In re	**)**	
	)	
	)	**MURs 4530, 4531, 4547,**
Democratic National Committee, John Huang,	**)**	**4642, 4909**
Charlie Trie, et al.	**)**	

Statement of Reasons of
Commissioner Scott E. Thomas

This case involved some of the most complicated factual and legal analysis in the Commission's history. Much of the evidence was adduced by other investigative bodies, but the real challenge in the case was trying to properly apply existing law and precedent to the many fact patterns that emerged.

While the Commission made many findings of 'probable cause to believe' that violations of the foreign national contribution ban and/or the prohibition on contributions in the names of others occurred, in several instances the General Counsel's recommendations to find violations were not approved by the four vote majority needed. In most of the latter instances, the commissioners voting against the General Counsel's recommendations were struggling with situations where the respondent in question didn't seem to have had a basis for knowing that the funds being solicited, accepted, or received were in fact from a prohibited source. Thus, the issue of just what degree of knowledge or *scienter*[1] is required became central to the determinations of liability.

In some instances, the probable cause determinations turned also on whether a particular person was serving as an 'agent' of the recipient party committee, and the extent to which the knowledge or actions of an agent could properly be imputed to such party committee. This required delving into the complicated world of fundraising by party committee operatives, some of whom were merely volunteers seeking for various reasons to put willing donors together with high level government officials. In several sets of circumstances reviewed, the fundraisers involved went out of their way to prevent staff of the recipient party committee from knowing the actual source of the donations involved, making the use of agency theory an inappropriate tool for assessing liability of the party committee itself.

[1] Black's Law Dictionary, 7th Ed. (1999), defines the term as, "[a] degree of knowledge that makes a person legally responsible for the consequences of his or her omission."

After all the dust settled, the picture that some painted of a massive conspiracy by the Democratic National Committee (DNC) to rake in truckloads of illegal foreign money faded from reality. While the Commission did find 'probable cause' that the DNC should be liable for some actions of its fundraisers and took too long to return some of the donations that ultimately were proven to be from prohibited sources, for the most part the DNC seems to have been the victim of unscrupulous or careless donors and fundraisers. Undoubtedly, the DNC could have been more diligent in requiring more inquiry about the actual sources of many donations, but it appears that some donors and some fundraisers were willing to deceive party officials in order to avoid losing a chance to benefit from the donations given. It is thus not clear that the DNC officials could have done anything to protect themselves from the actions of some of the fundraisers or donors involved in this case.

I write this statement of reasons not only to explain why I disagreed with the General Counsel's recommendation in certain instances, but also to provide some explanation of the state of the law in this area. While the foreign national ban and the contribution in the name of another provision are designed to address very important governmental interests—preventing foreign control of American elections and laundering of contributions through donors who appear legitimate—there are other important interests at stake as well, such as fairness in determining who is responsible when an illegal donation gets into the campaign process. A careful reading of the statutory and regulatory provisions, and of related legal concepts, is needed in order to reach proper determinations of liability in this area.

I. *Scienter* issues

The foreign national ban at 2 U.S.C. § 441e currently contains no language similar to other provisions of the statute that require some degree of knowledge on the part of the respondent accepting or receiving an impermissible contribution or donation. Thus, whereas § 441e makes it illegal for "any person to solicit, accept, or receive" any prohibited foreign national contribution: 2 U.S.C. § 441a(f) makes it improper for a candidate, political committee, or officer or employee of a political committee to "knowingly accept" an excessive contribution; 2 U.S.C. § 441b(a) makes it illegal for a candidate, political committee, or other person "knowingly to accept or receive" any prohibited corporate or union contribution; and 2 U.S.C. § 441f makes it improper for a person to "knowingly accept" a contribution made by someone in another person's name. Nonetheless, it seems illogical that Congress intended in this one instance to require 'strict liability' on the part of persons who have no basis for knowing the impermissible source of a contribution.[2] As this case demonstrates, it would be fundamentally unjust to

[2] Some might argue that the exclusion of term "knowingly" in one place but not another suggests Congress knew and intended the difference. As noted *infra*, when re-crafting § 441e in 1976, Congress seems to have intended to apply the "knowingly" standard. Thus, even if Congress knew the difference, apparently it did not intend such a difference. *See Public Citizen v. Department of Justice*, 491 U.S. 440, 454 (1989) ("Where the literal reading of a statutory term would 'compel an odd result,' *Green v. Bock Laundry Machine Co*., 490 U.S. 504, 509, we must search for other evidence of congressional intent to lend the term its proper scope.").

assess liability on the part of a fundraiser or recipient committee that solicits or receives a contribution if the contribution in fact appears to be from a legal source, especially if initial screening efforts resulted in specific assurances of the contribution's legality.[3] In reading the statutory language, it would be better to read in a 'knowledge requirement' analogous to the standard used elsewhere.[4]

The legislative history of the foreign national ban supports this construction. Before the current provision was moved to Title 2 of the *United States Code*, it read: "Whoever *knowingly* solicits, accepts, or receives any . . . contribution from any such foreign national, shall be fined not more than $25,000 or imprisoned not more than 5 years or both [emphasis added]." U.S. Code Cong. and Admin. News, 89th Cong., 2nd Sess., Vol. 1 at 281 (1966).[5]

As part of the Federal Election Campaign Act Amendments of 1976, § 112 of Pub. L. 94-283, the foreign national ban was placed within the FEC's parallel civil enforcement jurisdiction and revised to its current wording. However, there is no plausible reason for believing Congress intended to move to a 'strict liability' approach for persons soliciting, accepting, or receiving what turn out to be foreign national contributions. Indeed the Conference Report makes no reference to such approach.[6] It notes that the Senate bill "*incorporates the provisions of 18 U.S.C. 613*, replacing the criminal penalties," that the House amendment "*is the same as section 613 of title 18, United States Code*, except that the penalties were omitted," and that "[t]he conference

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[3] *See Staples v. United States*, 511 U.S. 600, 606 (1994) ("offenses that require no *mens rea* generally are disfavored"); *Women's Medical Professional Corp. v. Voinovich*, 130 F.3d 187, 204 (6th Cir. 1997), *cert. denied*, 523 U.S. 1036 (1998) (same).

[4] This same approach should be adopted regarding the 'solicitation' restriction in § 441e. It is worth noting that the only other current Federal Election Campaign Act (FECA) provision covering solicitation, the government contractor provision at 2 U.S.C. § 441c, makes it impermissible to "knowingly solicit" a prohibited contribution. The logic of this concept should be used in assessing liability under § 441e. The new Bipartisan Campaign Reform Act provisions prohibit certain solicitations (*e.g.*, national party solicitations of 'soft money,' codified at 2 U.S.C. § 441i(a)), and similar questions of liability may arise where the funds raised are not known to be from 'soft money' sources.

[5] The significance of this concept was not lost on Congress. In 1974, when revising the statute to use the defined term "foreign national" to describe who was covered by the ban, a colloquy between Senators Cannon and Bentsen illustrated the point:

> Mr. Cannon. . . . I know last year there were 4,633,457 registered aliens in this country. . . . [B]y this amendment . . . the Senator is going to impose on the candidate the question of whether he knew or ought to have known that those people were not properly admitted here for permanent residence at the time they made contributions to his campaign. . . .
>
> Mr. Bentsen. . . . I think one comment ought to be made in response to the comment made by the Senator from Nevada. It has been stated that no candidate may knowingly solicit or accept such contributions, so he must knowingly have done it in order to be in violation.

Congressional Record (daily ed. Mar. 28, 1974), pp. S4715-16, reprinted in *Legislative History of Federal Election Campaign Act Amendments of 1974* (GPO 1977), pp. 263-64.

[6] Courts have made note when Congress is silent in legislative history regarding what some view as an intended change in the law. *See Finnegan v. Leu*, 456 U.S. 431, 441 (1982) ("We think it virtually inconceivable that Congress would have prohibited the longstanding practice of union patronage without any discussion in the legislative history of the Act.")

substitute is *the same as the House amendment and the Senate bill* [emphasis added]." H.R. Conf. Rep. No. 94-1057, 94th Cong. 2d Sess. (1976).[7]

During the deliberations in this case, several labels were used to address the degree of knowledge required to establish a violation for soliciting, accepting, or receiving a foreign national contribution. No one was comfortable with a 'strict liability' standard. But the formulations offered instead included: a 'knew or should have known' concept, a 'knew or had reason to know' approach, a 'knew or had sufficient facts to make a reasonable person believe there was a substantial probability' standard, and, finally, a 'willful blindness' test.[8]

At least with regard to DNC liability, though, the starting place for analyzing the *scienter* question was the existing Commission regulations at 11 C.F.R. § 103.3(b). Under those provisions, a committee treasurer is responsible for examining all contributions received for evidence of illegality. *Id*. Contributions that "*present genuine questions as to whether they were made by . . . foreign nationals*, . . . may be, within ten days of the treasurer's receipt, either deposited into a campaign depository . . . or returned to the contributor [emphasis added]." 11 C.F.R. § 103.3(b)(1).[9] If any such contribution is deposited, the treasurer "shall make his or her *best efforts* to determine the legality of the contribution [emphasis added]." *Id*. If a treasurer had no basis for initially believing a contribution presented any "genuine questions," "but later *discovers that it is illegal* based on new *evidence* not available to the political committee at the time of receipt and

[7] Some quick legal scholars would assert that the omission of the word "knowingly" leaves us a clear contrast with other provisions, and the 'plain meaning' of the statutory terms precludes any legislative history analysis. In my view, the odd omission of the term in § 441e creates the very ambiguity that warrants resort to legislative history. *See Public Citizen v. Department of Justice*, *supra*, n. 2 at 455, citing *Boston Sand & Gravel Co. v. United States*, 378 U.S. 41, 48 (1928) (Holmes, J.) ("Looking beyond the naked text for guidance is perfectly proper when the result it apparently decrees is difficult to fathom or where it seems inconsistent with Congress' intention, since the plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.").

[8] Some of these concepts have been used in agency law. *See* Restatement of Agency (Second), § 9 ("A person has notice of a fact if he knows the fact, has reason to know it, should know it, or has been given notification of it."). In the criminal law context, "willful blindness" requires more than a showing that a person "should have known facts of which he or she was unaware." *United States v. Wert-Ruiz*, 228 F.3d 250, 255 (3d Cir. 2000). It requires that a person "himself was subjectively aware of the high probability of the fact in question, and not merely that a reasonable man would have been aware of the probability." *Id*. Stated differently, "a person must suspect wrongdoing and deliberately fail to investigate." *Hard Rock Café Licensing Corp. v. Concession Services Inc*., 955 F.2d 1143, 1149 (7th Cir. 1992).

[9] As the phrasing of the regulation indicates, there must be a genuine question about a crucial element of proving a violation, e.g., that the contribution actually came from foreign sources. In applying the ban on contributions made in the name of another, § 441f, the Commission similarly holds recipient committees liable only where there is evidence they knew or had genuine questions regarding the crucial element of funds being given by one person in another's name. By contrast, with standard excessive contribution situations, the Commission can hold recipient committees liable based solely on knowledge of receipt of the funds, goods, or services and the amount involved. *See FEC v. California Medical Ass'n and California Medical Political Action Committee*, 502 F. Supp. 196 (N.D. Cal. 1980) (PAC held liable for knowingly accepting more than $5,000 per year from related association).

deposit [emphasis added]," the treasurer is to refund the contribution within thirty days. 11 C.F.R. § 103.3(b)(2).[10]

Obviously, the curative measures available in § 103.3(b) would not make sense in a strict liability regime. These regulatory provisions strongly suggest that a recipient committee is not to be subjected to a strict liability standard, and that there must be some "evidence" at the disposal of the treasurer raising a "genuine question" at the outset, or leading to a later "discover[y] that [the contribution] is illegal" in order to impose responsibility.

In the court case that most thoroughly explored these regulatory provisions, *FEC v. Re-elect Hollenbeck to Congress Committee*, Civ. Action No. 85-2239 (D.D.C. 1986) (unpublished opinion), the court dismissed the Commission's case against a recipient committee on the ground that the contribution in question (a $5,000 contribution received by a candidate committee from a state party committee) would appear to be legal "to any reasonable treasurer." *Id*. at 5. The court noted that the FEC's regulation "does not place an affirmative obligation upon treasurers to verify the legality of every contribution." *Id*. at 4. It further stated:

> The "conscious avoidance of positive knowledge" has generally been considered sufficient to establish the element of knowledge in criminal statutes. *See*, *e.g*., *United States v. Jewell*, 532 F.2d 697, 702-03 (9th Cir. *en banc* 1976)(collecting cases). The Court believes it is also sufficient to establish knowledge under the civil penalty provisions at issue here.

Id. at 5. While *Hollenbeck* dealt with § 441a(f), which clearly contains a 'knowing acceptance' standard, it does shed light on the proper interpretation of the Commission's regulations that apply as well to the receipt of foreign national funds. *Supra*. In essence, a committee should be held liable under § 441e only where a contribution upon receipt would raise "genuine questions" regarding foreign national sourcing to a "reasonable treasurer." Further, conscious avoidance of positive knowledge about foreign national sourcing can suffice for liability.

I note that another case dealing with a candidate's receipt of a $5,000 contribution from a state party committee, *FEC v. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D.N.J. 1986), seems to have held a treasurer to a "duty to determine [the contributions's] propriety." But the court reasoned that because the contribution was in excess of $1,000 per election (the contribution limit for everyone other than multi-candidate committees when giving to candidate committees), it "therefore, at first blush, appeared to be illegal." *Id*. In a sense, therefore, the contrast with the *Hollenbeck* decision is not dramatic, since it stems from the unique circumstances arising from the

[10] The Explanation and Justification for this part of the regulation makes clear that it applies to foreign national contributions as well. 52 Fed. Reg. 768-69 (Jan. 9, 1987) ("This provision applies, for example, to prohibited corporate contributions made in the name of employees, . . . as well as contributions from foreign nationals . . . when there is no evidence of illegality on the face of the contributions themselves.").

contribution limits at play in both cases. *Hollenbeck*, though it reached a different conclusion on whether the contribution in question appeared to be illegal, seems to be on solid ground for the proposition that § 103.3(b) frames the analysis and the regulation in turn hinges on a "genuine question" and "reasonable treasurer" test. Further, nothing in *Dramesi* contradicts *Hollenbeck's* suggestion that if there are signs a committee official "consciously avoided positive knowledge" of foreign sourcing, the line has been crossed.[11]

With regard to the liability of fundraisers themselves, as distinguished from the recipient committee, it seems that the same concepts can and should be applied. Thus, as I considered the liability of John Huang and Charlie Trie, the central question was whether they knew about the foreign source of the moneys collected, or whether a reasonable person in their situation would have concluded there was a genuine question about the source. In some situations involving these two fundraisers, there clearly was a basis for concluding they had liability. In other situations, I believed the foregoing legal parameters warranted rejecting the General Counsel's recommendations.

II. DNC liability for acts of agents

In a general sense, the FEC can and should use agency principles to help determine liability. Ordinarily, an agent's actions should lead to liability on the part of the principal. *See* Restatement of Agency (Second) (1958), § 272 ("[T]he liability of a principal is affected by the knowledge of an agent concerning a matter as to which he acts within his power to bind the principal . . . ."); § 217D ("A principal may be subject to penalties enforced under the rules of criminal law, for acts done by a servant or other agent.").

In several situations where there were disagreements with the General Counsel's recommendations regarding DNC liability, it seemed that the purported agents were either themselves without the requisite *scienter*, as discussed above, or were withholding crucial information from other party operatives that would have allowed the latter to prevent the acceptance or receipt of the impermissible funds at issue. It seems fairly axiomatic that if *scienter* is an element of establishing a violation, an agent's lack of *scienter* prevents liability on the part of the principal. Beyond that, if an agent is preventing the principal from having relevant information that in all probability would have prevented the problem caused by the agent, basic notions of prosecutorial discretion call for options other than citing the principal for a violation of law.[12]

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[11] Of the several tests mentioned during the Commission's deliberations in this matter, this comes closest to a "willful blindness" test, in my view.

[12] In the area of agency law, "[t]he principal is not affected by the knowledge of an agent as to matters involved in a transaction in which the agent deals with the principal or another agent of the principal as . . . an adverse party. Restatement of Agency (Second) (1958), § 279. In the criminal law context, "[i]gnorance . . . of fact, at least if reasonable, and not due to carelessness or negligence, is a defense if it negatives a mental state required as an element of the offense charged. 21 Am. Jur. 2d, Criminal Law, § 141 (1981). *Compare*, Restatement of Agency (Second) (1958), § 282 ("A principal is not affected by the knowledge of an agent in a transaction in which the agent secretly is acting adversely to the principal

Several of my votes against the recommendations of 'probable cause' stemmed from application of the prosecutorial discretion concept.[13] Where an agent arguably knew (or consciously avoided knowledge) about foreign sourcing, but prevented DNC staff from knowing crucial facts, it seemed much more appropriate to deal with the DNC's receipt and use of what turned out to be impermissible funds by assuring that all such funds were returned or disgorged. That is the approach contemplated by the Commission's regulations at § 103.3(b)(2) (return once the illegality is discovered), and that is the approach the Commission routinely has taken over the years with recipient committees that only later get solid information that certain receipts were from impermissible sources. *See* Advisory Opinion 1991-39, Fed. Elec. Camp. Fin. Guide (CCH) ¶ 6042 (letter from Department of Justice triggered candidate committee's obligation to disgorge tainted contributions); MUR 3460 General Counsel's Report dated Aug. 12, 1994, at 3, FEC Public Records MUR Index (Commission approved letters to four candidate committees requesting disgorgement).

Some might argue that citing the DNC for violations and seeking a civil penalty, even regarding situations where its agents did not have the requisite *scienter* or deprived superiors of such *scienter*, might lead to more rigorous screening procedures by the regulated community in the future. My sense, though, is that the regulated community has been on 'high alert' regarding foreign donations since stories started appearing in the press in the Fall of 1996. I would need some indication the same problem is widespread before considering such a deterrence factor.[14]

III. Application of facts to foregoing legal concepts

In most respects, the critical facts noted by my colleagues who voted as I did in the various statements of reasons issued thus far are the facts I relied on for my votes against the General Counsel recommendations.[15] I therefore concur in the factual

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and entirely for his own or another's purposes, except . . . if the failure of the agent to act upon or to reveal the information results in a violation of a . . . relational duty of the principal to a person harmed thereby . . . or . . . if before he has changed his position the principal knowingly retains a benefit through the act of the agent which otherwise he would not have retained.").

[13] *See Butz v. Economou*, 438 U.S. 478, 515 (1978) ("The decision to initiate administrative proceedings against an individual or corporation is very much like the prosecutor's decision to initiate or move forward with a criminal prosecution. An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought."); *Arnold v. Commodity Futures Trading Commission*, 987 F. Supp. 1463, 1468 (S.D. Fla. 1997) ("Administrative agencies have significant discretion, analogous to that of a criminal prosecutor, in choosing their targets in administrative enforcement proceedings.")

[14] *Hotline's* April 18, 2001 edition noted a *New York Post* article about a New Jersey businessman and Republican fundraiser who pled guilty to lying to investigators about $15,000 from a South Korean company being funneled through several straw donors to the 1998 re-election campaign committee of former Senator Alphonse D'Amato. Compared to the 1996 election cycle, this appears to be a rather isolated occurrence.

[15] Sandstrom Statement of Reasons re DNC liability for K & L International Inc. donation, July 30, 2002; Mason/ Sandstrom/Smith Statement of Reasons re DNC liability for some of contributions raised through

analysis presented in those statements and will not repeat such evidence here. There are a few additional points that bear mention.

Regarding the DNC's possible liability for receipt of the $150,000 contribution from K & L International Inc. (K & L) using Il Sung Construction Company funds, it was apparent that the DNC operative, Mr. Wallace, did inform the K & L consultant, Mr. Lee, that contributions by foreign national corporations were prohibited. General Counsel's Brief of January 22, 2001, pp. 139,140. While there was contradictory evidence about whether further specific advice against laundering foreign money through a U.S. corporation was discussed, *id*., the evidence points out that DNC operatives were attempting in some measure to prevent illegal foreign donations. While all would now agree that party committees would be well served by a very clear recitation of all major aspects of the foreign national ban to all fundraisers and all donors, this particular instance in 1996 shows how a fairly clear warning to a donor did not lead that donor to share relevant information with DNC operatives. Thus, even though Mr. Lee appears to have had knowledge about the foreign sourcing, it is inappropriate to conclude the DNC had "genuine questions" along such lines.

This scenario exemplifies one other aspect of this case that made our determinations difficult. As in other instances, officials who appeared to be either U.S. citizens or permanent resident aliens associated with a U.S. corporation (Mr. Lee and Mr. Kim) arranged to bring to a fundraising event persons who were not citizens or permanent resident aliens. The General Counsel fairly argued that this should weigh in an analysis of whether the fundraiser involved, or higher level operatives at the party committee, had "genuine questions" regarding the foreign sourcing of the otherwise apparently legal donation. Looking at the situation in hindsight, this seems like an appealing argument. Yet, in the 1996 timeframe before other evidence of foreign money laundering surfaced, the mere fact that someone making a donation invited a foreign national to a related event would not have raised a "genuine question" to a reasonable person. In the modern global economy, there would have been little reason to question U.S. business officials seeking to make better government connections for their foreign-

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Hsi Lai Buddhist Temple, Aug. 5, 2002; Mason/Sandstrom Statement of Reasons re DNC liability for Ying Chiu Tien contribution, Aug. 2, 2002; Sandstrom/Smith Statement of Reasons re DNC liability for Yogesh Gandhi donation, Aug. 12, 2002; Sandstrom/Smith Statement of Reasons re DNC liability for Sy Zuan Pan contribution, Aug. 12, 2002; Sandstrom Statement of Reasons re DNC liability for Kanchanalak and Kronenberg donations, July 30, 2002; Mason/Sandstrom/Smith Statement of Reasons re DNC liability for Global Resource Management Inc. donation, Aug 5, 2002; Sandstrom Statement of Reasons re DNC liability for Elnitiarta and Panda Estates Investment Inc. donations, July 30, 2002; Mason/Sandstrom Statement of Reasons re DNC liability for Kyung Hoon "John" Lee contribution, Aug. 2, 2002; Sandstrom Statement of Reasons re DNC liability for Wiriadinata donations, July 30, 2002; Mason/Sandstrom Statement of Reasons re DNC liability for Subandi Tanuwidjaja donation, Aug. 2, 2002; Mason/Sandstrom/Smith Statement of Reasons re Dennis Eckart liability for Global Resource Management Inc. donation, Aug. 5, 2002; Mason/Sandstrom Statement of Reasons re John Huang liability for John Lee contribution, Aug. 2, 2002; Mason/Sandstrom Statement of Reasons re John Huang liability for Elnitiarta and Panda Estates Investment Inc. donations, Aug. 2, 2002; Mason/Sandstrom Statement of Reasons re John Huang liability for donations connected to Yah Lin "Charlie" Trie, Aug. 2, 2002; Sandstrom/Smith Statement of Reasons re Huang liability for Yogesh Gandhi donation, Aug 12, 2002; Sandstrom Statement of Reasons re Yah Lin "Charlie" Trie liability for Yogesh Gandhi donation, July 30, 2002.

based associates. These arrangements may point to the crude connection between many political donations and government access, but they do not necessarily connect attendees at events with the actual source of the donation. That said, the experience of the 1996 election might warrant different results in subsequent election cycles. Political committees surely are now on notice that foreign guests at fundraising events can lead to serious complications.

The 3-3 vote on finding probable cause the DNC violated § 441e and § 441f (regarding federal account deposits) stemming from contributions or donations made by Yah Lin "Charlie" Trie or his wife or his companies warrants some explanation.[16] While the Commission was able to agree on 'probable cause' findings regarding other contributions or donations facilitated by Trie, *see* ¶ IV, 17 of DNC Conciliation Agreement, funds from Trie, Trie's wife, or Trie's companies presented different circumstances. It is only with respect to the funds that Trie began forwarding to the DNC in the names of donors other than himself, his wife, or his companies, that Trie clearly assumed the mantle of being an agent of the DNC. Only then was he unquestionably acting on behalf of the DNC to solicit, accept, or receive funds for the party. When providing his own funds, or those of his wife or companies, he was simply acting in the role of a donor.[17] For this reason, I could not vote for DNC liability based on Trie's actions. Nor was there evidence from other sources that would have given the DNC knowledge or "genuine questions" regarding the foreign source of the contributions and donations provided in the name of Trie, Trie's wife, or Trie's companies.

Another vote needing some explanation is the 3-3 vote regarding John Huang's liability for soliciting, accepting, or receiving the contributions and donations from Arief and Soraya Wiriadinata that were in fact funded by Hashim Ning, Soraya's father.[18] At least in my mind, there simply was not sufficient evidence that "genuine questions" were presented to Huang regarding the source of these funds. That is not to say this wasn't a very bizarre set of circumstances. The fact that the Wiriadinatas left the country and provided Huang a series of checks for him to submit to the DNC at his discretion seems odd at the least. But it appears that from Huang's perspective these two individuals were themselves permissible donors (being permanent resident aliens) and they came from a wealthy family. *See* General Counsel's Brief, p. 16, n. 17. While Huang had worked with the father before and knew him well, there was not sufficient evidence that Huang had genuine questions about the father being the source of the funds at issue.

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[16] Commissioners McDonald and Sandstrom joined me in opposition. No other Statement of Reasons has been written to date regarding this set of facts.

[17] The investigation did adduce that Trie was given the honorific titles of "Vice-Chair" for the 1994 Presidential Birthday Celebration and "vice chair" of the DNC's Finance Board, and that he became a "managing trustee" of the DNC. I have the sense these are titles emanating from donor status, rather than fundraiser status. Nonetheless, it is difficult to apply the agent concept when dealing with donations by Trie, Trie's wife, or Trie's companies.

[18] Commissioners McDonald and Sandstrom joined me in the vote. To date, no other Statement of Reasons has been issued regarding this vote.

Clarification also is needed about the 3-3 vote regarding Huang's § 441e liability for donations made by Duangnet Kronenberg.[19] While Huang could be found liable for *soliciting* a foreign national donation from Pauline Kanchanalak (since she indeed was a foreign national herself),[20] any entreaties for funds from Ms. Kronenberg would not cross that line because she was a permanent resident alien entitled to make contributions or donations. Further, there was insufficient evidence to determine that Huang would have had "genuine questions" about the source of Ms. Kronenberg's funds such that he could be found to have solicited, accepted, or received foreign contributions through her.

Finally, as to the 3-3 vote regarding John Huang's § 441b and § 441f liability regarding Kanchanalak and Kronenberg checks reimbursed by funds from AEGIS Capital Management Limited and Ban Chang International (USA),[21] there was insufficient evidence that Huang knew or had "genuine questions" about the role of these two entities. The checks he was receiving and passing along to the DNC were from individuals, and Ms. Kanchanalak was deliberately hiding the actual source of the donations in order to facilitate her plan to build 'connections' to government officials through political giving. General Counsel's Brief of Jan. 22, 2001, pp. 90-92, 101.

IV. Conclusion

The Commission patiently and thoroughly followed up on the multiple investigations of the 1996 election by congressional committees and the Department of Justice. Where loose ends remained, the Commission acted. Much of the illegal money that was donated to the DNC was provided by means that prevented the DNC from knowing it was illegal. In the end, the DNC's liability was confined to those situations where the facts should have raised "genuine questions" on the part of DNC fundraisers or staff. Indeed, the conciliation agreement reached with the DNC outlines $280,000 raised by John Huang, $239,500 raised by "Charlie" Trie, and $275,000 raised by "Johnny"

[19] Commissioners McDonald and Sandstrom joined me in the vote. To date, no other Statement of Reasons has been issued regarding this vote.

[20] *See* John Huang Conciliation Agreement, ¶ IV 18,19, 21, 23. The evidence warranting this finding regarding Huang, but not the DNC, is largely circumstantial. Huang repeatedly was in direct contact with Pauline Kanchanalak during the relevant timeframe, whereas other higher-level DNC officials did not seem to have this degree of interaction. The General Counsel provided some information that almost led me to find probable cause regarding DNC liability for soliciting Kanchanalak. Apparently, Kanchanalak had advised one official at the DNC in 1992 that her mother-in-law was the donor of funds in that time-frame. S*ee* General Counsel's January 22, 2001 Brief at 102,103. Further, the DNC had a White House event form suggesting Pauline Kanchanalak held a foreign passport. *Id*. at 105, 106. Nonetheless, this is one of those situations where it seemed inappropriate to make findings of violations against the DNC. Kanchanalak clearly was going out of her way to prevent others from knowing who was behind the "P. Kanchanalak" funds.

[21] Commissioners McDonald and Sandstrom joined me in this vote. To date no other Statement of Reasons has been issued regarding this vote.

Chung that warranted DNC liability. As for the fundraisers and donors in question, the Commission also reached conciliation agreements with many of them as well, outlining their violations and obtaining as much civil penalty as possible. On balance, therefore, the Commission can claim success on one of its most important chapters ever.[22]

9/18/02	/ s /
Date	Scott E. Thomas Commissioner

[22] By contrast, the Commission stumbled badly, in my view, when in MUR 4250 three commissioners blocked a 'probable cause' finding regarding the Republican National Committee and thereby completely terminated a proceeding where there was strong evidence that party officials not only knew about the foreign source of $1.6 million that ended up in RNC coffers but carefully constructed the transactions to route the money through an entity set up and controlled by the RNC. *See* Thomas and McDonald Statement of Reasons in MUR 4250 dated Jan. 28, 2000, available at fec.gov/members/thomas. While affording judicial deference to the three blocking commissioners in a related criminal proceeding, the D.C. Circuit noted, "[I]t is not necessary for a court to find that the agency's construction was the only reasonable one or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *In re Sealed Case*, 223 F.3d 775 (D.C. Cir. 2000), *citing FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 39 (1981).