



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3822

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FEDERAL ELECTION COMMISSION
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LAW OFFICES

MARTIN, MEYER, ROTHENBERG, GOERGEN & HENLEY 91 FEB -4 AM 9:01

A PROFESSIONAL CORPORATION

3412 CUTSHAW AVENUE

RICHMOND, VIRGINIA 23230-5033

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OF COUNSEL
LEWIS W. MARTIN

BERNARD G. MEYER, JR.
RICHARD S. ROTHENBERG
PETER J. GOERGEN
ROBERT E. HENLEY, III
RANDOLPH C. ROBERTSON
BRADLEY P. MARRS
BRIAN K. STEVENS
JOHN L. EHRLER

MUR 3222

January 30, 1991

Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

91 FEB -4 PM 3:53

RECEIVED
FEDERAL ELECTION COMMISSION
GENERAL COUNSEL

Re: Joseph Elton
v.
Robb for Senate Committee,
Robert Watson and David K. McCloud

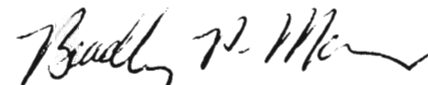
Dear Ms. Lerner:

Thank you for your recent letter, stating the requirements for filing a complaint with the FEC. In comparing the requirements stated in your letter with the Complaint previously submitted to your office, I find that the only shortcoming of the prior Complaint was the failure to provide a notarized affidavit from Mr. Elton.

I now enclose a new draft of the Complaint, with the notarized affidavit included. I ask that you begin your proceedings in this matter immediately.

If your office requires anything further to begin handling this matter, please do not hesitate to call me and I will endeavor to meet your requests as quickly as possible.

Sincerely,



Bradley P. Marrs

BPM/kcn
Enclosure

cc: Joseph Elton
Tony Buckley

21040350005

BEFORE THE FEDERAL ELECTIONS COMMISSION

JOSEPH ELTON,

Complainant,

v.

ROBB FOR SENATE COMMITTEE

ROBERT WATSON

and

DAVID K. MC CLOUD,

Respondents.

COMPLAINT

Complainant Joseph Elton, by counsel, respectfully represents unto the Federal Elections Commission as follows:

1. Mr. Elton is the Executive Director of the Republican Party of Virginia,

2. Robert Watson and David K. McCloud are agents or employees of the 1988 Robb for Senate Committee, with Mr. McCloud serving as that committee's chairman.

3. Respondent McCloud is the signatory for the Robb for Senate Committee

in MUR 2673.

4. By letter dated August 28, 1990, the Robb for Senate Committee, acting through David K. McCloud, made direct contact with the chairman of this Commission, Lee Ann Elliot, in an

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attempt to influence the course of the Commission staff's investigation in MUR 2673. McCloud apparently sent copies of his letter to Chairman Elliot and to every other member of the Commission as well. A copy of the August 28, 1990 letter is attached as Exhibit A to this complaint.

5. By sending the August 28, 1990 letter to members of the Commission, McCloud and the Robb for Senate Committee violated federal laws and regulations prohibiting ex parte contact with members of the Commission, and attempted to exert undue pressure on members of the Commission by bringing to bear the influence of the office of a sitting United States Senator.

6. Respondents McCloud and Watson, still acting on behalf of the Robb for Senate Committee, distributed copies of their August 28, 1990 letter to various members of the news media, including Brett Blackledge of the Fairfax Journal, George Archibald and Jim Clardy of The Washington Times, and other news organizations and representatives. A copy of The Washington Times article written by Messrs. Archibald and Clardy, dated September 26, 1990, is attached as Exhibit B to this complaint; that article reveals that its authors had been provided with a copy of the August 28, 1990 letter.

7. By providing the news media with copies of their letter, which contained confidential information concerning MUR 2673, all three respondents violated federal laws and regulations prohibiting disclosure of confidential matters pending before the

Commission.

8. In a further attempt to manipulate and unduly influence the Commission staff in its handling of MUR 2673, respondent Watson arranged a personal meeting with Stephen Haner, Executive Director of the Joint Republican Caucus of the Virginia General Assembly. During this personal meeting, Watson threatened to add Mr. Haner as a respondent in MUR 2673 unless Mr. Haner presented testimony to this Commission in support of the allegations of the Robb for Senate Committee.

9. While Mr. Elton has no knowledge of what, if any, statements Mr. Haner may have made to this Commission, under oath or otherwise, he respectfully submits that Mr. Watson's activities were violative of federal laws and regulations governing proceedings before this Commission in that (a) they tended to suborn perjury, and (b) they may have involved the disclosure to Mr. Haner by Mr. Watson of confidential matters related to the Commission's proceedings in MUR 2673.

WHEREFORE, complainant Joseph Elton prays that this Commission will begin a preliminary investigation into the activities of Robert Watson, David K. McCloud, and the Robb for Senate Committee; that this Commission will find probable cause to believe that one or more violations of federal laws or regulations have been committed by the respondents; that the Commission will refer such matters for criminal prosecution as it may deem appropriate; and that this Commission will take such

other equitable or punitive action as may be authorized by law.

JOSEPH ELTON

By Bradley P. Marrs
Counsel

Bradley P. Marrs
MARTIN, MEYER, ROTHENBERG
GOERGEN & HENLEY, P. C.
3412 Cutshaw Avenue
Richmond, Virginia 23230-5033
(804) 257-7255

I affirm under penalty of perjury that the allegations set forth in this Complaint are true, to the best of my knowledge.

Joseph Elton
Joseph Elton
6627 Greenvale Drive
Richmond, Virginia 23225

STATE OF VIRGINIA

CITY OF RICHMOND, to-wit:

Sworn to before me this 30th day of January, 1991, by Joseph Elton.

Kimberly C. Nuckols
Notary Public

My Commission expires: 6-26-93

EXHIBIT A

ROBB FOR SENATE
12 Forest Hills Drive
Luray, Virginia 22835

August 28, 1990

Lee Ann Elliot, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2673

Dear Madam Chairman:

I write to you, in frustration, following the second anniversary of the Robb for Senate Campaign's initial filing in the above-captioned proceeding. In the 24 months since I filed that complaint, the Commission has neither completed this proceeding nor provided any information to us on whether or when it will reach a decision in this case. During that time, rumors about the case have continued to circulate, and because the Robb Campaign has followed the Commission's standard of confidentiality, we have been severely limited in our ability to respond to an array of unfounded rumors and a political cover-up not seen since the Watergate scandal.

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FEDERAL ELECTION COMMISSION

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Lee Ann Elliot, Chairman
Federal Election Commission
August 28, 1990
Page 2

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Lee Ann Elliot, Chairman
Federal Election Commission
August 28, 1990
Page 3

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Lee Ann Elliot, Chair
Federal Election Commission
August 28, 1990
Page 4

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Lee Ann Elliot, Chairman
Federal Election Commission
August 28, 1990
Page 5

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Lee Ann Elliot, Chairman
Federal Election Commission
August 28, 1990
Page 6

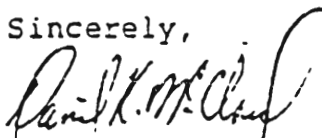
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Lee Ann Elliot, Chair
Federal Elections Commission
August 28, 1990
Page 7

The Campaign also requests that this proceeding be brought promptly to a close. The Commission should have sufficient information about Billy Franklin's employer and his connections to the Republican Party of Virginia by now. Two years is a long time, particularly when other interested parties have not felt themselves constrained by the Commission's rules.

As you know, I have had the opportunity to speak with the Commission staff only once since this complaint was filed in August 1988, and have received no acknowledgment of our last letter of May 18 to the Commission. I hope that you will be able to sort through these issues in the near future and I stand ready, as I have throughout, to aid the Commission in any way necessary.

Sincerely,



David K. McCloud

cc: Mr. John W. McGarry
Ms. Joan D. Aiken
Mr. Danny L. McDonald
Mr. Scott E. Thomas
Mr. Thomas Josefiak
Mr. David G. Gartner
Lawrence M. Noble, Esq.
Anthony Buckley, Esq.

91040350076

State GOP involved in '88 Robb probe

By George Annabi
and Jim Clardy
THE WASHINGTON TIMES

Virginia State Republican Chairman Donald W. Huffman and the party's executive director personally solicited and accepted contributions from GOP donors in 1988 to continue a private detective's probe of then-Democratic Senate candidate Charles Robb's social life, The Washington Times has learned.

The Federal Election Commission, acting on a complaint by Mr. Robb's campaign committee, has spread a wide net in an investigation of alleged improper campaign activities by the state Republican Party, sources said yesterday.

About a dozen state GOP officials, office holders and contributors have been subpoenaed in the FEC

probe and many have already testified — some more than once — the sources involved in the investigation said. The FEC inquiry will continue at least through next month, the sources said.

The FEC is investigating whether the 1988 probe of Mr. Robb's social life by Norfolk private detective Billy A. Franklin was an improper contribution to Mr. Robb's Republican opponent, Maurice Dawkins.

Mr. Franklin disclosed Monday that he was retained and paid by Richmond obstetrician Lewis H. Williams — not the state GOP Dr. Williams, a Republican who narrowly lost a bid for Congress from Richmond's 3rd District in 1962, is out of the country and could not be reached for comment.

Mr. Franklin was investigating whether Mr. Robb had ties to drug

dealers and prostitutes while he was governor from 1982 to 1986, and reports that he attended parties in Virginia Beach where cocaine was used.

Mr. Robb has denied ever seeing, possessing or using cocaine, but acknowledged that he may have been "naive" about people in his social circle, several of whom were indicted and convicted of drug trafficking.

While no detrimental information about Mr. Robb's social life was formally released by Mr. Franklin or Dr. Williams during the 1988 Senate campaign, the Norfolk detective personally shared information and leads with many news organizations following the story during the Robb-Dawkins race.

Mr. Robb won the election handily. Through the FEC complaint, the senator is now trying to stop Mr. Frank-

lin from publishing a book that details whatever he learned about Mr. Robb.

According to the detective, Dr. Williams "ran out of money" in mid-1988 and Mr. Franklin continued the probe at his own expense.

However, Dr. Williams actually informed state GOP officials months earlier that he could not finance the Robb investigation alone. The Times was told yesterday. The physician requested their help in raising funds to continue the probe, said one source involved in the effort.

Mr. Huffman personally solicited funds for the probe from party contributors throughout the state and enlisted several GOP state legislators to assist the fund-raising, the source said.

On at least one occasion, at Mr. Huffman's request, a GOP patron

gave \$500 in cash for the probe, a source involved in the FEC inquiry said. The contributor handed the cash in an envelope to GOP Executive Director Joe Elton at a Republican gathering in Roanoke to be forwarded to Dr. Williams in Richmond, the source said.

Mr. Huffman and Mr. Elton have repeatedly denied any connection with the Williams-Franklin probe.

"The Republican Party of Virginia has not contributed to Billy Franklin's investigation," Mr. Elton said yesterday.

Mr. Elton also denied any involvement by him or the state GOP in the probe of Mr. Robb. He declined to comment on the scope of the FEC probe.

Mr. Huffman could not be reached

see ROBB, page B2



Sen. Charles Robb

ROBB

From page B1

for comment yesterday.

GOP officials told The Times that Dr. Williams initiated the probe of Mr. Robb on his own after a widely known, lengthy investigation of the former governor's private life by a Norfolk Virginian-Pilot reporter in 1988 resulted in no story.

The newspaper ultimately published a lengthy story in August 1988 about Mr. Robb's partygoing and alleged involvement with women and drug-users, but the Williams-Franklin probe continued.

David McCloud, Mr. Robb's chief of staff and former campaign chairman, charged in a letter to the FEC

on Aug. 28 that Mr. Huffman and Mr. Elton asked for donations at the Republican Commonwealth Gala Dinner in February 1988 to help fund the probe.

Following the fund-raiser, Mr. McCloud said, individual Republican donors were directed to Mr. Huffman's hotel suite where the GOP chairman and Mr. Elton sought cash contributions to pay Mr. Franklin.

The gala at Richmond's Jefferson Sheraton Hotel raised about \$50,000 for party coffers. Yesterday, Mr. Elton said that "no funds collected for the Commonwealth Gala dinner were diverted to Billy Franklin."

State Democrats have charged that Mr. Franklin's expenses were defrayed by Republican donations and that his fees should therefore be

listed as a campaign contribution in accordance with FEC rules.

They also said that if state Republicans leaked the findings of Mr. Franklin's investigation to the press in an attempt to embarrass Mr. Robb during the 1988 campaign, the detective's fees are subject to federal campaign disclosure laws.

The FEC's findings will remain confidential unless violations of federal campaign disclosure laws are charged, according to an FEC official.

Some Republicans said yesterday, however, they would demand a general housecleaning within the party if evidence comes to light that GOP leaders had been connected with Mr. Franklin's investigation regardless of whether any laws were broken.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 1991

Joseph Elton
c/o Bradley Marrs, Esq.
Martin, Meyer, Rothenberg,
Goergen & Henley
3412 Cutshaw Avenue
Richmond, VA 23230-5033

RE: MUR 3222

Dear Mr. Elton:

This letter acknowledges receipt on February 4, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Robb for the Senate and Alson H. Smith, Jr., as treasurer, David K. McCloud and Robert L. Watson. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3222. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 376-3110.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

21040350078



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 7, 1991

Robert L. Watson
113-115A South Third Street
Richmond, VA 23219

RE: MUR 3222

Dear Mr. Watson:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3222. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

21040350079


Robert L. Watson
Page 2

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

21040350080



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 7, 1991

David K. McCloud
Russell Office Building
Room 493
Washington, D.C. 20510-4603

RE: MUR 3222

Dear Mr. McCloud:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3222. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

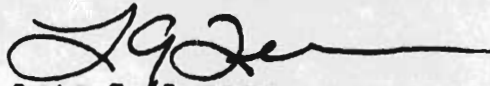
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David K. McCloud
Page 2

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel



BY: Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

21040350082



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 7, 1991

Alson H. Smith, Jr., Treasurer
Robb for the Senate
12 Forest Hills Drive
Luray, VA 22835

RE: MUR 3222

Dear Mr. Smith:

The Federal Election Commission received a complaint which alleges that Robb for the Senate and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3222. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

21040350083


Alson H. Smith, Treasurer
Page 2

If you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 376-5690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

1. Complaint
2. Procedures
3. Designation of Counsel Statement

cc: Senator Charles Robb
Russell Office Building
Room 493
Washington, D.C. 20510-4603

21040350034

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BEFORE THE FEDERAL ELECTION COMMISSION

JOSEPH ELTON,
Complainant,

v.

MUR 3222

ROBB FOR SENATE COMMITTEE,
ROBERT WATSON, AND
DAVID K. MCCLOUD,
Respondents

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FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

ANSWER AND MEMORANDUM IN SUPPORT OF DISMISSAL

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Now comes the Robb for Senate Committee, Robert Watson, and David K. McCloud (Respondents) and state the following in response to the Complaint filed by Complainant Joseph Elton (Elton) in this matter and received by Respondents on February 8, 1991:

1. Respondents neither admit nor deny the allegations in Paragraph 1 of the Complaint.

2. Respondents admit that David K. McCloud is the chairman of the Robb for Senate Committee as alleged in Paragraph 2 of the complaint. Robert Watson has no official affiliation with the Robb for Senate Committee.

3. Respondents admit that David K. McCloud filed a Complaint, and subsequent documents at the request of the Commission, in MUR 2673.

4. Respondents admit that David K. McCloud sent a letter to Lee Ann Elliot, Chairman of the Federal Election Commission on August 28, 1990, and copied the other members of the Commission, and deny the remaining allegations of Paragraph 4.

5. Respondents deny each and every allegation of Paragraph 5 of the Complaint.

6. Respondents admit that David K. McCloud provided a copy of his August 28, 1990 letter to Brett Blackledge of the Fairfax Journal as alleged in Paragraph 6 of the Complaint. Neither Mr. McCloud nor Mr. Watson had contact with George Archibald or Jim Clardy of the Washington Times.

7. Respondents deny the allegations of Paragraphs 7, 8, and 9 of the Complaint.

MEMORANDUM IN SUPPORT OF DISMISSAL

1. Complainant Elton does not, and cannot, support his allegations that the Respondents have violated the Federal Election Campaign Act or FEC regulations.

2. This is the second, and we hope the last, time Respondents have been called upon to answer a baseless complaint about their efforts to obtain a Commission decision in MUR 2673. In MUR 2980, Billy Franklin, a private investigator who Respondents have alleged has worked for Mr. Elton and the Republican Party of Virginia, alleged that Respondents had violated the Commission's confidentiality rules by providing copies of their pleadings in MUR 2673 to reporters. On December 14, 1989, the Commission determined that there was no reason to believe that Respondents had violated the confidentiality rules.

A. RESPONDENTS HAVE COMPLIED WITH THE EX PARTE RULE

3. Elton clearly does not understand the Commission's ex parte rule which prohibits "communication[s] relative to the factual or legal merits of any enforcement action," 11 C.F.R. Sec. 111.22, if he believes that Respondents' August 28 letter to Chairman Elliot violated the rule.

4. That letter merely sets forth the Respondents' frustration with the length of time the Commission was taking to resolve the issues in MUR 2673, now more than two years, and the hardship caused to the interested parties by the lack of resolution.

5. The letter made reference only to publicly available information and expressed concern about the public comments about that proceeding being made

6. Mr. McCloud's letter specifically avoided comment on information available only in its pleadings in MUR 2673.

7. The Commission itself recognized that the letter was not about the factual or legal merits of MUR 2673 in its September 19 letter to Mr. McCloud. In that letter, the Commission reminded Respondents that if they wished to file a complaint

they needed to file a sworn and notarized complaint. See Exhibit A.

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8. Respondents consulted with counsel in drafting the August 28, 1990 letter and intentionally limited the scope of the letter to avoid discussion of any notification sent by the Commission, any aspect of the investigation conducted by the Commission, or the factual or legal merits of the underlying MUR.

B. RESPONDENTS HAVE NOT MISUSED THE OFFICE OF A SITTING UNITED STATES SENATOR

9. Elton's contention that Respondents sought to improperly influence the Commission by bringing to bear the influence of the office of a sitting Senator is baseless. The August 28 letter in question was sent by the Robb for Senate Committee on Robb for Senate letterhead, not official Senate stationery.

10. Inquiring about the status of one's case before the Commission (since the Commission does not communicate with Complainants once the Complaint is filed), is a normal activity, and expressing frustration about delays in that process after two years is clearly reasonable. The logical outcome of Elton's position, an outcome the Commission clearly would not support, is that elected officials are not entitled to the same protections of the law as private individuals seeking redress from the Commission.

C. RESPONDENTS HAVE CONSISTENTLY RESPECTED THE COMMISSION'S CONFIDENTIALITY REQUIREMENTS

11. Since the August 28 letter did not constitute a pleading in MUR 2673 and discussed publicly available information only, it could not have violated the confidentiality provisions of the Commission's rules. As the Commission noted in its September 19 letter to the Respondents,

the Commission's confidentiality requirements do not prohibit an individual from publicizing knowledge available to him independent of action by the Commission.

FEC Letter to David K. McCloud (September 19, 1990)(Exhibit A).

12. And, as the Commission noted in dismissing Mr. Franklin's similarly baseless complaint against Respondent McCloud in MUR 2980,

The Commission has consistently held that this prohibition [the confidentiality rule] does not prevent a complainant from releasing the fact that a complaint

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has been filed, or from releasing the substance of that complaint. See, e.g., MUR 2142.

FEC First General Counsel's Report, MUR 2980 (December 14, 1989) (Exhibit B).

13. Since the August 28 letter did not discuss information gleaned from Commission communications, which were not, in any event, available to Respondents, discussed only publicly available information, and did not constitute a pleading in MUR 2673, there are no restrictions on Respondents' right to disseminate copies of the letter to the media or anyone else.

D. ELTON'S ALLEGATION THAT RESPONDENT WATSON THREATENED ANYONE IS GROUNDLESS

15. As for Complainant's allegations about conversations between Mr. Watson and Mr. Haner, the suggestion that intimidation could possibly have been involved is ludicrous. Mr. Haner and Mr. Watson have known each other for years in political circles in Richmond. They met in June of 1989, at Mr. Haner's request, to discuss the Robb campaign's allegations that the Republican Party of Virginia had hired private investigator Billy Franklin to investigate Senator Robb.

16. Mr. Haner told Mr. Watson that he was not involved in the hiring of Franklin, but that he believed that Elton had been.

17. Mr. Elton's concern for Mr. Haner's welfare is touching, but Respondents fail to see how Mr. Elton has standing to raise such a claim and suspect he is more concerned about testimony Mr. Haner may have given to the Commission implicating Mr. Elton in illegal activity.

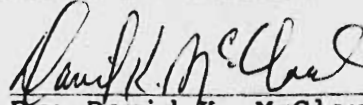
18. Furthermore, Mr. Elton's suggestion that a violation of the Act has occurred because Mr. Elton imagines that Mr. Watson might have disclosed confidential matters relating to the Commission's proceedings in MUR 2673 to Mr. Haner, who is affiliated with the very people alleged to be behind the illegal activities involved in that proceeding is patently absurd, and a waste of the Commission's time.

CONCLUSION

WHEREFORE, Respondents request that the General Counsel recommend that the FEC dismiss the Complaint in this matter and urge the FEC to refuse to provide a forum for this baseless complaint.

Respectfully submitted,

Robb for Senate Committee,
Robert Watson, and
David K. McCloud

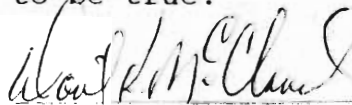


By: David K. McCloud

DATED: February 22, 1991

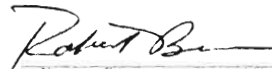
VERIFICATION

I have read the foregoing amendment and know the contents thereof, and the same is true of my own knowledge, except to those matters therein stated on information and belief, and as to those matters, I believe them to be true.



David K. McCloud

The above-signed person, known to me to be David K. McCloud, personally appeared before me this 22 day of February, 1991, and acknowledged the contents of this Amendment to be true for the uses and purposes set forth therein.



My commission expires: Oct. 1, 1991

21040350039



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 19, 1990

David K. McCloud
Robb for Senate
12 Forest Hills Drive
Luray, Virginia 22835

RE: MUR 2673

Dear Mr. McCloud:

This is to acknowledge receipt of your August 28, 1990 letters regarding the above-captioned matter.

To the extent your August 28th letter was meant to be a complaint

or to the extent your letter was meant to supplement your previous complaint, the Act and Commission Regulations require that the contents of a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter did not contain a notarization on your signature and was not properly sworn to. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action or to consider any such additional information unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

As for your concerns about not being apprised of when the Commission will reach a final decision in this case, the Act prohibits any person from making public the fact of any notification or investigation by the Commission, prior to closing the file in the matter, unless the party being investigated has agreed in writing that the matter be made

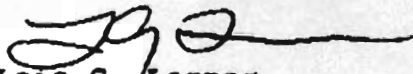
David K. McCloud
Page 2

public. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A). This prohibition applies equally to the complainant in a matter. Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter dated August 22, 1988, we will notify you as soon as the Commission takes final action on your complaint. In the meantime, we welcome any additional evidence you can provide us in this matter. We cannot, of course, advise you concerning any contemplated action pursuant to 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

21040350091

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE**FIRST GENERAL COUNSEL'S REPORT**

MUR # 2980
DATE COMPLAINT RECEIVED
BY OGC: September 7, 1989
DATE OF NOTIFICATION TO
RESPONDENTS: September 15, 1989
STAFF MEMBER: A. Buckley

COMPLAINANT: Billy A. Franklin

RESPONDENTS: David K. McCloud; Robb for Senate and
Alson H. Smith, Jr., as treasurer

RELEVANT STATUTE: 2 U.S.C. § 437g(a)(12)(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The complainant, Billy A. Franklin, is a private detective whose investigation of Senator Charles Robb is the subject of MUR 2673. Mr. Franklin filed a complaint alleging that David K. McCloud, chairman of Robb for Senate, or Robb for Senate itself, violated 2 U.S.C. § 437g(a)(12)(A) by releasing the contents of the complaint and amendments in MUR 2673 to various newspaper reporters.

II. FACTUAL AND LEGAL ANALYSIS

Pursuant to 2 U.S.C. § 437g(a)(12)(A), it is unlawful for any person to publicize any notification or investigation made by the Federal Election Commission, without the written consent of the person receiving such notification or of the person with respect to whom such investigation is made. The Commission has consistently held that this prohibition does not prevent a

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complainant from releasing the fact that a complaint has been filed, or from releasing the substance of that complaint. See, e.g., MUR 2142.

Mr. Franklin cites several newspaper articles as support for his allegations. The first two, Washington Post articles dated August 30, 1988, both state that a Commission spokesman confirmed the filing of the complaint in MUR 2673, but declined further comment due to confidentiality rules. The articles further state that Mr. McCloud declined to discuss the complaint, citing privacy laws, but that Mr. Franklin divulged the contents of the complaint. The other articles state the contents of the amendments to the complaint, but do not mention the sources of this information.

None of the evidence cited in the complaint supports a finding that the respondents have violated the confidentiality requirements of the Act by disclosing any information about a Commission notification or investigation. Moreover, the respondents have submitted additional evidence, in the form of an affidavit from the complainant in MUR 2673 and additional newspaper articles, in support of their argument that they did not breach the confidentiality requirements. (Attachment 1). Therefore, this Office recommends that the Commission find no reason to believe that David K. McCloud violated 2 U.S.C. § 437g(a)(12)(A), find no reason to believe that Robb for Senate and Alson H. Smith, Jr., as treasurer, violated 2 U.S.C. § 437g(a)(12)(A), and close the file.

III. RECOMMENDATIONS

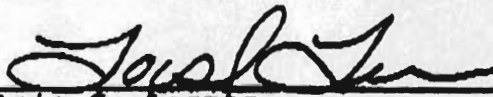
1. Find no reason to believe that David K. McCloud violated 2 U.S.C. § 437g(a)(12)(A).
2. Find no reason to believe that Robb for Senate and Alson H. Smith, Jr., as treasurer, violated 2 U.S.C. § 437g(a)(12)(A).
3. Approve the attached letters.
4. Close the file.

Lawrence M. Noble
General Counsel

Date

12-14-89

BY:


Lois G. Lerner
Associate General Counsel

Attachments

1. Reply of Respondents
2. Letters (2)

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FEDERAL ELECTION COMMISSION
MAIL ROOM

LAW OFFICES

MARTIN, MEYER, ROTHENBERG, GOERGEN & HENLEY

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A PROFESSIONAL CORPORATION

3412 CUTSHAW AVENUE

RICHMOND, VIRGINIA 23230-5033

(804) 257-7255

TELECOPIER (804) 353-9941

OF COUNSEL
LEWIS W. MARTIN

BERNARD G. MEYER, JR.
RICHARD S. ROTHENBERG
PETER J. GOERGEN
ROBERT E. HENLEY, III
RANDOLPH C. ROBERTSON
BRADLEY P. MARRS
BRIAN K. STEVENS

March 29, 1991

Lois G. Lerner
Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Re: Elton v. Robb for Senate Committee, Watson and McCloud
MUR 3222

Dear Ms. Lerner:

I would appreciate your letting me know if the respondents in the case referenced above have provided you with any written reply to our charges. We would appreciate the opportunity to review and comment upon their reply.

Sincerely,



Bradley P. Marrs

BPM/ddh

cc: Joseph Elton

91 APR -1 PM 3:59

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 11, 1991

Bradley P. Marrs, Esq.
Martin, Meyer, Rothenberg,
Goergen & Henley
3412 Cutshaw Avenue
Richmond, VA 23230

RE: MUR 3222
Robb for Senate Committee

Dear Mr. Marrs:

This is in response to your letter dated March 29, 1991 in which you request an opportunity to review and comment upon any written reply by the respondents to the complaint you filed on January 30, 1991, with the Federal Election Commission.

The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any person from making public the fact of any notification or investigation by the Commission, prior to closing the file in the matter, unless the party being investigated has agreed in writing that the matter be made public. See 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A). Because there has been no written agreement that the matter be made public, we are not in a position to release any information at this time.

As you were informed by letter dated February 7, 1991, we will notify you as soon as the Commission takes final action on your complaint.

Sincerely,

Lawrence M. Noble
General Counsel

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

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR # 3222
DATE COMPLAINT RECEIVED
BY OGC: February 4, 1991
DATE OF NOTIFICATION TO
RESPONDENTS: February 5, 1991
STAFF MEMBER: Tony Buckley

COMPLAINANT: Joseph Elton, Executive Director of the
Republican Party of Virginia

RESPONDENTS: David K. McCloud
Robert Watson
Robb for the Senate and Alson H. Smith, Jr., as
treasurer

RELEVANT STATUTES: 2 U.S.C. § 437g(a)(12)(A)
11 C.F.R. § 111.22(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arose as a result of information published in
regard to MUR 2673.

On August 28, 1990, David K. McCloud, the complainant in
MUR 2673, wrote to the chairman of the Federal Election
Commission to express his concern over Commission's failure to
take final action or provide him information regarding the
status of that matter. In his letter, Mr. McCloud recited
various additional facts which he believed supported his theory

in MUR 2673.

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.¹ Copies of the letter were sent to the five other Commissioners, the ex officio designee of the Secretary of the Senate, the General Counsel, and the staff attorney assigned to MUR 2673. References to the letter appeared in several newspaper reports several days after its receipt by the Commission.

On January 30, 1991, Joseph Elton, Executive Director of the Republican Party of Virginia, through his attorney, Bradley P. Marrs, filed a complaint alleging that, by sending his letter to the Commissioners, Mr. McCloud had violated the Act's prohibition against ex parte communications.

Attachment 1. The complainant further alleged that by sending copies of the letter in question to various members of the media, Mr. McCloud and others had violated the confidentiality provisions of the Act. Finally, the complainant alleges that Robert Watson, State Director for Senator Robb, met with Steven Haner, Executive Director of the Joint Republican Caucus in the Virginia legislature, in order to coerce Mr. Haner into providing testimony to the Commission in support of the allegations of the complaint in MUR 2673, and that this activity

1. Because Mr. McCloud included new allegations of violations, and because this letter was not notarized, this Office informed Mr. McCloud by letter dated September 19, 1990, that the contents of the letter would have to be sworn to and signed in the presence of a notary for them to be considered by this Office.

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by Mr. Watson may have violated of the Act's confidentiality provisions.²

On February 22, 1991, Respondents submitted a joint response. Attachment 2. They first argue that the letter sent to the Chairman of the Commission did not violate the prohibition against ex parte communications because the letter made reference only to publicly available information and specifically avoided comment on information available only in the pleadings in MUR 2673. With regard to the alleged violation of confidentiality, Respondents admit that David McCloud provided a copy of the letter to Brett Blackledge of the Fairfax Journal, but argue that the August 28th letter could not have violated confidentiality as it was not a pleading and only discussed publicly available information.

II. FACTUAL AND LEGAL ANALYSIS

Pursuant to 2 U.S.C. § 437g(a)(12)(A), it is illegal for any person to make public any notification or investigation without the written consent of the person receiving the notification or the person with respect to whom such investigation is made. Although the Commission's regulations also prohibit any person from making the administrative

2. The complainant also alleged that Respondents, by sending the letter to the Commission, attempted to exert undue pressure on members of the Commission by bringing to bear the influence of the office of a sitting United States Senator, and that Mr. Watson's meeting with Mr. Haner may have tended to suborn perjury. This Office has no opinion on whether these were attempted or occurred, but simply notes that such activities are outside the jurisdiction of the Commission.

complaint filed with the Commission public, 11 C.F.R. § 111.21(a), the Commission has consistently held that the Act's prohibition does not prevent a complainant from releasing the fact that a complaint has been filed, or from releasing the substance of that complaint. See, e.g., MUR 2142.

Pursuant to 11 C.F.R. § 111.22(a), no interested party outside of the Commission shall make or cause to be made to any Commissioner any ex parte communication relative to the factual or legal merits of any enforcement action. An ex parte communication "is a communication about a case which an adversary makes to the decisionmaker without notice to an affected party." D'Acquisto v. Washington, 640 F. Supp. 594, 621 (N.D. Ill. 1986).

Mr. McCloud's August 28, 1990 refers to the complaint in MUR 2673 and summarizes the central allegations therein. Additionally, that letter discusses information obtained by Mr. McCloud from various allegedly public sources,

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As there is no question that Mr. McCloud's letter was made public, the only issue relating to confidentiality is whether the contents of that letter were such that they should not have been revealed. Nothing in the letter discusses what action the Commission has taken in its investigation of MUR 2673, or whom the Commission has notified or otherwise contacted. Rather, the information more closely resembles that which is contained in complaints and the publication of which the Commission has found does not violate confidentiality. Moreover, the pendency of a MUR does not suddenly make the dissemination of already public information illegal solely because it relates to the subject matter of the MUR. Rather, it is the release of information regarding actions the Commission has taken during the pendency of a MUR which is illegal. Accordingly, this Office recommends that the Commission find no reason to believe that David McCloud or Robb for the Senate and Alson H. Smith, Jr., as treasurer, violated 2 U.S.C. § 437g(a)(12)(A).

Likewise, the complainant's statements that he has no knowledge of what Mr. Watson might have said to Mr. Haner, but that the contact might have violated confidentiality, are clearly insufficient to support a finding of reason to believe. Accordingly, this Office recommends that the Commission find no reason to believe that Robert L. Watson violated 2 U.S.C. § 437g(a)(12)(A).

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With regard to the alleged violation of the Commission's regulation prohibiting ex parte communications, the same letter was sent to the General Counsel and the staff attorney assigned to MUR 2673. Given that the Commission's procedures contemplate an enforcement process where the General Counsel recommends a course of action to the Commission based on the evidence, see 11 C.F.R. §§ 111.7 and 111.16, a communication would only be ex parte if it was sent to a Commissioner or Commissioners and was not made part of the normal routing procedures in the enforcement process. Such is not the case here.³ Accordingly, this Office recommends that the Commission find no reason to believe that David McCloud or Robb for the Senate and Alson H. Smith, Jr., as treasurer, violated 11 C.F.R. § 111.22(a). Because this Office is recommending no reason to believe findings as to all alleged violations, this Office further recommends that the Commission close the file and approve the appropriate letters.

III. RECOMMENDATIONS

1. Find no reason to believe that David K. McCloud violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.22(a).
2. Find no reason to believe that Robb for the Senate and Alson H. Smith, Jr., as treasurer violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.22(a).

3. The Commission's regulation expressly recognizes that enforcement proceedings are confidential. See 11 C.F.R. § 111.22(a) ("except to the extent required for the disposition of ex parte matters required by law (for example, during the normal course of an investigation or a conciliation effort)"). Thus, it is irrelevant that the McCloud letter was not provided to the respondents in MUR 2673.

3. Find no reason to believe that Robert Watson violated 2 U.S.C. § 437g(a)(12)(A).
4. Approve the appropriate letters.
5. Close the file.

Date

5/28/91

Lawrence M. Noble
General Counsel

Attachments

1. Complaint
2. Response

21040350103

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

Joseph Elton, Executive Director)
of the Republican Party of)
Virginia.)

MUR 3222

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 4, 1991, the Commission decided by a vote of 5-0 to take the following actions in MUR 3222:

1. Find no reason to believe that David K. McCloud violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.22(a).
2. Find no reason to believe that Robb for the Senate and Alson H. Smith, Jr., as treasurer violated 2 U.S.C. § 437g(a)(12)(A) or 11 C.F.R. § 111.22(a).
3. Find no reason to believe that Robert Watson violated 2 U.S.C. § 437g(a)(12)(A).

(Continued)

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4. Approve the appropriate letters, as recommended in the General Counsel's Report dated may 29, 1991.
5. Close the file.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens did not cast a vote.

Attest:

6-5-91
Date

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

Received in the Secretariat: Thurs., May 30, 1991 4:05 p.m.
Circulated to the Commission: Fri., May 31, 1991 12:00 p.m.
Deadline for vote: Tues., June 4, 1991 4:00 p.m.

dr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1991

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Joseph Elton
c/o Bradley P. Marrs, Esq.
Martin, Meyer, Rothenberg,
Goergen & Henley
3412 Cutshaw Avenue
Richmond, VA 23230

RE: MUR 3222

Dear Mr. Elton:

On June 4, 1991, the Federal Election Commission reviewed the allegations of your complaint dated January 30, 1991, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe David McCloud or Robb for the Senate and Alson H. Smith, Jr., as treasurer, violated 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.22(a), or that Robert Watson violated 2 U.S.C. § 437g(a)(12)(A). Accordingly, on June 4, 1991, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "L92", is written over the typed name of Lois G. Lerner.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

21040350106



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 17, 1991

Robert L. Watson
5740 Park Avenue
Richmond, VA 23226

RE: MUR 3222
Robert L. Watson

Dear Mr. Watson:

On February 7, 1991, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and its implementing regulations.

On June 4, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you and the other respondents in this matter, that there is no reason to believe you violated 2 U.S.C. § 437g(a)(12)(A). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to read "L. G. Lerner", is written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

21040350107



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

June 17, 1991

David K. McCloud
Russell Office Building
Room 493
Washington, D.C. 20510-4603

RE: MUR 3222
David K. McCloud

Dear Mr. McCloud:

On February 7, 1991, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and its implementing regulations.

On June 4, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you and the other respondents in this matter, that there is no reason to believe you violated 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.22(a). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

91040350103



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1991

Alson H. Smith, Jr., Treasurer
Robb for the Senate
12 Forest Hills Drive
Luray, VA 22835

RE: MUR 3222
Robb for the Senate and Alson H.
Smith, Jr., as treasurer

Dear Mr. Smith:

On February 7, 1991, the Federal Election Commission notified Robb for the Senate (the "Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, and its implementing regulations.

On June 4, 1991, the Commission found, on the basis of the information in the complaint, and information provided by you and the other respondents in this matter, that there is no reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 437g(a)(12)(A) and 11 C.F.R. § 111.22(a). Accordingly, the Commission closed its file in this matter.

This matter will become a part of the public record within 30 days. If you wish to submit any materials to appear on the public record, please do so within ten days. Please send such materials to the Office of the General Counsel.

Sincerely,

Lawrence M. Noble
General Counsel

A handwritten signature in dark ink, appearing to be "L. Lerner", is written over a horizontal line.

BY: Lois G. Lerner
Associate General Counsel

Enclosure
GC Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3222

DATE FILMED 2/1/91 CAMERA NO. 2

CAMERAMAN AS

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