court, that he wrote unauthorized checks totaling \$155,750 from the DNCVC account and \$18,975 from the Salute Committee account to himself. Haywood failed to include in required filings 37 of 41 total disbursements to himself from the DNCVC's account and 8 of 11 disbursements he had made to himself from the Salute Committee account.⁸ *See* Attachment 2. Haywood also acknowledged that he deposited checks that he believed were corporate checks and checks made payable to committees other than the DNCVC, into the DNCVC account. *See infra* at 8-10.

Haywood failed to keep an account of the name, address, date, amount and purpose of all disbursements made by the Committee and to keep copies of receipt invoices or cancelled checks

⁷ Haywood wrote himself checks from the Salute Committee account from March through May 2002, and from the DNCVC account from June 2002 through May 2003

⁸ Haywood served as Assistant Treasurer until May 2003, when he was removed from his position. Thus, he did not file the 2003 July Quarterly Report covering the period of April 1 through June 30, 2003, during which he made an additional 7 disbursements to himself. The Committee reported those 7 unauthorized disbursements, totaling \$27,500, in its 2003 July Quarterly Report. *See* Attachment 2

28044183785

1 for all disbursements that exceeded \$200. 2 U.S.C. § 432(c)(5). Likewise, he failed to file
2 reports with the Commission that disclosed such information and the total amount of Committee
3 disbursements. 2 U.S.C. §§ 434(b)(4)(H)(v) and (6)(B)(v). Finally, he commingled campaign
4 and personal funds in violation of the Act's prohibition and converted campaign funds for his
5 own personal use. 2 U.S.C. §§ 432(b)(3) and 439a(b)(1); 11 C.F.R. § 102.15.⁹ Haywood's
6 admissions establish all of the violations set forth above and are corroborated by staff from the
7 participating committees, as well as the Committee's disclosure reports and bank statements.

8
9
10 However, we recommend the Commission take no further action with regard to the
11 previous determination that there was reason to believe Haywood violated 2 U.S.C. § 432(h)(1).
12 At the time of the reason to believe findings, it was unclear whether Haywood had deposited
13 contribution checks into his personal bank account. A review of the evidence, including
14 Haywood's statements and the Committee's internal audit, reveals no evidence that Haywood
15 deposited any contribution checks directly into his personal bank account. See Haywood Letter
16 dated Jan. 25, 2005 at 7; RTB Response at 14.

17 2. Haywood Knowingly and Willfully Violated 2 U.S.C. § 441b

18 In November 2004, the Commission found reason to believe that the Committee violated
19 the Act's prohibition against corporate contributions, but did not know Haywood's role in those
20 actions. During our investigation, Haywood acknowledged that he received and deposited

⁹ Haywood previously used campaign funds to pay for a trip to Australia while he served as Assistant Treasurer of McCain 2000, Inc, although it appears that he promptly repaid those funds. See Final Audit Report for McCain 2000, Inc and McCain 2000 Compliance Committee, Inc, Gary Hache ROI. We have uncovered no information indicating that the DNCVC was aware of Haywood's prior use of campaign funds for his personal use.

28044183786

1 corporate checks into the DNCVC account despite knowing that this was illegal. *See* Haywood
2 Letter dated March 15, 2005, p. 13.

3 It is unlawful for any candidate, political committee, or other person knowingly to accept
4 or receive any contribution from a corporation.¹⁰ 2 U.S.C. § 441b(a). Further, once a political
5 committee encounters a possible prohibited corporate contribution among the contributions
6 received, the contribution must either be refunded or deposited into the committee's campaign
7 bank account within 10 days of the treasurer's receipt while the treasurer determines whether it is
8 permissible 11 C.F.R. § 103.3(b)(1). Commission regulations also require the treasurer to make
9 at least one written or oral request for evidence of legality and if not able to determine the
10 legality of the contribution, refund the questionable contribution within 30 days of receipt. *Id.*

11 Haywood recognized he should have taken specific steps to learn whether the entities
12 were corporations and, if so, then to refund the checks, but it is unclear whether anyone did this.
13 Haywood claimed that he believed that the fundraising staff from the participating committees
14 were supposed to follow up on questionable contribution checks before sending them to him.

15 However, Theodore Koch states that Haywood was
16 responsible for handling that task. No documentation has been provided by
17 either to support their respective contentions, and the Committee's Procedures Memo is silent on
18 this point. Instead, it appears that Haywood received these checks from June through November
19 2002, did not deposit them until various points between January 2003 and April 2003, and did
20 very little or nothing during those intervening months to correct the improper deposits or to
21 refund the checks. However, regardless of who was supposed to conduct the required follow-up,

¹⁰ None of the DNCVC's participating committees could accept corporate contributions

28044183787

1 Haywood admitted that he knew, based on the names of the entities, that these checks were
2 apparently from corporations (e.g., "Steven D. Bell & Co.," "Brit Farms, Inc.," "Creative
3 Packaging Solutions, Inc.") and that it was illegal to accept corporate contributions. *See*
4 Haywood Letter dated March 15, 2005;

5 *see also* Attachment 3. He admitted that he initially set these types of checks
6 aside, but ultimately deposited them in the DNCVC account even though he knew the Committee
7 could not accept such checks. Therefore, we recommend the Commission find reason to believe
8 Haywood knowingly and willfully violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b), in his
9 official and personal capacities.¹¹

10
11
12 **B. THE COMMITTEE**

13 Our investigation confirmed that the Committee filed inaccurate disclosure reports with
14 the Commission and accepted prohibited corporate contributions. Counsel for the Committee
15 contends that the Committee should not be held responsible for these violations of the Act
16 because Haywood caused them. Furthermore, counsel for the Committee claims that the
17 Committee's reliance on Haywood's reputation and experience in campaign finance, in
18 conjunction with its Procedures Memo, demonstrates that it had sufficient internal controls, did
19 everything it could to prevent the violations, and therefore should not be held responsible for the

¹¹ The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law" 122 Cong Rec H 2778 (daily ed May 3, 1976), *see also Federal Election Comm'n v John A. Dramesi for Cong Comm*, 640 F Supp 985, 987 (D N J 1986) (distinguishing between "knowing" and "knowing and willful") A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful *United States v Hopkins*, 916 F 2d 207, 214 (5th Cir 1990)

violations. Specifically, counsel asserts that the "DNCVC put in place the best 'internal control' it could by hiring a noted expert in the field of FEC compliance."

The Committee, however, abandoned the protocol set forth in its Procedures Memo and substituted no other affirmative checks on his actions.

1. Reporting/Recordkeeping Violations

The Committee's disclosure reports were inaccurate, in violation of 2 U.S.C. § 434 and 11 C.F.R. § 104. The Committee was required to deposit contributions into its campaign bank account, keep track of all receipts and disbursements, and disclose them in reports to the Commission.¹² 2 U.S.C. §§ 432(c)(5), (h)(1), 434(b)(4)(H)(v), and (6)(B)(v). However, the Committee through Haywood, who was the only staff person from the Committee in charge of these responsibilities, failed to fulfill all of those requirements. Over thirty checks from business entities received in 2002 were not deposited into the campaign account and reported to the Commission until 2003. *See infra* section III.B.2. Additionally, thirty-seven disbursements to Haywood from the DNCVC bank account during 2002 through 2003 were unreported. *See supra* at 7.

In defense of the Committee, its counsel contends that the Committee is not responsible for the failure to file accurate reports because that responsibility was given to Haywood.

¹² Historically, the Commission has held committees responsible for reporting violations. In the context of discussing the Administrative Fines program, the Commission has previously stated that "violations of the reporting requirements of 2 U.S.C. 434(a) are strict liability offenses." Explanation and Justification, *Final Rules on Administrative Fines*, 65 Fed. Reg. 31,787, at 31789-90 (May 19, 2000), *see also* *Lovely v. FEC*, 307 F. Supp. 2d 294 (2004) (quoting E&J for Administrative Fines). While these authorities discuss a strict liability analysis regarding the timing of reports (section 434(a)), it also seems logical to use a strict liability analysis when examining the completeness and accuracy of the reports (section 434(b)).

Furthermore, counsel argues that the Committee reasonably relied on Haywood's reputation and uses that as the sole reason why he was not supervised more stringently. Mitchell Affidavit at para. 22, 23, and 40; Finally, the Committee's counsel claims that the existence of the Committee's Procedures Memo, which called for separation of some of the tasks and responsibilities within the Committee, demonstrates that it had sufficient internal controls. Attachment 1.

The Commission has already spoken on counsel's argument that the Committee should not bear any responsibility, in a similar situation where a committee indicated that it could not be held responsible for failing to file reports with the Commission. Seeking assistance from the Commission through an advisory opinion request, a committee claimed that it could not file reports with the Commission because the former treasurer refused to provide financial records to the committee. The Commission failed to find the committee's lack of control or access to the documents as a complete defense and advised the committee that it was required to make best efforts to obtain the information necessary to file reports with the Commission. See Advisory Opinion 1995-10 (Helms for Senate) As such, the Committee here must bear some responsibility unless it can demonstrate that it exercised best efforts to submit accurate reports.

Best efforts may be offered as an affirmative defense to liability, and may also be viewed as a mitigating factor, as it pertains to a committee submitting information required by the Act. 2 U.S.C. § 432(i). Here, the Committee's Procedures Memo dictated that the same individual not have control over all receipts, disbursement decisions, record keeping and bank reconciliation. Had there been adherence to such a separation of functions, it could be argued that best efforts were taken to prevent a theft from occurring. However, instead of following the

28044183790

1 stated procedures, the Committee abandoned them, leaving no controls in place that could have
2 allowed Haywood's actions to be discovered and possibly prevented.¹³ *Supra* at 5-6.

3 In addition, the Committee's counsel has repeatedly emphasized that the Committee was
4 merely a "clearing account," not an actual committee, because it had no employees, essentially
5 claiming that it should not be held responsible for violations of the Act because of its small size.

6 Mitchell Affidavit at para. 15. Under the Act, all committees are required to file
7 complete and accurate reports, thus, the fact that it was a joint fundraising committee with only
8 two paid staff members does not relieve the Committee of those requirements. 2 U.S.C. § 434;
9 11 C.F.R. § 104. Moreover, the feasibility of some separation of functions in this case is
10 demonstrated by the procedures that the Committee itself created and initially followed.¹⁴

11 The Committee's counsel also argues that because Commission regulations do not explicitly
12 require specific internal controls or a separation of duties, it would be unfair to require
13 committees to follow any such procedures.

We are not suggesting that the
14 Committee was required to follow any particular procedures. But reporting obligations become
15 meaningless if they are not construed to imply an obligation to exercise due diligence and take
16 appropriate steps to ensure adequate compliance with the Act. Currently, a number of active and

¹³ Furthermore, Haywood's theft might have been prevented by implementing procedures that would have required only minimal cost and effort and would have been less onerous than those outlined in the Committee's Procedures Memo. For example, simply having the Committee's bank statement sent directly to North Carolina for review by a staff member of a participating committee, or instituting limited spot-checking of disclosure reports filed with the Commission or bank statements could have deterred Haywood's actions. Indeed, Mitchell had previously served as a treasurer for the North Carolina Victory 2000 Committee and, according to Neal Rhoades, "[i]n that capacity, he reviewed and signed checks but did not have responsibilities for the day-to-day accounting, procedures, bookkeeping, compliance or reporting for the North Carolina 2000 committee." Rhoades Affidavit, at para. 6

¹⁴ Despite the expenses sometimes associated with such controls, other regulatory agencies, such as the SEC, recognize that internal controls for small entities are feasible and appropriate. *See, e.g.*, Kathleen Day, *Sarbanes-Oxley Exception Denied*, Washington Post, May 18, 2006 at D02

1 recently closed enforcement cases at the Commission involve reporting violations stemming
2 from a lack of separation of functions or internal controls as a potential causal connection for a
3 theft by a committee staff member. *See, e.g.,*

4 MUR 5721 (Lockheed Martin Employees PAC).
5

6 Finally, while the loss of Committee funds was the sole focus of Haywood's criminal
7 prosecution, the Commission is vested with the authority to address the harm to the public as a
8 result of the lack of full disclosure and misreporting. The fact that Haywood's conduct was
9 illegal and that the treasurer and the participating committees were unaware of his conduct does
10 not vitiate the Committee's violations. The Committee is ultimately responsible for complying
11 with the Act and bears some responsibility for the violations that resulted from Haywood's
12 embezzlement. Through its actions and inaction, the Committee deprived itself of the
13 opportunity to discover the large checks Haywood wrote to himself or any other potential
14 warning signs of embezzlement over the course of a year *See, e.g., Harrison v. Dean Witter*
15 *Reynolds, Inc.*, 79 F 3d 609 (7th Cir. 1996) (finding that evidence presented at trial was sufficient
16 to show that there was a total lack of sufficient diligence and that the company ignored the

¹⁵ In other regulatory schemes, federal agencies have held the entities they regulate liable for failing to have adequate internal controls despite the criminal acts of employees *See, e.g., Hendricksen v Hendricksen, Smith Barney, et al*, 640 F 2d 880, 883-885 (7th Cir 1981) (finding Smith Barney liable under the doctrine of *respondereat superior* in securities matter for funds converted by its employee where the company did not follow its own compliance rules and did not diligently supervise the employee) The SEC recently entered into a settlement agreement with a newspaper company that failed to properly report its circulation figures and trends, which were considered an indicator of the company's overall performance *See* SEC, Administrative Proceeding, No 3-12304 (Tribune Company) The SEC found that the company lacked sufficient internal controls to detect the employees' actions, and thus violated sections 13(a) and (b)(2) of the Securities Exchange Act of 1934, as well as Rule 12b-20, for failing to provide accurate and complete reports to the SEC and the public The SEC did not impose a penalty, but noted the violations and required that the company cease and desist from committing such violations

28044183792

obvious warning signs of fraud). In this matter, the Committee made no effort to meet the "best efforts" standard that would mitigate the Committee's liability.

2. Prohibited Corporate Contributions

As previously discussed in the First General Counsel's Report, in January 2004, the Reports Analysis Division ("RAD") sent the Committee two Requests for Additional Information ("RFAs") concerning apparent corporate contributions reported in the Committee's amended 2003 April and July Quarterly Reports. FGCR at 14 and at Attachment 4. The Committee's response to the RFAs contained no explanation concerning the entities listed by RAD, nor did it indicate whether it intended to refund any of the contributions. *Id.* The Committee's RTB Response in the enforcement matter also fails to provide any details concerning the corporate contributions. The RTB Response refers to a joint fundraising agreement that stated, "only contributions from individuals will be deposited into the depository account." See Committee RTB Response at 10 and Attachment. The RTB Response also claims that some of the checks were made payable to the Dole Victory Committee, which was permitted to accept corporate contributions that were then to be disbursed to the non-federal account of the National Republican Senatorial Committee. RTB Response at 10. Finally, the RTB Response also argues that Haywood stole those corporate contributions and, thus, the Committee never actually received the funds *Id.*

Final Audit Reports recommended that the Committee either provide evidence that the apparent corporate contributions were not prohibited or that the Committee issue refunds to each corporation.

FAR at 7-8 However, the Committee refused to follow either option, arguing that

28044183793

Haywood was solely responsible for the deposit of the corporate checks and that the Committee should not be required "to 'repay' money it *never* received."

The Committee further reiterated that some of the checks were intended for the Dole Victory Committee and also suggested that the Commission instead require Haywood to refund the corporate checks directly after he pays restitution for the stolen funds that were derived from legally permissible funds. *Id.* at 2, 4. Upon completion of the audit, we again attempted to obtain information from the Committee regarding the corporate checks and forwarded to the Committee additional follow-up questions. *See* OGC Letter dated Aug. 24, 2005. The Committee did not provide any additional information in response to our requests.

Our investigation confirmed that the Committee received corporate checks that were ultimately deposited into the Committee's bank account. In total, our investigation uncovered 33 apparent corporate checks totaling \$91,070 that were deposited into the Committee bank account in violation of 2 U.S.C. § 441b¹⁶. Of the 33 checks, 12 were payable to the Committee. The others were payable to the Elizabeth Dole 2002 Committee, Inc., Dole Victory Committee, North Carolina Republican Victory 2002 Committee, Dole Victory 2002 Committee, Dole Committee, and there was one check with a blank payee line. The attached chart lists the corporate checks deposited into the Committee's bank account. *See* Attachment 3. Although we also sought evidence of any mitigating factors, we were unable to find such information with regard to the

¹⁶ The FAR identified 31 checks totaling \$81,320 that appeared to come from corporate entities, including three limited liability companies for which there were no documentation establishing whether those companies elected treatment as a partnership or corporation by the Internal Revenue Service 11 C.F.R. § 110.1(g). Our investigation revealed additional checks that may not have met Audit's criteria.

28044183794

1 receipt of corporate contributions.¹⁷ Instead, what we learned is that, as of this date, the
2 corporate contributions have not been refunded.

3 The Committee refers to Haywood's "secret actions which concealed his receipt, deposit
4 and conversion of corporate checks" and therefore claims it should not be held responsible for
5 accepting the contributions. However, we were unable to ascertain exactly

6 how Haywood could have obtained the corporate checks that were purportedly payable to other
7 committees. It appears that the fundraising staff from the participating committees, who assisted
8 on DNCVC events, may have forwarded the corporate checks to Haywood, along with all the
9 other contributions.¹⁸ Furthermore, due to his location in Washington, DC, there was little
10 opportunity for Haywood to covertly obtain those checks as the Committee has suggested. It
11 appears that Haywood only attended some of the Committee's larger fundraising events and thus,

¹⁷

¹⁸ The Committee did not provide us with access to relevant fundraising staff to confirm or deny this information

Carla Eudy, one of the DNCVC's fundraisers, did state that her firm's fundraising staff would have been in charge of collecting, copying and logging in the checks before forwarding them on to Haywood for some of the events. In fact, because her staff was tasked to review the checks upon receipt, before forwarding them to Haywood, they should have followed up on any problematic checks themselves, returned any corporate checks, and then given the other checks to Haywood.

28044183795

could not have obtained many of those checks himself.¹⁹

Haywood acknowledges that at some of the events he attended, fundraising staff did give him checks they had collected.

However, he does not recall whether any corporate checks were received at any of those events. *Id.*

The Committee has never addressed the fact that the corporate funds remain in its bank account and has provided no substantial tie between Haywood's crime and the prohibited contributions. Under the Committee's theory that Haywood should bear full responsibility, when and if Haywood pays full restitution to the Committee as ordered by the court, the Committee would receive a windfall.²⁰

Regardless of whether checks were made payable to the DNCVC or to similarly named committees, it is undisputed that prohibited corporate contributions were deposited into the Committee's bank account in violation of 2 U.S.C. § 441b and must be refunded.²¹ However, since it discovered the corporate checks in 2003, the Committee has neither refunded those

¹⁹ Our review of the documentation accompanying some of the corporate checks and of the memo notations written on some of the checks confirms that some of the checks pertained to the Committee's smaller fundraising events, which Haywood did not attend

²⁰ The United States District Court for the District of Columbia ordered Haywood to pay a total of \$174,725 in restitution. Haywood paid \$50,000 at the time he was sentenced, \$18,950 of that went toward full restitution for the Salute Committee and \$31,050 was applied to the DNCVC's account. See 2005 July Quarterly Report. The remaining amount is to be paid on a monthly basis, following Haywood's release from prison. See FGCR at Attachment 3

²¹ It is reasonable to believe that all of the corporate checks were actually intended for the DNCVC. On a number of the checks, corrections were made to the payee line to indicate the DNCVC as the proper payee. Further, many of the checks were dated in July 2002, around the time of one of the Committee's major fundraising events, "An Evening with George W. Bush & Elizabeth Dole," which took place in Greensboro, NC on July 25, 2002. Finally, a few of the checks made payable to another similarly named committee actually noted a DNCVC event written in the memo entry, for example, the checks from Steven D. Bell & Co. dated July 17, 2002, were written to Dole Victory 2002 Committee, but noted the DNCVC's Greensboro event

28044183796

checks nor transferred them to any other committees.

For the

reasons discussed above, we recommend that the Commission take no further action with respect to the Committee with regard to 2 U.S.C. § 432(h)(1). *See supra* at 8.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

A.

28044183797

28044183798

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

28044183799

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

28044183800

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

1

28044183801

2

3

4

5

6

7

8

9

10

11

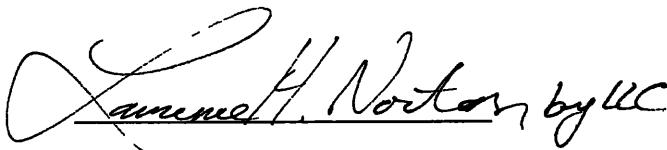
V. **RECOMMENDATIONS**

1. Find reason to believe that Earl Allen Haywood, in his official and personal capacities, knowingly and willfully violated 2 U.S.C. § 441b and 11 C.F.R. § 103.3(b).
2. Merge AR 05-11 into MUR 5610.
3. Take no further action with respect to Earl Allen Haywood, in his official and personal capacities, and the Dole North Carolina Victory Committee and Mike Mitchell, in his official capacity as treasurer, pertaining to violations of 2 U.S.C. § 432(h)(1)
- 4.
- 5.
- 6.
7. Approve the attached Factual and Legal Analysis.

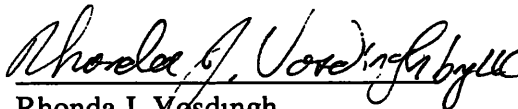
28044183802

8. Approve the appropriate letters.

8/23/06
Date



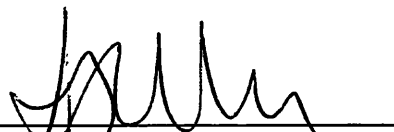
Lawrence H. Norton
General Counsel



Rhonda J. Vording
Associate General Counsel
for Enforcement



Sidney Rooke
Assistant General Counsel



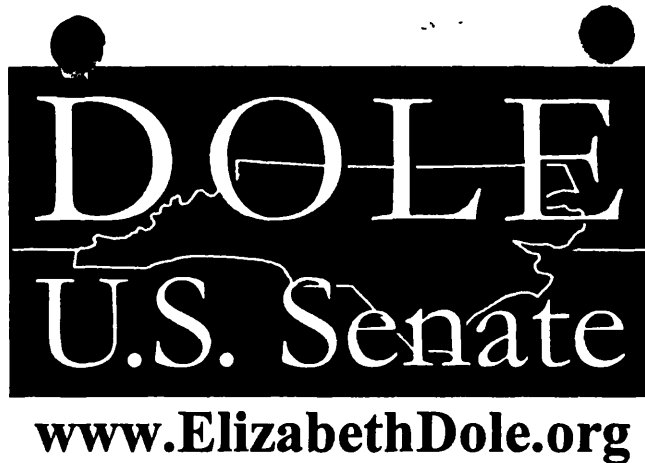
Ana J. Peña-Wallace
Attorney



Alexandra Doumas
Attorney

Attachments:

- 1- Procedures Memo of May 24, 2002
- 2- Disbursements Chart
- 3- Corporate Checks Chart
- 4- Factual and Legal Analysis



Memo

To: Mark
From: Randy
Date: May 24, 2002
Re: Dole NC Victory Committee Logistics
Cc: Neal, Cleta, Carla, Ted, Alan

Following is a description of how the logistics for the Dole NC Victory Committee (joint committee between Dole 2002 and NCGOP) will operate based on our conference call Friday and subsequent conversations.

- ☐ P.O. Box 2008, Salisbury, NC 28145 will be dedicated to receiving contributions related to the Dole NC Victory Committee (except for special events for which the joint committee will / may establish a different address or PO Box).
- ☐ Bob Kearley, Dole 2002 Committee Staff, will check this box daily (morning) beginning Tuesday, May 28.
- ☐ Contributions will be sorted/categorized, photocopied and faxed by Bob to Allen Haywood (ass't treasurer and custodian of records of Dole NC Victory Committee) for entry into Campaign Manager. Alan will be responsible for all FEC reporting, reattribution/redesignation procedures, FEC filing, and other official reporting requirements.
- ☐ Contributions will be deposited by Bob into the First Union bank account, with assistance from Ted as needed.
- ☐ Allen will also be responsible for paying expenses of the joint committee and reimbursing expenses advanced by the participants (Dole 2002 and NC GOP Victory) in proportion to the allocation ratios of the formula and actual proceeds
- ☐ Regarding expenses: We should decide specifically what expenses are going to be absorbed by joint committee re: staff, office, computer, etc. --- and then create

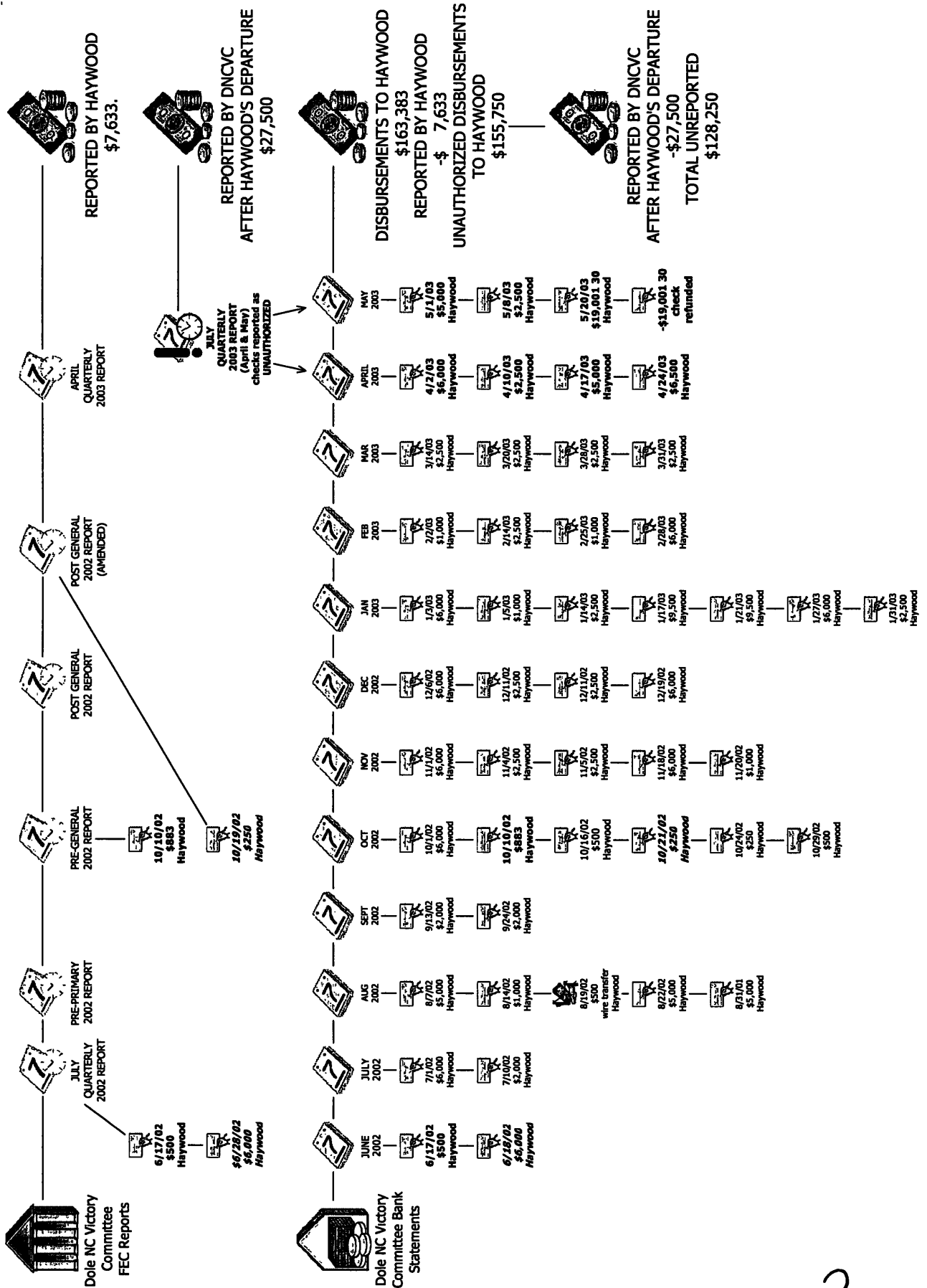
a system for keeping track of those actual amounts in order to be able to invoice and get reimbursed – and make sure we maintain the legal proportions.

- ☐ Daily tracking reports will be prepared by Bob, with assistance from Ted as needed, and distributed to the recipients of this memo along with any fundraising point-of-contacts for Dole NC Victory. *NOTE: The fundraising agreement provides that the joint committee will be responsible for maintaining the books and records and accounts of the joint committee, providing weekly reports to the participants (that includes both the Dole campaign AND the NCGOP Victory 2002 Committee). The reports can be more frequent if necessary. The main point to keep in mind is that this must be JOINT and the state party must be kept 'in the loop' specifically either through Neal or some other designated person.*

Action Items:

- ☐ Deposit slips for First Union account to Ted/Bob (from Allen?)
- ☐ Decisions on allocating, tracking, and paying expenses. Separate meeting with Allen, Mark, Neal, Cleta, others?
- ☐ Ted and Bob get together to develop daily reporting templates.

DOLE NORTH CAROLINA VICTORY COMMITTEE DISBURSEMENTS TO ALAN HAYWOOD



**MUR 5610 & AR 05-11: Dole North Carolina Committee, Inc. ("DNCVC")
CORPORATE CHECKS DEPOSITED INTO DNCVC BANK ACCOUNT**

PAYOR	PAYEE	AMOUNT
Andrews Hunt Farms LLC	Elizabeth Dole 2002 Committee Inc (Dole North Carolina Victory Committee written in by hand)	50
Steven D. Bell & Co.	Dole Victory 2002 Committee	1,000
Steven D. Bell & Co.	Dole Victory 2002 Committee	9,000
Boette Consulting Services	Dole North Carolina Victory Committee	2,000
Britt Farms, Inc.	? (blank)	500
ClearDefense Holdings, Inc.	Dole Victory Committee	250
Creative Packaging Sol'ns LLC	Dole Victory Committee	500
DLTI Inc	Dole Victory Committee	5,000
First NC Development LLC	Dole North Carolina Victory Committee	250
Fletcher Limestone Co Inc	Dole Victory Committee	100
Garofalo Schreiber & Hart, Chartered (Corp Acct)	Dole North Carolina Victory Committee	1,000
Greensboro Auto Auction Inc	Dole Victory Committee	2,000
H&H Industries Inc	Dole North Carolina Victory Committee	1,000
H&H Industries Inc	Dole Victory Committee	3,000
HMG Inc	NC Repub Vic 2002 Committee	4,000
Investors Title Insurance Co.	Dole Victory Committee	10,000
John Kavanagh Company	Dole Victory Committee	975
Main Street Partners, LLC	Dole Victory Committee	2,000
Maxwell Associates of Greensboro Inc	Dole Victory Committee	2,000
McCoy Hillard & Parks CPAs, PA (professional corporation)	Dole North Carolina Victory Committee	1,500
Mountain Medical Inc	Dole Committee (something crossed out)	150
New Breed Corporate Services Inc	Dole Victory Committee	25,000
Old South Home Co	Dole Victory Committee	2,000
Optima (Comm'l Cleaning - corp office)	Dole Victory Committee	125
Pegram-West Inc	Dole North Carolina Victory Committee	75
Pegram-West Inc	Dole North Carolina Victory Committee	9,000
Piedmont Wholesale Engineered Products Inc	Dole North Carolina Victory Committee	1,000
The Renaissance Center for Pl. Surgery (professional corp.)	Dole Victory Committee	570
Sidonna Black Realty Inc	Dole North Carolina Victory Committee	25
STC Property Company	Dole North Carolina Victory Committee	1,000
Sutton-Kennerly & Associates	Dole Victory Committee	1,000
Warehouse Design, Inc	Dole Victory Committee	3,000
Wiley Rein & Fielding LLP	Dole North Carolina Victory Committee	2,000

Total = \$91,070

Total payable to DNCVC = \$18,900

ATTACHMENT 3
Page 1 of 1

28044183807