



FEDERAL ELECTION COMMISSION

1325 K STREET N.W.  
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1776

Date Filmed 3/25/85 Camera No. --- 4

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FEDERAL ELECTION COMMISSION

Routing Cards ; 12 day report ; Comment  
Sheets ; excerpts from General Counsel's  
Reports dated 2/14/85 and 11/16/84

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- (1) Classified Information
- (2) Internal rules and practices
- (3) Exempted by other statute
- (4) Trade secrets and commercial or financial information
- (5) Internal Documents
- (6) Personal privacy
- (7) Investigatory files
- (8) Banking Information
- (9) Well Information (geographic or geophysical)

Signed Mama E White  
date 3/22/85

85040520003

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1776
Mondale for President	)	
Committee, Inc.	)	
Michael S. Berman, treasurer	)	
Alabama Education Association	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 21, 1985, the Commission decided by a vote of 4-0 to take the following actions in MUR 1776:

1. Take no further action against the Alabama Education Association.
2. Take no further action against the Mondale for President Committee and Michael S. Berman, as treasurer.
3. Close the file.
4. Approve the letters attached to the General Counsel's Report signed February 14, 1985.

Commissioners Elliott, Harris, McGarry and Reiche voted affirmatively in this matter; Commissioners Aikens and McDonald did not cast a vote.

Attest:

2-21-85  
Date

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

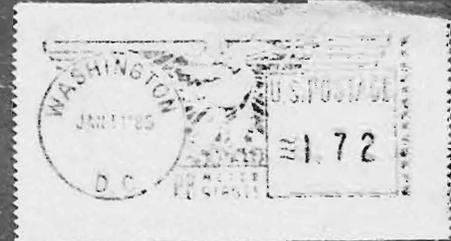
Received in Office of Commission Secretary:	2-15-85, 1:05
Circulated on 48 hour tally basis:	2-19-85, 11:00

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Charles N. Steele  
General Counsel  
Federal Election Commission

1325 K Street, N.W.

Washington, D.C.



20463

RETURN  
REQUIRE



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 27, 1985

William A. Wilson, Vice-President  
The National Right to Work Committee  
8001 Braddock Road  
Suite 500  
Springfield, Virginia 22160

Re: MUR 1776

Dear Mr. Wilson:

This is in reference to the complaint you filed on September 6, 1984, against the Mondale for President Committee, Inc. ("MPC"), Michael S. Berman, as treasurer, Walter F. Mondale, and the Alabama Education Association ("AEA").

Based upon the allegations contained in your complaint, the Commission determined on November 27, 1984, that there is reason to believe MPC, Michael S. Berman, as treasurer, and the AEA violated 2 U.S.C. § 441b(a), and that MPC and Michael S. Berman, as treasurer, violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also determined on November 27, 1984, that there is no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b).

After an investigation was conducted, the Commission, on February 21, 1985, determined to take no further action against MPC, Michael S. Berman, as treasurer, and the AEA. Accordingly, the file in this matter has been closed. A copy of the final General Counsel's Report in this matter is enclosed for your information. 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).

If you have any questions please contact Maura White at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

85040520006



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 27, 1985

Ralph M. Hettinga, Jr.  
645 Compress Road  
Las Cruces, New Mexico 88001

Re: MUR 1776

Dear Mr. Hettinga:

This is in reference to the complaint you filed on September 6, 1984, against the Mondale for President Committee, Inc. ("MPC"), Michael S. Berman, as treasurer, Walter F. Mondale, and the Alabama Education Association ("AEA").

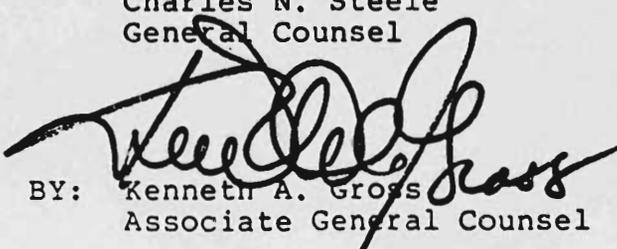
Based upon the allegations contained in your complaint, the Commission determined on November 27, 1984, that there is reason to believe MPC, Michael S. Berman, as treasurer, and the AEA violated 2 U.S.C. § 441b(a), and that MPC and Michael S. Berman, as treasurer, violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also determined on November 27, 1984, that there is no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b).

After an investigation was conducted, the Commission, on February 21, 1985, determined to take no further action against MPC, Michael S. Berman, as treasurer, and the AEA. Accordingly, the file in this matter has been closed. A copy of the final General Counsel's Report in this matter is enclosed for your information. 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).

If you have any questions please contact Maura White at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

  
BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

8504052007



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 27, 1985

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee  
Suite 318  
2233 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

You were previously notified that the Commission determined on November 27, 1984, that there is reason to believe your clients, Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b(a) and § 434(b). You submitted a response to the Commission's finding on January 14, 1985.

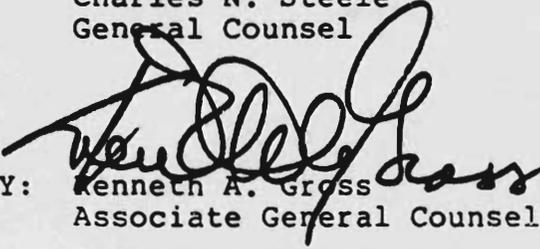
After considering the circumstances of this matter, the Commission, on February 21, 1985, determined to take no further action against your clients and close the file in this matter. The Commission reminds your clients that it is nevertheless a violation of 2 U.S.C. § 441b(a) for a political committee or its agents to accept an in-kind contribution from a labor organization.

This matter will become a part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY:   
Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

85040520008



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 27, 1985

Robert H. Chanin, Esquire  
Joy L. Koletsky, Esquire  
National Education Association  
1201 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

You were previously notified that the Commission determined on November 27, 1984, that there is reason to believe your client, the Alabama Education Association, violated 2 U.S.C. § 441b(a). You submitted a response to the Commission's finding on January 2, 1985.

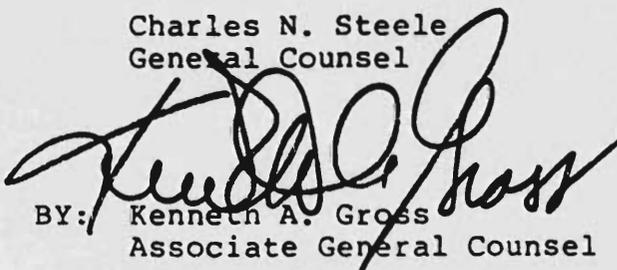
After considering the circumstances of this matter, the Commission on February 21, 1985, determined to take no further action against your client and close the file in this matter. The Commission reminds your client that is nevertheless a violation of 2 U.S.C. § 441b(a) for a labor organization to make an in-kind contribution to a federal political committee.

This matter will become a part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

  
BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

85040520007

**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )

Mondale for President )

Committee, Inc; Michael S. Berman, )  
as treasurer; Alabama Education )  
Association )

RECEIVED  
FEDERAL ELECTION COMMISSION  
OCT 11 1984

MUR 17765 P.1: 05

**GENERAL COUNSEL REPORT**

**I. Background**

On September 6, 1984, Ralph Hettinga and the National Right to Work Committee filed a complaint against Walter F. Mondale, the Mondale for President Committee Inc. ("MPC"), Michael S. Berman, as treasurer, and the Alabama Education Association ("AEA").<sup>1</sup> On October 10, 1984, the National Right to Work Committee submitted additional information concerning its complaint of September 6, 1984. The AEA submitted its response to the complaint on October 9, 1984. On October 10, 1984, a response to the complaint was submitted on behalf of MPC, Michael S. Berman, as treasurer, and Walter F. Mondale.

On November 27, 1984, the Commission determined that there is reason to believe the AEA violated 2 U.S.C. § 441b(a), and that there is reason to believe MPC, and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b). The Commission further determined that there was no reason to believe Walter F. Mondale violated 2 U.S.C. §§ 441b(a) and 434(b).

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Notification of the Commission's finding was mailed to the respondents on December 7, 1984. On January 2, 1985, this Office received the response of the AEA to the Commission's finding and order. MPC and Michael S. Berman, as treasurer, submitted a response to the Commission's finding on January 14, 1985.

In response to the Commission's finding that it violated 2 U.S.C. § 441b(a) by permitting agents of MPC to use its facilities and telephones without charge for ten days during March of 1984, the AEA contends that "the transaction in question involved, at worst, an inadvertant violation of the Act."

(Attachment 1.) AEA's response repeats its earlier explanation in this matter that the AEA's Executive Director "authorized Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale." In addition, the response emphasizes that the Executive Director was not familiar with the requirements of the federal election law and did not believe it was necessary to impose a charge because "this off-hours use of AEA telephones did not involve any additional expenditures of AEA resources."

The "fair market value for the 'full-service rental' of the facilities in question (including utilities, furniture and one telephone) is \$135," according to the AEA. The AEA states that this estimation is "[b]ased upon information provided by real estate agents in Montgomery, Alabama." In addition, the AEA contends that it has determined "that the fair market value for

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the use of the AEA's remaining telephones is \$28.11." Finally, the AEA claims that "[t]here were no additional telephone charges to AEA that related to or resulted from the volunteers' use of the telephones."

MPC's reply to the Commission's finding states that "there was no violation of the Act on its part" and that it "should not be held liable for the unknown, unauthorized and unratified acts of volunteers." (Attachment 2.) It is MPC's position that "[f]or the Commission to hold [MPC] liable in this instance would be against sound principles of agency and would undercut [MPC's] attempt to establish and maintain a management system designed to insure compliance with the requirements of FECA regarding the use of union facilities and with the requirements of Chapter 96 of Title 26 to control committee expenditures."

According to MPC, "to assume that these volunteers were acting with the consent of [MPC] in this situation ignores the clear weight of credible evidence which the Commission has before it." MPC emphasizes that the two individuals (Elizabeth Dunn and Elizabeth Nevil) "alleged to have organized and overseen the use of labor phones" were both volunteers who did not receive any salary or expense reimbursements from the campaign, and that those individuals (Scott Davis and Joel Odom) "with authority to commit the campaign to the use of union phones or facilities in Alabama" did not have knowledge of such use and did not consent to such use. MPC concludes that in order for it to be held liable for the acts of these volunteers "principles of agency law

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would require that they, and in particular Ms. Nevil who established and ran the AEA phone bank have some authority, express or apparent to bind MPC by their acts." MPC emphatically insists that no such authority existed.

In its defense MPC claims that it "set up procedures by which only certain persons were authorized to approve and commit the campaign to the use of labor phones and facilities," and that neither Ms. Dunn nor Ms. Nevil were ever given such authority. MPC argues that "in the absence of either express authority given by MPC to these volunteers to act as its agents in this matter or any evidence that AEA assumed such authority on the part of these volunteers, MPC should not be bound by their acts." MPC insists that there "was no ratification, express or implied, of the use of AEA phones and facilities by [MPC] since such use was unknown to MPC and [MPC] had no opportunity either to consent to or to disavow the actions of these volunteers."

Although MPC acknowledges that there are circumstances under which a volunteer might be a bona fide agent of a political committee, it ardently argues that "for the Commission to find MPC liable in this instance would be to create an agency relationship between MPC and these volunteers contrary to established agency principles in the absence of any credible evidence and contrary to the sworn statements of the individuals involved." Moreover, "such a finding would undercut the sound policy encouraging the establishment of orderly management procedures designed to insure compliance with Commission

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requirements and to avoid excessive or unauthorized expenses." In conclusion, MPC notes that its payment of the "minimal amount" at issue for the use of AEA's telephones and facilities "would establish a principle of liability which the Committee cannot accept or agree to."

## II. Legal Analysis

It is the position of MPC that it did not authorize any individual to operate the telephones at the AEA on its behalf. MPC's claim is supported by the fact that no use agreement or any other arrangement for the use of its facilities was entered into between MPC and the AEA, according to the AEA. To be sure, MPC has attested to the fact that it did not have knowledge of the use of the AEA's telephones until the filing of the instant complaint.

The facilities in question herein involve approximately ten telephones and desks which have existed "for many years" at the AEA's headquarters. The total fair market value of these facilities in Montgomery, Alabama, has been estimated, under oath, to be only \$163.11. In addition, the AEA has attested to the fact that there were no additional telephone charges resulting from MPC's use. In view of all of the above circumstances, it is the recommendation of this Office that the Commission take no further action against MPC, Michael S. Berman, as treasurer, and the AEA<sup>2/</sup>, and close the file in this matter.

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<sup>2/</sup> In MUR 1349, the Reagan for President Committee utilized the telephones and facilities of two corporations (Footnote continued)

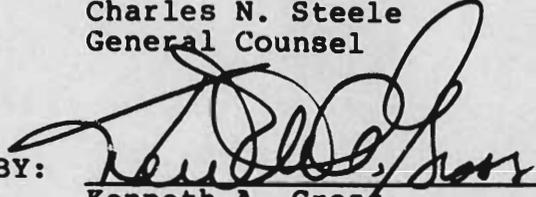
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III. Recommendation

1. Take no further action against the Alabama Education Association.
2. Take no further action against the Mondale for President Committee and Michael S. Berman, as treasurer.
3. Close the file.
4. Approve the attached letters.

Charles N. Steele  
General Counsel

February 14, 1985  
Date

BY:   
Kenneth A. Gross  
Associate General Counsel

Attachments

1. AEA response
2. MPC response
3. Proposed letters (4)

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(Footnote Continued)

The Commission determined that there was reason to believe the Reagan for President Committee and the two corporations violated 2 U.S.C. § 441b(a) because the amount charged did not constitute the fair market value for the use of the facilities, but subsequently determined to take no further action against all of these respondents.



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035  
 MARY HATWOOD FUTRELL, President  
 KEITH GEIGER, Vice President  
 ROXANNE E. BRADSHAW, Secretary-Treasurer

Wht  
 LEGAL SERVICES  
 OFFICE OF GENERAL COUNSEL AIO: 42  
 DECEMBER 21 1984  
 2 2:30  
 CAMERON, Executive Director

December 21, 1984

Ms. Lee Ann Elliott  
 Chairman  
 Federal Election Commission  
 Washington, D.C. 20463

Re: MUR 1776

Dear Ms. Elliott:

On December 7, 1984, you notified us that the Commission "determined that there is reason to believe the Alabama Education Association ["AEA"] violated 2 U.S.C. §441b(a) ... by making a prohibited expenditure ... when it permitted its facilities and telephones to be used to support the candidacy of Walter Mondale." You ordered AEA to answer certain questions, and its response is enclosed. You also invited us to "submit any factual or legal materials which [we] believe are relevant to the Commission's analysis of the matter." This letter is submitted in response to the latter invitation.

In our initial response to this MUR on October 9, 1984, we indicated that AEA Executive Director, Dr. Paul R. Hubbert, authorized Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale. We indicated further that Dr. Hubbert did not believe it was necessary to impose a charge because (1) this off-hours use of AEA telephones did not involve any additional expenditure of AEA resources, (2) Dr. Hubbert was not familiar with the requirements of federal election law, and (3) state law would have permitted state and local candidates to use AEA's facilities in like circumstances free-of-charge. In short, we asserted in our initial response that the transaction in question involved, at worst, an inadvertent violation of the Act. The attached response to the Order to Submit Written Answers indicates that any such violation was, in addition, inconsequential in amount. And, finally, Dr.

Attachment 1(1)

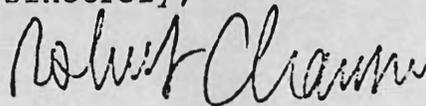
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Hubbert has asked me to assure the Commission that AEA will not in the future allow its facilities to be used free-of-charge in connection with any federal election.

Based on the foregoing, we respectfully request that the Commission take no further action.

Sincerely,



Robert H. Chanin

Joy L. Koletsky

Attorneys for AEA

Enclosure

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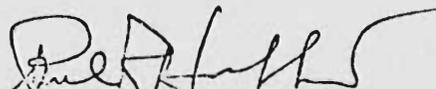
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of ) MUR 1776  
 )  
Alabama Education Association )

RESPONSE OF THE ALABAMA EDUCATION ASSOCIATION TO  
ORDER TO SUBMIT WRITTEN ANSWERS

1. Based upon information provided by real estate agents in Montgomery, Alabama, AEA has determined that the fair market value for the "full-service rental" of the facilities in question (including utilities, furniture and one telephone) is \$135.00.
2. AEA has determined that the fair market value for the use of the remaining telephones is \$28.11.
3. There were no additional telephone charges to AEA that related to or resulted from the volunteers' use of the telephones.

I hereby declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and correct.

  
Paul R. Hubbert

Date: December 21, 1984

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January 11, 1985

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RE: MUR 1776

Dear Mr. Steele:

8 5 0 4 0 5 2 0 0 1 9  
This letter is the response of the Mondale for President Committee, Inc. ("MPC") to notification that the Commission has determined there is reason to believe that MPC violated 2 U.S.C. Sections 441b(a) and 434(b) by "accepting an in-kind contribution from the Alabama Education Association ("AEA") in connection with the use of AEA's facilities and telephones by MPC volunteers."

MPC believes that there was no violation of the Act on its part and that the Commission should rescind this finding, find no probable cause against MPC or take no further action in this case. MPC should not be held liable for the unknown, unauthorized and unratified acts of volunteers. For the Commission to hold the Committee liable in this instance would be against sound principles of agency and would undercut the Committee's attempts to establish and maintain a management system designed to insure compliance with the requirements of FECA regarding the use of union facilities and with the requirements of Chapter 96 of Title 26 to control committee expenditures. Further, to assume that these volunteers were acting with the

consent of the Committee in this situation ignores the clear weight of credible evidence which the Commission has before it.

In our initial response to this matter, we indicated that Elizabeth Dunn and Elizabeth Nevil -- the individuals alleged to have organized and overseen the use of labor phones -- were both volunteers in Montgomery, Alabama during the period just before the Alabama primary. Both were local residents of the Montgomery area. Ms. Dunn volunteered for approximately 6 weeks and Ms. Nevil volunteered for approximately 2 1/2 to 3 weeks. Neither individual was involved with the campaign prior to that time nor, to our best knowledge, after the Alabama primary. Neither individual worked outside the Montgomery area; and neither individual received or was offered or promised any salary or expense reimbursement from the campaign at any time.

As we also indicated in our initial response, a decision was made by the State Director not to use any labor facilities or phones in Alabama and neither of the campaign's two staff members with authority to commit the campaign to the use of union phones or facilities in Alabama (Scott Davis and Joel Odum) ever had knowledge of, suggested or consented to such use. These facts are established by the sworn affidavits attached to the initial response.

In order for MPC to be held liable for the acts of these volunteers in this instance, principles of agency law would require that they, and in particular Ms. Nevil who established and ran the AEA phone bank. have some authority, express or apparent, to bind MPC by their acts. However, as is clear from

the affidavits submitted with our original response, no such authority existed.

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The cost for the use of AEA's phones or facilities would have been a qualified campaign expense if incurred by the Committee. The question in this instance is whether or not such expense was incurred by the Committee. This issue has recently been addressed by the Commission. In AO 1984-58, the issue was whether or not the Reagan-Bush '84 Committee had incurred an expense for police and security services in the absence of any agreement or commitment on the part of the Committee. In its opinion, the Commission made it clear that the Act and the regulations intend that a qualified campaign expense must be incurred by or pursuant to the authority of a candidate or his/her authorized committee and that an expense is considered incurred only if it is incurred by a person authorized by the candidate or the candidate's committee to incur such expense on behalf of the candidate or committee.

As stated in our original response, MPC set up procedures by which only certain persons were authorized to approve and commit the campaign to the use of labor phones and facilities. Neither Ms. Dunn nor Ms. Nevil were ever given such authority. Further, at no time did MPC, through Mr. Scott or Mr. Odum ever convey to AEA, or to anyone else, that Ms. Dunn or Ms. Nevil had authority to commit the campaign to use of AEA phones or facilities. In the absence of either express authority given by MPC to these volunteers to act as its agents in this matter or any evidence that AEA assumed such authority on the part of these volunteers, MPC should not be bound by their acts. (See generally,

Restatement of Agency 2d, Sections 26 and 27.)

There was no ratification, express or implied, of the use of AEA phones and facilities by the Committee since such use was unknown to MPC and the Committee had no opportunity either to consent to or to disavow the actions of these volunteers.

8 5 0 4 0 5 2 0 0 2 2  
MPC acknowledges that there are circumstances under which a political committee might be bound by the actions of a volunteer or in which a volunteer might be a bona fide agent of a political committee. However, for the Commission to find MPC liable in this instance would be to create an agency relationship between MPC and these volunteers contrary to established agency principles in the absence of any credible evidence and contrary to the sworn statements of the individuals involved. Further, such a finding would undercut the sound policy encouraging the establishment of orderly management procedures designed to insure compliance with Commission requirements and to avoid excessive or unauthorized expenses.<sup>1/</sup> Although, it would appear that the cost of the use of AEA phones and facilities was de minimus in this instance (less than \$200), payment of even this minimal amount by MPC would establish a principle of liability which the Committee cannot accept or agree to. Should the Commission find MPC liable in such a case despite our best efforts to maintain an orderly

<sup>1/</sup> The Commission's "Financial Control and Compliance Manual" indicates that establishment of reasonable management control systems and procedures may provide a basis for limiting the committee's liability and for disavowing excessive or unauthorized expenses. Chapter I, "General Election Financing", p. I - 16.

system of management control, the effect would be to discourage reliance on the Commission's own guidelines and frustrate the policy of encouraging development of such management systems and procedures.

For the foregoing reasons MPC would respectfully request that the Commission rescind this finding, find no probable cause against MPC or take no further action on this matter.

Respectfully submitted.

*David M. Ifshin*  
David M. Ifshin  
General Counsel *by CUD*

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

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2(s)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee  
Suite 318  
2233 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

You were previously notified that the Commission determined on November 27, 1984, that there is reason to believe your clients, Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b(a) and § 434(b). You submitted a response to the Commission's finding on January 14, 1985.

After considering the circumstances of this matter, the Commission, on \_\_\_\_\_, 1985, determined to take no further action against your clients and close the file in this matter. The Commission reminds your clients that it is nevertheless a violation of 2 U.S.C. § 441b(a) for a political committee or its agents to accept an in-kind contribution from a labor organization.

This matter will become a part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

Attachment 3(1)

85040520024



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Robert H. Chanin, Esquire  
Joy L. Koletsky, Esquire  
National Education Association  
1201 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

You were previously notified that the Commission determined on November 27, 1984, that there is reason to believe your client, the Alabama Education Association, violated 2 U.S.C. § 441b(a). You submitted a response to the Commission's finding on January 2, 1985.

After considering the circumstances of this matter, the Commission on , 1985, determined to take no further action against your client and close the file in this matter. The Commission reminds your client that is nevertheless a violation of 2 U.S.C. § 441b(a) for a labor organization to make an in-kind contribution to a federal political committee.

This matter will become a part of the public record within 30 days. Should you wish to submit any materials to appear on the public record, please do so within ten days.

If you have any questions please contact Maura White at 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

3(2)

85040520025



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Ralph M. Hettinga, Jr.  
645 Compress Road  
Las Cruces, New Mexico 88001

Re: MUR 1776

Dear Mr. Hettinga:

This is in reference to the complaint you filed on September 6, 1984, against the Mondale for President Committee, Inc. ("MPC"), Michael S. Berman, as treasurer, Walter F. Mondale, and the Alabama Education Association ("AEA").

Based upon the allegations contained in your complaint, the Commission determined on November 27, 1984, that there is reason to believe MPC, Michael S. Berman, as treasurer, and the AEA violated 2 U.S.C. § 441b(a), and that MPC and Michael S. Berman, as treasurer, violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also determined on November 27, 1984, that there is no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b).

After an investigation was conducted, the Commission, on , 1985, determined to take no further action against MPC, Michael S. Berman, as treasurer, and the AEA. Accordingly, the file in this matter has been closed. A copy of the final General Counsel's Report in this matter is enclosed for your information. 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).

If you have any questions please contact Maura White at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

3(3)

85040520026



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

William A. Wilson, Vice-President  
The National Right to Work Committee  
8001 Braddock Road  
Suite 500  
Springfield, Virginia 22160

Re: MUR 1776

Dear Mr. Wilson:

This is in reference to the complaint you filed on September 6, 1984, against the Mondale for President Committee, Inc. ("MPC"), Michael S. Berman, as treasurer, Walter F. Mondale, and the Alabama Education Association ("AEA").

Based upon the allegations contained in your complaint, the Commission determined on November 27, 1984, that there is reason to believe MPC, Michael S. Berman, as treasurer, and the AEA violated 2 U.S.C. § 441b(a), and that MPC and Michael S. Berman, as treasurer, violated 2 U.S.C. § 434(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also determined on November 27, 1984, that there is no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b).

After an investigation was conducted, the Commission, on , 1985, determined to take no further action against MPC, Michael S. Berman, as treasurer, and the AEA. Accordingly, the file in this matter has been closed. A copy of the final General Counsel's Report in this matter is enclosed for your information. 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).

If you have any questions please contact Maura White at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

BY: Kenneth A. Gross  
Associate General Counsel

Enclosure  
General Counsel's Report

3(4)

85040520027



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035  
 MARY HATWOOD FUTRELL, President  
 KEITH GEIGER, Vice President  
 ROXANNE E. BRADSHAW, Secretary-Treasurer

RECEIVED  
 OFFICE OF THE FEDERAL ELECTION COMMISSION SECRETARY

LEGAL SERVICES  
 OFFICE OF GENERAL COUNSEL

GCC#6207  
 RECEIVED AT THE FEC  
 HAND DELIVERED

AID: 48

05 JAN 2 P 2: 30

JOHN CAMERON, Executive Director

December 21, 1984

Ms. Lee Ann Elliott  
 Chairman  
 Federal Election Commission  
 Washington, D.C. 20463

Re: MUR 1776

Dear Ms. Elliott:

On December 7, 1984, you notified us that the Commission "determined that there is reason to believe the Alabama Education Association [{"AEA"}] violated 2 U.S.C. §441b(a) ... by making a prohibited expenditure ... when it permitted its facilities and telephones to be used to support the candidacy of Walter Mondale." You ordered AEA to answer certain questions, and its response is enclosed. You also invited us to "submit any factual or legal materials which [we] believe are relevant to the Commission's analysis of the matter." This letter is submitted in response to the latter invitation.

In our initial response to this MUR on October 9, 1984, we indicated that AEA Executive Director, Dr. Paul R. Hubbert, authorized Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale. We indicated further that Dr. Hubbert did not believe it was necessary to impose a charge because (1) this off-hours use of AEA telephones did not involve any additional expenditure of AEA resources, (2) Dr. Hubbert was not familiar with the requirements of federal election law, and (3) state law would have permitted state and local candidates to use AEA's facilities in like circumstances free-of-charge. In short, we asserted in our initial response that the transaction in question involved, at worst, an inadvertent violation of the Act. The attached response to the Order to Submit Written Answers indicates that any such violation was, in addition, inconsequential in amount. And, finally, Dr.

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35 JAN 2 P 3: 59

GENERAL COUNSEL

Hubbert has asked me to assure the Commission that AEA will not in the future allow its facilities to be used free-of-charge in connection with any federal election.

Based on the foregoing, we respectfully request that the Commission take no further action.

Sincerely,



Robert H. Chanin  
Joy L. Koletsky

Attorneys for AEA

Enclosure

85040520029



Mondale for President  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1000

RECEIVED THE FEC  
**MONDALE**  
15 JAN 1985 P 1: 02  
GCC #6411

January 11, 1985

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RE: MUR 1776

15 JAN 1985 P 2: 36  
RECEIVED  
GENERAL COUNSEL

Dear Mr. Steele:

This letter is the response of the Mondale for President Committee, Inc. ("MPC") to notification that the Commission has determined there is reason to believe that MPC violated 2 U.S.C. Sections 441b(a) and 434(b) by "accepting an in-kind contribution from the Alabama Education Association ("AEA") in connection with the use of AEA's facilities and telephones by MPC volunteers."

MPC believes that there was no violation of the Act on its part and that the Commission should rescind this finding, find no probable cause against MPC or take no further action in this case. MPC should not be held liable for the unknown, unauthorized and unratified acts of volunteers. For the Commission to hold the Committee liable in this instance would be against sound principles of agency and would undercut the Committee's attempts to establish and maintain a management system designed to insure compliance with the requirements of FECA regarding the use of union facilities and with the requirements of Chapter 96 of Title 26 to control committee expenditures. Further, to assume that these volunteers were acting with the

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consent of the Committee in this situation ignores the clear weight of credible evidence which the Commission has before it.

In our initial response to this matter, we indicated that Elizabeth Dunn and Elizabeth Nevil -- the individuals alleged to have organized and overseen the use of labor phones -- were both volunteers in Montgomery, Alabama during the period just before the Alabama primary. Both were local residents of the Montgomery area. Ms. Dunn volunteered for approximately 6 weeks and Ms. Nevil volunteered for approximately 2 1/2 to 3 weeks. Neither individual was involved with the campaign prior to that time nor, to our best knowledge, after the Alabama primary. Neither individual worked outside the Montgomery area; and neither individual received or was offered or promised any salary or expense reimbursement from the campaign at any time.

As we also indicated in our initial response, a decision was made by the State Director not to use any labor facilities or phones in Alabama and neither of the campaign's two staff members with authority to commit the campaign to the use of union phones or facilities in Alabama (Scott Davis and Joel Odum) ever had knowledge of, suggested or consented to such use. These facts are established by the sworn affidavits attached to the initial response.

In order for MPC to be held liable for the acts of these volunteers in this instance, principles of agency law would require that they, and in particular Ms. Nevil who established and ran the AEA phone bank. have some authority, express or apparent, to bind MPC by their acts. However, as is clear from

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the affidavits submitted with our original response, no such authority existed.

The cost for the use of AEA's phones or facilities would have been a qualified campaign expense if incurred by the Committee. The question in this instance is whether or not such expense was incurred by the Committee. This issue has recently been addressed by the Commission. In AO 1984-58, the issue was whether or not the Reagan-Bush '84 Committee had incurred an expense for police and security services in the absence of any agreement or commitment on the part of the Committee. In its opinion, the Commission made it clear that the Act and the regulations intend that a qualified campaign expense must be incurred by or pursuant to the authority of a candidate or his/her authorized committee and that an expense is considered incurred only if it is incurred by a person authorized by the candidate or the candidate's committee to incur such expense on behalf of the candidate or committee.

As stated in our original response, MPC set up procedures by which only certain persons were authorized to approve and commit the campaign to the use of labor phones and facilities. Neither Ms. Dunn nor Ms. Nevil were ever given such authority. Further, at no time did MPC, through Mr. Scott or Mr. Odum ever convey to AEA, or to anyone else, that Ms. Dunn or Ms. Nevil had authority to commit the campaign to use of AEA phones or facilities. In the absence of either express authority given by MPC to these volunteers to act as its agents in this matter or any evidence that AEA assumed such authority on the part of these volunteers, MPC should not be bound by their acts. (See generally,

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Restatement of Agency 2d, Sections 26 and 27.)

There was no ratification, express or implied, of the use of AEA phones and facilities by the Committee since such use was unknown to MPC and the Committee had no opportunity either to consent to or to disavow the actions of these volunteers.

MPC acknowledges that there are circumstances under which a political committee might be bound by the actions of a volunteer or in which a volunteer might be a bona fide agent of a political committee. However, for the Commission to find MPC liable in this instance would be to create an agency relationship between MPC and these volunteers contrary to established agency principles in the absence of any credible evidence and contrary to the sworn statements of the individuals involved. Further, such a finding would undercut the sound policy encouraging the establishment of orderly management procedures designed to insure compliance with Commission requirements and to avoid excessive or unauthorized expenses.<sup>1/</sup> Although, it would appear that the cost of the use of AEA phones and facilities was de minimus in this instance (less than \$200), payment of even this minimal amount by MPC would establish a principle of liability which the Committee cannot accept or agree to. Should the Commission find MPC liable in such a case despite our best efforts to maintain an orderly

<sup>1/</sup> The Commission's "Financial Control and Compliance Manual" indicates that establishment of reasonable management control systems and procedures may provide a basis for limiting the committee's liability and for disavowing excessive or unauthorized expenses. Chapter I, "General Election Financing", p. I - 16.

85040520034

system of management control, the effect would be to discourage reliance on the Commission's own guidelines and frustrate the policy of encouraging development of such management systems and procedures.

For the foregoing reasons MPC would respectfully request that the Commission rescind this finding, find no probable cause against MPC or take no further action on this matter.

Respectfully submitted.

*David M. Ifshin*  
David M. Ifshin  
General Counsel *my*  
*cut*

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

85040520035



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE: JANUARY 9, 1985

SUBJECT: MUR 1776 - Comprehensive Investigative  
Report #1 signed January 7, 1985

The above-captioned matter was circulated to the Commission on a 24 hour no-objection basis at 4:00, January 8, 1985.

There were no objections to the Comprehensive Investigative Report #1 at the time of the deadline.

85040520036



FEDERAL ELECTION COMMISSION  
 WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary  
 FROM: Office of General Counsel *JS*  
 DATE: January 8, 1985  
 SUBJECT: MUR 1776 Comprehensive Investigative Report #1

The attached is submitted as an Agenda document  
 for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

CIRCULATIONS

DISTRIBUTION

48 Hour Tally Vote	[ ]	Compliance	[x]
Sensitive	[ ]	Audit Matters	[ ]
Non-Sensitive	[ ]	Litigation	[ ]
24 Hour No Objection	[X]	Closed MUR Letters	[ ]
Sensitive	[X]	Status Sheets	[ ]
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Information	[ ]	Other (see distribution below)	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]		
Other	[ ]		

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**SENSITIVE**

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED  
OFFICE OF THE FEDERAL  
COMMISSION SECRETARY

In the Matter of )  
 )  
Mondale for President )  
Committee, Inc; Michael S. Berman, )  
as treasurer; )  
Alabama Education Association )

MUR 1776  
85 JAN 8 AIO: 28

COMPREHENSIVE INVESTIGATIVE REPORT #1

On September 6, 1984, Ralph Hettinga and the National Right to Work Committee filed a complaint against Walter F. Mondale, the Mondale for President Committee Inc., ("MPC") Michael S. Berman, as treasurer, and the Alabama Education Association ("AEA"). On October 10, 1984, the National Right to Work Committee submitted additional information concerning its complaint of September 6, 1984. The AEA submitted its response to the complaint on October 9, 1984. On October 10, 1984, a response to the complaint was submitted on behalf of MPC, Michael S. Berman, as treasurer, and Walter F. Mondale.

On November 27, 1984, the Commission determined that there is reason to believe the AEA, MPC, and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b(a). The Commission further determined that there was no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a). Notification of the Commission's finding was mailed to the respondents on December 7, 1984. On December 20, 1984, counsel for MPC and its treasurer requested a 15 day extension of time to respond to the Commission's finding. By letter dated December 27, 1984, counsel for MPC and its treasurer were notified that the requested extension had been granted and that their clients' response is due on January 11, 1985. On January 2, 1985 this Office received the response of

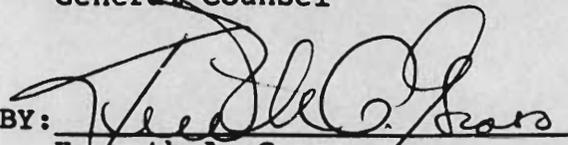
85040520038

the AEA to the Commission's finding and order.

Following receipt of the responses of all of the respondents in this matter, this Office will prepare a report to the Commission containing recommendations with respect to the respondents in this matter.

Charles N. Steele  
General Counsel

January 7, 1985  
Date

BY:   
Kenneth A. Gross  
Associate General Counsel

85040520039



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 27, 1984

David Ifshin, Esquire  
Carolyn U. Oliphant, Esquire  
Mondale for President Committee, Inc.  
2233 Wisconsin Avenue, N.W., Suite 318  
Washington, D.C. 20007

RE: MUR 1776

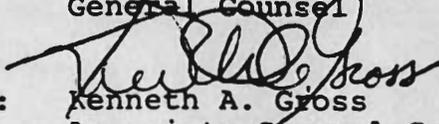
Dear Mr. Ifshin and Ms. Oliphant:

This is in response to your letter submitted on December 20, 1984, in which you request a 15 day extension of time to respond to the reason to believe finding made against your clients, Mondale for President Committee, Inc., and Michael S. Berman, as treasurer.

I have reviewed your request and agree to the extension. The response of your clients is due, therefore, on January 11, 1985. If you have any questions, please contact Maura White at 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By:   
Kenneth A. Gross  
Associate General Counsel

85040520040

Mondale for President  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1800

# MONDALE

GCC# 6055

DEC 20 1985  
P4:54  
RECEIVED  
GENERAL COUNSEL

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RE: MUR 1776

Dear Mr. Steele:

The Committee has received your notification that the Commission found reason to believe against MPC in MUR 1776. Our response to your letter is currently due on December 27. Due to the holidays, the Committee's offices will be closed during that week, and Committee personnel and attorneys will be out of town. Accordingly, we would like an additional fifteen days to submit a response to the Commission's finding. Our response will therefore be due on January 11, 1985.

Thank you for your attention to this matter.

Sincerely,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

85040520041

8 5 0 4 0 5 2 0 0 4 2

**MONDALE**

Charles N. Steele  
General Counsel  
FEC  
1325 K Street, NW  
7th Floor



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 7, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Chanin, Esquire  
Joy Koletsky, Esquire  
National Education Association  
1201 - 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

The Federal Election Commission notified your client, the Alabama Education Association, on September 14, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time. We acknowledge receipt of your client's explanation of this matter which was dated October 9, 1984.

Upon further review of the allegations contained in the complaint and information supplied by your client, the Commission, on November 27, 1984, determined that there is reason to believe the Alabama Education Association violated 2 U.S.C. § 441b(a), a provision of the Act, by making a prohibited expenditure in connection with a federal election when it permitted its facilities and telephones to be utilized to support the candidacy of Walter Mondale.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter within 15 days of your receipt of this notification. In addition, please submit answers to the enclosed order to answer questions within 15 days of your receipt of this letter.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

85040520043

Letter to Robert Chanin  
Page 2

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 your client wishes the matter to be made public. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202)523-4143.

Sincerely,



Lee Ann Elliott  
Chairman

Enclosures  
Procedures  
Order with questions

85040520044

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of ) MUR 1776  
Alabama Education Association )

ORDER TO SUBMIT WRITTEN ANSWERS

To: Alabama Education Association

Pursuant to 2 U.S.C. § 437d(a)(1), and in furtherance of its investigation in the above-styled matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order.

Such answers must be submitted under oath and must be forwarded to the Commission within 15 days of your receipt of this Order.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C. on this *6th* day of *December*, 1984.

*Lee Ann Elliott*  
\_\_\_\_\_  
Lee Ann Elliott

ATTEST:

*Marjorie W. Emmons*  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

Attachment  
Questions

85040520045

Interrogatories to: Alabama Education Association

1. State the fair market value of the facilities, including space, furniture and utilities, used by volunteers on behalf of Walter Mondale during the period of March 4, 1984, through March 12, 1984, at the Alabama Education Association, 422 Dexter Avenue, Montgomery, Alabama.

2. a) State the fair market value of the telephones utilized by volunteers on behalf of Walter Mondale during the period of March 4, 1984, through March 12, 1984, at the Alabama Education Association, 422 Dexter Avenue, Montgomery, Alabama.

b) State the amount of any additional telephone charges to the Alabama Education Association, including the cost of long distance calls, related to or resulting from, the volunteers' use of the telephones.

85040520046



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 7, 1984

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee, Inc.  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

On September 14, 1984, the Commission notified your clients, Walter F. Mondale, Mondale for President Committee, Inc. ("MPC"), and Michael S. Berman, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. We acknowledge receipt of your explanation of this matter on October 10, 1984.

Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission determined on November 27, 1984, that there is reason to believe MPC and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b) by accepting an in-kind contribution from the Alabama Education Association ("AEA") in connection with the use of the AEA's facilities and telephones by MPC's volunteers. The Commission also determined that there is no reason to believe Walter F. Mondale violated 2 U.S.C. §§ 441b(a) and 434(b).

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter within 15 days of your receipt of this notification.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your clients, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

85040520047

Letter to David Ifshin and Carolyn Oliphant  
Page 2

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 your clients wish the matter to be made public. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202)523-4143.

Sincerely,

  
Lee Ann Elliott  
Chairman

Enclosure  
Procedures

85040520048

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
Walter F. Mondale; )  
Mondale for President Committee, Inc.; ) MUR 1776  
Michael S. Berman, as treasurer; )  
Alabama Education Association )

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 27, 1984, do hereby certify that the Commission took the following actions in MUR 1776:

1. Decided by a vote of 6-0 to find reason to believe the Alabama Education Association violated 2 U.S.C. § 441b(a).
2. Decided by a vote of 6-0 to find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441b(a) and § 434(b).
3. Decided by a vote of 6-0 to find no reason to believe Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b).
4. Decided by a vote of 6-0 to direct the Office of General Counsel to send appropriate letters pursuant to these findings, and to send the Order attached to the General Counsel's report dated November 16, 1984.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry, and Reiche voted affirmatively for the decisions.

Attest:

11-30-84  
Date

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

85040520049



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE: DECEMBER 7, 1984

SUBJECT: MUR 1776 - Order

8 5 0 4 0 5 2 0 0 5 0

The attached order, which was Commission approved on November 27, 1984 by a vote of 6-0, has been signed and sealed this date.

Attachment



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL  
FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*  
DATE: NOVEMBER 20, 1984  
SUBJECT: OBJECTIONS - MUR 1776 First General  
Counsel's Report signed November 16,  
1984

The above-named document was circulated to the  
Commission on Friday, November 16, 1984 at 2:00.

Objections have been received from the Commissioners  
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____ X _____
Commissioner Harris	_____ X _____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____ X (comments attached) _____

This matter will be placed on the Executive Session  
agenda for Tuesday, November 27, 1984.

85040520051



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ JODY C. RANSOM *JCR*

DATE: NOVEMBER 19, 1984

SUBJECT: OBJECTIONS - MUR 1776 First General  
Counsel's Report signed November 16,  
1984

The above-named document was circulated to the  
Commission on Friday, November 16, 1984 at 2:00.

Objections have been received from the Commissioners  
as indicated by the name(s) checked:

Commissioner Aikens	_____
Commissioner Elliott	_____ X _____
Commissioner Harris	_____ X _____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	_____

This matter will be placed on the Executive Session  
agenda for Tuesday, November 27, 1984.

85040520052



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE  
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM *JCR*

DATE: NOVEMBER 19, 1984

SUBJECT: OBJECTION - MUR 1776 First General  
Counsel's Report signed November 16,  
1984

The above-named document was circulated to the  
Commission on Friday, November 16, 1984 at 2:00.

Objections have been received from the Commissioners  
as indicated by the name(s) checked:

Commissioner Aikens \_\_\_\_\_  
Commissioner Elliott \_\_\_\_\_  
Commissioner Harris \_\_\_\_\_ X \_\_\_\_\_  
Commissioner McDonald \_\_\_\_\_  
Commissioner McGarry \_\_\_\_\_  
Commissioner Reiche \_\_\_\_\_

This matter will be placed on the Executive Session  
agenda for Tuesday, November 27, 1984.

85040520053



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary  
FROM: Office of General Counsel *CW*  
DATE: November 16, 1984  
SUBJECT: MUR 1776 - First General Counsel's Report

The attached is submitted as an Agenda document  
for the Commission Meeting of \_\_\_\_\_  
Open Session \_\_\_\_\_  
Closed Session \_\_\_\_\_

CIRCULATIONS

48 Hour Tally Vote [ X ]  
Sensitive [ X ]  
Non-Sensitive [ ]  
24 Hour No Objection [ ]  
Sensitive [ ]  
Non-Sensitive [ ]  
Information [ ]  
Sensitive [ ]  
Non-Sensitive [ ]  
Other [ ]

DISTRIBUTION

Compliance [ X ]  
Audit Matters [ ]  
Litigation [ ]  
Closed MUR Letters [ ]  
Status Sheets [ ]  
Advisory Opinions [ ]  
Other (see distribution below) [ ]

85040520054

**SENSITIVE**

FEDERAL ELECTION COMMISSION  
1325 K Street, N.W.  
Washington, D.C. 20463

REC'D  
FEC  
CLERK

FIRST GENERAL COUNSEL'S REPORT 10:51

DATE AND TIME OF TRANSMITTAL  
BY OGC TO THE COMMISSION 10:50 - 11/16/84

MUR 1776  
DATE COMPLAINT RECEIVED  
BY OGC 9/6/84  
DATE OF NOTIFICATION TO  
RESPONDENT 9/14/84  
STAFF MEMBER Maura White

COMPLAINANTS' NAMES: Ralph Hettinga and the National Right to Work Committee

RESPONDENTS' NAMES: Walter F. Mondale; Mondale for President Committee, Inc.; Michael S. Berman, as treasurer; Alabama Education Association

RELEVANT STATUTE: 2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED: Public Records

FEDERAL AGENCIES CHECKED: None

SUMMARY OF ALLEGATIONS

On September 6, 1984, Ralph Hettinga and the National Right to Work Committee filed a complaint against Walter F. Mondale, the Mondale for President Committee Inc. ("Committee"), Michael S. Berman, as treasurer, and the Alabama Education Association ("AEA"). The complaint alleges that the Committee utilized the facilities and telephones of the Alabama Education Association and failed to pay for such use, in violation of 2 U.S.C. § 441b(a) and § 434. 1/

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**FACTUAL AND LEGAL ANALYSIS**

(a) The facts

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The complainants' allegations are based upon the affidavit of a private investigator who infiltrated the Committee's headquarters in Montgomery, Alabama. According to the complainants, the "affidavit reflects that, from March 4 through March 12, 1984, AEA permitted the Mondale campaign to use its offices and telephone bank to conduct a partisan get-out-the-vote campaign on Walter Mondale's behalf directed at members of the general public." The complainants assert that their review of "FEC filings made by the Mondale campaign through July 1984 reveals that Mondale has neither paid for nor been billed for the use of AEA's facilities and phones, even though two of the individuals mentioned in the affidavit, Tina Hester and John Knight, have received expense money from the Mondale campaign and, therefore, the Mondale campaign knew or must have known of the phone bank operation." 2/ The complainants conclude that "[t]his constitutes a violation of 2 U.S.C. § 441b inasmuch as Mondale is required to pay fair market value for the use of union

2/ Although the complainants stated that excerpts from the Committee's July filing were attached to the complaint, the filings were omitted but subsequently provided on September 12, 1984 (Attachment 1). The excerpts show a debt of \$92.42 owed to Tina Hester by the Committee for "expense reimbursement" and nine expenditures totalling \$180 to John Knight for "travel."

facilities and phones, and it constitutes a violation of § 434(b)'s reporting requirements." In addition, the complainants "request that the violations be remedied and that Respondents be assessed the maximum civil penalty for knowing and willful violations."

A review of the affidavit submitted by the complainants reveals that Jeffrey Saunders, a private investigator with Associated Investigators, Inc. of Washington, D.C., volunteered his services to Elizabeth Nevil 3/ on March 1, 1984, at "Mondale's Montgomery headquarters" (492 South Court Street) and was "immediately accepted." The affiant contends that on March 2, 1984, he again reported to "Mondale's office" and was "put to work checking a list of volunteers and a reception guest list against the Democratic Club list, checking off known Mondale supporters." According to the affiant, he was told by Elizabeth Nevil that "a telephone bank would be operating soon, and that AEA was contributing the telephones." 4/ On March 4, 1984, the affiant claims to have reported to AEA's headquarters and was escorted by Elizabeth Nevil to an office with eight or nine desks, each with a telephone. 5/ It is the affiant's contention

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3/ The affidavit states that Elizabeth Nevil told another individual at a later time that she was a "paid employee of the Mondale campaign, but had not received a check in some time." But see below.

4/ The affiant states that he was told the phone banks would be operating from 2 p.m. to 6 p.m. on Sunday, and from 6:30 p.m. to 9 p.m. the rest of the week. His affidavit, however, indicates that on one weekday the phones were used as early as 1:30 p.m.

5/ At this time the affiant claims to have been told that "use of the telephones had been authorized by Paul Hubbard."

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that "[a]ll volunteers were Mondale workers, not union employees," and that each was supplied with "several pages of the Democratic Club membership roster" and instructed to call members of the Democratic Club concerning candidate preference. 5/ On March 5, 1984, the affiant again reported to AEA's headquarters where Tina Hester was purportedly making long distance calls to delegates in the second congressional district while the affiant and three others "called individuals on the Democratic Club list." 7/ The affiant allegedly worked the "telephone bank" on March 8, 1984, from 6 p.m. to 9 p.m. and was provided with "five pages of geographical listings of registered voters." 8/ On March 9, 11, and 12, 1984, the affiant also claims to have worked at the AEA's phone banks along with other individuals; on two of the three days the affiant made telephone calls to names on the

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6/ The volunteers were also provided with a one-page script, volunteer information, and several pages of the "Democratic Club membership roster," according to the affiant. Attached to the complaint was a "Telephone Bank Script" and a "Telephone Bank Information Slip" upon which was the notation "Democrats for Good Government." The script and information slip related to candidate preference, rides to the polls, literature, and the recruitment of additional volunteers.

7/ According to the affidavit, the telephones used were equipped with a WATS line, but the line was not needed. It is alleged, however, that long distance calls were made by Elizabeth Nevil on March 12, 1984, "in an effort to obtain beer for the victory party."

8/ The affidavit asserts that Elizabeth Nevil told him that the list "had been provided by John Knight, a County Commissioner and an officer of the Alabama Democratic Conference," and that Richard Carter said the list had been "used repeatedly in numerous campaigns and had been obtained from another candidate."

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registered voters list and on the other day made calls from a "new list" which had "approximately fifty alphabetized pages." With respect to the "new list," an excerpt of which was appended to the complaint, the affiant contends that Elizabeth Nevil stated that it contained "predominantly white blue-collar workers," but did not know its origin. 9/

On October 10, 1984, one of the complainants in this matter submitted a letter, accompanied by a September 13, 1984, news article in the Birmingham Post-Herald, which states that since the filing of the instant complaint "both Mondale campaign officials and AEA officials have essentially admitted the violations to newspaper reporters." The complainant contends that the statement of Elizabeth Dunn, "coordinator for Mondale's campaign in the 2nd Congressional District," that "'We had lots of phone banks, not just AEA's...'" indicates that "illegal subsidies may extend beyond the AEA situation, and the investigation should be expanded accordingly." (Attachment 2.)

This office's review of the Birmingham Post-Herald news article reveals that volunteers for Walter Mondale were reported as conceding that they used a telephone bank at the AEA's office.

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9/ The complainant appears to be insinuating that this "new list" constituted the AEA's membership list which the complainant's private investigator claimed to have seen at an earlier date in the possession of Elizabeth Nevil. This office notes, however, that no such direct allegation has in fact been made, that the portion of the "new list" submitted with the complaint was handwritten whereas the AEA's membership list was described as a computer printout, and that most of the names on the list appear to be of husbands and wives.

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According to the news article, Paul Hubbert, an officer of the AEA, said that he had no knowledge of the AEA's phones being used by Mondale volunteers, while Elizabeth Dunn admitted they were used before the March 13 presidential primary. 10/ The news article also reported Ms. Dunn as saying that calls were made every night by Mondale volunteers, not AEA employees.

On October 9, 1984, the AEA submitted its response to the complaint (Attachment 3). 11/ The response of the AEA explains that in late February of 1984 Paul Hubbert, the Executive Director of the AEA, 12/ "authorized Elizabeth Dunn and other Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale." The affidavit of Paul Hubbert was included in the AEA's response. Paul Hubbert attests to the fact that he was not present in the AEA headquarters building when the alleged use of the headquarters took place and, therefore, he has "no personal knowledge as to the specifics of such use." According to the affidavit, there is no "telephone bank" at the AEA as alleged, but rather a secretarial pool of approximately 10

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10/ It was reported that "Hubbert said he authorized the use of the telephones for AEA members to contact other AEA members."

11/ In its response the AEA alleges a violation of § 441b(a) by the National Right to Work Committee in connection with its payment of the salary of a private investigator who supported the candidacy of Walter Mondale. A letter was subsequently mailed to counsel for the AEA by this office, advising him that no action could be taken with respect to the allegation because it did not adhere to the procedural requirements of a proper complaint.

12/ Paul Hubbert "has primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment," according to the AEA's response.

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desks, each with a telephone, which has existed "for many years" on the headquarter's second floor. With respect to the circumstances surrounding his authorization of the use of the headquarters, Paul Hubbard explains that he was contacted by Elizabeth Dunn, a Mondale volunteer, in late February of 1984 and asked whether volunteers "could use the AEA telephones outside of AEA's regular business hours to make local calls on behalf of Mr. Mondale." Mr. Hubbert states in his affidavit that he consented to the use and provided a key to the headquarters to Ms. Dunn. Although Mr. Hubbert "did not specifically monitor the use of the AEA telephones by the Mondale volunteers," he was aware of their use of the secretarial pool "during off-hours for approximately a ten day period immediately preceding the Alabama primary election on Tuesday, March 13, 1984." 13/ The affidavit concludes that the "off-hours use of the AEA telephones by the Mondale volunteers to make local calls did not involve any additional expenditure of AEA resources." It is noted in the AEA's response that "AEA is prepared to send Ms. Dunn or Ms. Nevil a bill and/or take such other remedial steps as may be appropriate."

13/ The affiant notes that when he authorized the use of the AEA's telephones he was "not familiar with the requirements of 2 U.S.C. § 441(b) [sic]."

stated that it had not entered into any arrangement for the use of AEA facilities or telephones with the Committee and that it believes such a response to be accurate at this time as well. The AEA's response emphasizes that the affidavit of the complainant's private investigator, upon which MUR 1776 is based, "does not even refer to the Mondale for President Committee" and that Scott Davis, the Committee's Alabama State Coordinator, attested that the Committee "did not make use of any labor facilities or equipment in Alabama."

On October 10, 1984, the Committee responded to the complaint's allegations (Attachment 4). It is the Committee's position that "no use of AEA phones or facilities by volunteers from the Montgomery field office was authorized, approved or, known to the Committee until this past September when complainants announced to the press that this complaint was being filed." According to the Committee, "[t]hose Committee employees in Alabama who had the responsibility for authorizing and overseeing phone bank use in Alabama were never told of the use of AEA phones or facilities." Moreover, "[c]ommittee volunteers from the Montgomery field office... used AEA phones without authorization from anyone within the Committee." The Committee concludes that "[b]ecause such use by these volunteers was both unauthorized and unknown to the Committee, the Commission should

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find no reason to believe that a violation of 2 U.S.C. § 441b or 434(b) occurred, and accordingly should dismiss this complaint."

The Committee's response explains that it established procedures for its use of union facilities to ensure compliance with Commission regulations. In Alabama "it was the Committee's intent and policy to not use any labor facilities." 14/ Two individuals, Scott Davis (Alabama State Coordinator) and Joe Adum (a consultant), were identified by the Committee as being "responsible for authorizing and overseeing all phone bank operations in the state." According to the affidavit of Scott Davis, which was included with the Committee's response, he served as the Alabama State Coordinator from October 1, 1983, to March 15, 1984, and at no time did he authorize Elizabeth Dunn or Elizabeth Nevil to use the AEA's phones or facilities and at no time during the Alabama primary campaign did he authorize or become aware of "any use of labor phones or facilities in the State of Alabama by Mondale volunteers." The affiant avers that his "first knowledge of any use of labor phones or facilities in Alabama was on or about September 13, 1984 when [he] was advised of and subsequently read an article in the Birmingham Post-Herald which alleged that labor phones had been used by some Mondale volunteers in Montgomery, Alabama."

The affidavit of Joel Odum, a consultant to the Committee

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from February 19, 1984, to March 13, 1984, was also included with the Committee's response. In his affidavit Joel Odum states that he had "authority to authorize use of phones for GOTV and polling operations" and that to his knowledge only Scott Davis "had authority to allow or approve the use of labor phones for the primary campaign in Alabama." Joel Odum attests to the fact that he did not set up any phone bank at the AEA or at "any other labor organization's facilities in the State of Alabama, whereby Mondale volunteers used a labor organization's phones or facilities." According to the affidavit, Joel Odum did not "authorize, suggest or approve the use of phones or facilities" of the AEA and was unaware of such use.

With respect to the activities of Elizabeth Dunn and Elizabeth Nevil, who were mentioned in the complaint, the Committee's reply states that they both were volunteers who worked in the Montgomery field office and who were not reimbursed at any time "for their services or for their expenses." Elizabeth Dunn performed "general political organizing in the Alabama 2nd Congressional District" and Elizabeth Nevil "organized volunteer phoning." The Committee's response explains that based upon its inquiries with Elizabeth Nevil "it would appear that any use of AEA phones by these volunteers was limited to use of 8 to 10 phones for approximately 10 days to 2 weeks before the primary," and that the "[p]honing was done in the evenings and weekend afternoons for about 3 hours from lists of local area residents." According to the Committee's response, Elizabeth Nevil is "unaware of any long distance calls having

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been made by herself or any other individual." The affidavit of Elizabeth Nevil confirms that she was not paid by the Committee and that she did not consult with or receive authorization to use AEA telephones or facilities from "Scott Davis, Joel Odum or from any other individual from the Mondale Campaign." In addition, Elizabeth Nevil stated in the affidavit that she did not discuss her use of "labor phones or facilities with any individual from the Campaign" and was not aware that such use could violate federal election law. 15/

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The Committee's response argues further that "Complainants would have the Commission infer that because two individuals, Tina Hester and John Knight, subsequently received or were owed minimal expense reimbursements for items completely unrelated to any use of phones, that this was sufficient to put the Committee on notice that labor phones were being used." The Committee insists that "[t]here is not one shred of evidence to support such a tenuous conclusion." John Knight was "never employed by the Committee" and "[i]f he did in fact give these volunteers a list of registered voters, as is claimed, there is no evidence to show that he had any knowledge of AEA phone use," according to

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15/ The Committee's response explains that Scott Davis had "very little contact" with either Elizabeth Nevil or Elizabeth Dunn and "[o]n a few occasions, he was asked to provide them with campaign materials to distribute and with information concerning Mr. Mondale's projected visits to the Montgomery area." Moreover, "Mr. Odum visited the office on at least one occasion but assumed from his conversations with Ms. Dunn and Ms. Nevil that they were doing their phoning only from the Mondale office."

the Committee's response. 16/ As to Tina Hester, it is explained that she was "briefly employed by the Committee" and spent one week in Alabama. It is the Committee's position that there is "no evidence that she took part in the AEA phone bank except apparently to make a few calls on one evening unrelated to the calls that other volunteers were making," or that "she ever discussed or informed anyone from the Committee that AEA phones were being used." The Committee maintains that such use "as Ms. Hester may have made of these phones was clearly unauthorized, isolated and de minimus."

In conclusion the Committee emphasizes that "any use of AEA phones or facilities in Montgomery by these volunteers was clearly unauthorized and unknown to the Committee," and that "[s]uch use was against the policy of the Committee in Alabama and against the established procedures of the Committee." The Committee maintains, therefore, that the "Commission should find that such unauthorized use was not a contribution to or an expenditure by the Committee."

(b) The Applicable Law

Pursuant to 2 U.S.C. § 441b(a), a labor organization is prohibited from making a contribution or expenditure in connection with a federal election, and a political committee is prohibited from knowingly accepting any contribution prohibited

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16/ The Committee notes that John Knight was apparently "reimbursed approximately \$280 for travel which was paid from drafts to cover the cost of a car rental."

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by 2 U.S.C. § 441b.

The term "contribution" is defined at 2 U.S.C. § 431(8) (A) to include any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The term "expenditure" is defined at 2 U.S.C. § 431(9) (A) and 11 C.F.R. § 100.8(a) (1) to include any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. For purposes of 11 C.F.R. § 100.8(a) (1) the term "anything of value includes all in-kind contributions. 11 C.F.R. § 100.8(a) (1) (iv) (A).

As set forth at 11 C.F.R. § 114.9(d) persons other than officials, members and employees of a labor organization, who make any use of the labor organization's facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a federal election are required to reimburse the labor organization within a commercially reasonable time in the amount of the normal and usual rental charge as defined in 11 C.F.R. § 100.7(a) (1) (iii) (B) for the use of the facilities.

Under 11 C.F.R. § 100.7(a) (1) (iii) (A) goods or services provided without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but

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are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the political committee. 11 C.F.R. § 100.7(a)(1)(iii)(A).

The term "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and "usual and normal charge" for any services, other than those of an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered. 11 C.F.R. § 100.7(a)(1)(iii)(B).

(c) Application of the law to the facts

The evidence in hand indicates that the facilities and telephones of the AEA were utilized to support the candidacy of Walter Mondale in connection with the 1984 presidential primary election in Alabama. The record in this matter also demonstrates that the AEA was not reimbursed for this use. Primary authority for the day to day operation of the AEA is vested in the Executive Director of the AEA who has admitted that he permitted the AEA's facilities to be used for the purpose of making calls "on behalf of Mr. Mondale." It cannot, therefore, be argued that the use at issue was either unknown or unauthorized by the AEA.

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Clearly, the utilization of the AEA's facilities and telephones to conduct partisan telephoning and electioneering on behalf of Walter Mondale was for the purpose of influencing a federal election. By permitting its facilities and telephones 17/ to be used without charge to influence a federal election, it is the view of this office that there is reason to believe the AEA made a prohibited expenditure in connection with a federal election, in violation of 2 U.S.C. § 441b(a). 18/

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With respect to the Committee, it is the position of both the AEA and the Committee that no use agreement or any other arrangement for the use of the AEA's facilities was entered into between the Committee and the AEA. The Committee insists that its employees who had responsibility for authorizing and overseeing phone bank use in Alabama were never told of the use of the AEA's facilities. The Committee has also maintained that it was its intent and policy not to use any labor facilities in Alabama. While some Committee volunteers apparently utilized the AEA's facilities on behalf of Walter Mondale, there is no

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17/ In the view of this office there is insufficient evidence to conclude that the AEA's membership list was utilized on behalf of Walter Mondale. Moreover, there is no indication that the use of this list was authorized by the AEA.

18/ The Office of the General Counsel does not share the complainants' view that knowing and willful violations are at issue. There is simply no proof at this time of "'defiance' or 'knowing, conscious, and deliberate flaunting' of the Act by the AEA in this matter. AFL-CIO v. FEC, 628 F.2d 98, 101 (D.C. Cir. 1980), quoting Frank Irely, Jr. Inc. v. OSHA, 519 F.2d 1200, 1207 (3rd Cir. 1975).

evidence that this use was sanctioned or authorized in any way by the Committee. 19/ Indeed, the Committee's State Coordinator in Alabama has attested to the fact that no such authorization was given. Moreover, Elizabeth Nevil has stated under oath that she did not consult with, or receive authorization from, any individual at the Committee concerning the use of the AEA's facilities or telephones.

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Although it is a settled proposition of law that the principal is considered to have the knowledge that its agent possesses within the scope of the agency, W.R. Grace and Co. v. Western U.S. Industries, Inc., 608 F.2d 1214, 1218 (9th Cir. 1979), the fundamental question is whether the Committee's volunteers who utilized the AEA's facilities were agents, or intended to be agents, of the Committee. Agency is created by agreement of the parties and authority is conferred to the extent that the creation results from the agreement between the principal and agent that such a relation shall exist. 3 Am. Jur. 2d Agency § 17. The principal must intend that the agent shall act for him, the agent must intend to accept the authority and act on it, and the intention of the parties must find expression either in words or conduct between them. Id.

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19/ This office notes that although Tina Hester, who was "briefly" employed by the Committee, utilized the telephones at the AEA to make calls one evening "unrelated to the calls that other volunteers were making," her use of the phones was also unauthorized, and she apparently did not inform anyone at the Committee that the AEA's phones were being used.

Under the foregoing standard and factual record, it is the view of this office that the Committee should not be found to be liable for the use of the AEA's facilities by the Committee's volunteers. There is no indication that their actions were authorized or sanctioned by the Committee. There is also no indication that these volunteers were agents of the Committee as a result of either express or implied agency. It is, therefore, the recommendation of this office that the Commission find no reason to believe Walter F. Mondale, the Committee, and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 441b(a) and 434(b) in connection with the use of the AEA's facilities and telephones.

RECOMMENDATIONS

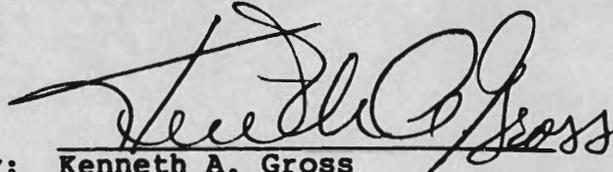
1. Find reason to believe the Alabama Education Association violated 2 U.S.C. § 441b(a).
2. Find no reason to believe the Mondale for President Committee, Inc., Michael S. Berman, as treasurer, and Walter F. Mondale violated 2 U.S.C. § 441b(a) and § 434(b), and close the file as it pertains to these respondents.

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3. Approve the attached letters and Order.

Charles N. Steele  
General Counsel

*Nov. 16, 1984*



By: Kenneth A. Gross  
Associate General Counsel

**Attachments:**

- 1 - Letter from complainant
- 2 - Letter from complainant
- 3 - AEA response
- 4 - MPC response
- 5 - Proposed letters (2) and Order (1)

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# National Right To Work Committee

THE FEC  
GCC #1061  
84 SEP 12 P12: 19

A COALITION OF EMPLOYEES AND EMPLOYERS  
HEADQUARTERS AT THE NATION'S CAPITAL

1796

September 11, 1984

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

34 SEP 12 P 4: 08  
RECEIVED  
GENERAL COUNSEL

Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph Martin (Bud) Hettinga, Jr., filed a complaint alleging violations of the federal election laws by Walter F. Mondale and Mondale for President Campaign Committee, as well as Alabama Education Association.

The excerpts from Mondale's July filing with the Commission, which are referred to on page two of our complaint, may have been omitted. Copies are enclosed with this letter.

Sincerely,

THE NATIONAL RIGHT TO WORK COMMITTEE

BY: William A. Wilson  
William A. Wilson, Vice President

WW/gh

cc: Mr. Hettinga

Enclosures

Attachment 1 (1)

85040520073

Hertz System Licensee Post Office Box B Des Moines, Iowa 50315	583.08	-0-	-0-	583.08
Nature of Debt (Purpose): car rental				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hertz Corporation Post Office Box 26141 Oklahoma City, Oklahoma 73126	2992.39	6/1/84 153.90	-0-	3146.29
Nature of Debt (Purpose): car rental				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor Tina Hester 4301 - 38th Street, N.W. Washington, D.C. 20016	92.42	-0-	-0-	92.42
Nature of Debt (Purpose): Expense reimbursement				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor Highlander Inn and Supper Club Rural Route 2 Iowa City, Iowa 52240	420.01	-0-	-0-	420.01
Nature of Debt (Purpose): lodging				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hillsborough Cnty Cntr. Labor Cte. 1701 North Franklin Tampa, Florida 33602	250.58	-0-	-0-	250.58
Nature of Debt (Purpose): telephones				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hill Stapler Company 2200 Evergreen Street Baltimore, Maryland 21216	51.46	-0-	-0-	51.46
Nature of Debt (Purpose): equipment repair				
1) SUBTOTALS This Period (This Page Optional)				4543.84
2) TOTAL This Period (last page this line only)				
3) TOTAL OUTSTANDING LOANS from Schedule D (last page only)				1(2)

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HONDALE FOR PRESIDENT  
 HONDALE  
 SCHEDULE D-P  
 FOR THE PERIOD OF: 06/01/04 TO 06/30/04

OPERATING EXPENDITURES - FEC JP LINE NO. 23

PAGE: 3

	DATE	EXPENDITURE DESCRIPTION	AMOUNT
VEND: 100165 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00
VEND: 100166 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00
VEND: 100167 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00
VEND: 100168 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00
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VEND: 100172 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00
VEND: 100173 NAME: JOHN F KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/04	TRAVEL AUTO PRIMARY	20.00

(13)

# National Right To Work Committee

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1776

A COALITION OF EMPLOYEES AND EMPLOYERS  
HEADQUARTERS AT THE NATION'S CAPITAL

October 4, 1984

**SENSITIVE**

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

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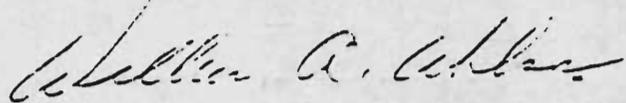
Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph M. Hettinga, Jr., filed a complaint alleging that Alabama Education Association had illegally provided a phone bank subsidy to the Mondale campaign.

Since that date, both Mondale campaign officials and AEA officials have essentially admitted the violations to newspaper reporters. See the enclosed article from the Birmingham Post-Herald.

More important, Elizabeth Dunn, coordinator for Mondale's campaign in Alabama's Second Congressional District, is quoted as saying, "We had lots of phone banks, not just AEA's, ..." This indicates that illegal subsidies may extend beyond the AEA situation, and the investigation should be expanded accordingly.

Sincerely,



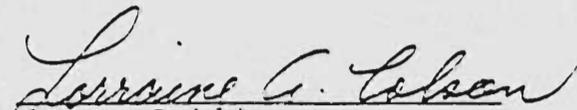
William A. Wilson, Vice President

WAW/gh

cc: Mr. Hettinga

Enclosure

Subscribed and sworn to before me, a notary public, this 4th day of October, 1984.

  
Notary Public

My commission expires: November 30, 1987. Attachment 2(1)

85040520076

# Mondale volunteers concede AEA phones used in campaign

United Press International

MONTGOMERY — Volunteers for Walter Mondale conceded yesterday that they used a telephone bank at the Alabama Education Association office to campaign for him, but they said nothing improper was done.

The National Right to Work Committee has filed a complaint with the Federal Election Commission charging that the Mondale presidential campaign should have paid for the use of the telephones.

Paul Eubbert, the AEA executive secretary, said last week that he had no knowledge of the AEA's phones being used by Mondale volunteers.

But Elizabeth Dunn, coordinator for Mondale's campaign in the 2nd Congressional District, admitted they were used before Alabama's March 13 presidential primary. Mondale, who is supported by the AEA leadership, carried Alabama in the primary.

"We had lots of phone banks, not just AEA's, but we did use seven of their (phones), and we did have calls going on every single night," Mrs. Dunn said. "AEA people didn't use the phones. They were all Mondale volunteers."

Mrs. Dunn said a key to the AEA office was made available to the Mondale group. Eubbert said he did not

know the Mondale workers used the AEA facilities and or that they had a key to the AEA office.

"I really don't know how they got the key," Eubbert said. "There are many keys around. I assume they must have gotten it from somebody who had one."

Eubbert said he authorized the use of the telephones for AEA members to contact other members.

The Right to Work Committee's complaint said the contribution was not reported in Mondale's financial disclosure reports.

Mondale supporters said there was no violation of election laws because the telephones and office space are standard AEA expenses.

Julian McPhillips, a Montgomery lawyer and Mondale supporter, said the Right to Work Committee complaint was frivolous. "It involved no cost to the AEA," he said.

Mrs. Dunn said that in an election "when anybody donates anything, they think of it as an in-kind contribution, which is legal."

The Right to Work complaint was accompanied by an affidavit signed by Jeffrey Saunders, who reportedly was hired to infiltrate the Mondale campaign.

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LEGAL SERVICES  
OFFICE OF GENERAL COUNSEL

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D.C. 20036 • (202) 822-7035  
MARY HATHOOD FUTRELL, President  
KEITH GEIGER, Vice President  
RODOLPHE E. BRADSHAW, Secretary-Treasurer  
DON CAMERON, Executive Director

October 9, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: MUR 1776

Dear Mr. Steele:

On September 14, 1984, you wrote to the Alabama Education Association ("AEA") regarding the above MUR, which is based upon a complaint filed by the National Right to Work Committee ("NRWC") and Ralph Martin (Bud) Hettinga, Jr. The complaint alleges that AEA violated the Federal Election Campaign Act of 1971 ("Act") by "permitt[ing] the Mondale Campaign the use of its offices and telephone bank to conduct a partisan get-out-the-vote campaign on Walter Mondale's behalf directed at members of the general public," without charging fair market value for such use. The "facts" in support of this allegation are set forth in an affidavit by Jeffrey Saunders that is attached to the complaint. Mr. Saunders is a private investigator who was retained by the NRWC. I have been authorized to represent AEA in this MUR, and this response is submitted on its behalf.

Dr. Paul R. Hubbert is the Executive Director of AEA, and has primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment. Attached to this letter is an affidavit by Dr. Hubbert, in which he sets forth the circumstances regarding the use of the AEA telephones that is alleged in the Saunders Affidavit. Although Dr. Hubbert's affidavit speaks for itself, it is helpful to emphasize certain key points:

1. Inasmuch as the alleged use of the AEA telephones took place outside of AEA's regular business hours (i.e., on Sundays and after 6:00 p.m. on week days), and involved "Mondale workers,

Attachment 3(1)

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not union employees," Saunders Affidavit, ¶ 6, Dr. Hubbert has no personal knowledge of the specifics of such use;

2. In late February 1984, Dr. Hubbert authorized Elizabeth Dunn and other Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale; and

3. This off-hours use of the AEA telephones did not involve any additional expenditure of AEA resources, and, being unfamiliar with the requirements of federal election law, Dr. Hubbert concluded that it was unnecessary to impose a charge for such use. This conclusion was based, at least in part, on the fact that it would have been permissible under Alabama law, with which Dr. Hubbert was familiar, for candidates for state and local political office to have used AEA facilities in like circumstances without charge.

I have discussed this MUR with Dr. Hubbert, and informed him of the position taken by the Commission -- i.e., that AEA was required to charge the Mondale volunteers for the fair market value of their use of the AEA telephones. To the extent there was a violation of the Act, it was inadvertent and AEA is prepared to send Ms. Dunn or Ms. Neville a bill and/or take such other remedial steps as may be appropriate. We would appreciate guidance from the Commission in this regard.

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The Saunders Affidavit refers to some volunteer "Mondale workers," (paragraph 6), one of whom allegedly "told [him] that the use of the telephones had been authorized by Paul Hubbard." Id. at paragraph 5. The affidavit does not even refer to the Mondale for President Committee, and as Scott Davis, Alabama State Coordinator for the Committee, declares in the affidavit.....

To my knowledge, the Mondale Committee did not enter into any use agreements with any labor organizations for the use of their facilities in Alabama, nor did we make use of any labor facilities or equipment in Alabama.

Whereas MUR 1776 may involve, at worst, an inadvertent and relatively inconsequential violation of the Act, the Saunders Affidavit documents a far more significant breach of law. For the reasons set forth below, we submit that NRWC has violated 2 U.S.C. § 441(b) by utilizing its resources to support the candidacy of Walter Mondale.

We begin with the undisputed fact that during the period covered by his affidavit -- i.e., March 1 through March 12, 1984 -- Mr. Saunders was being paid by NRWC. On Thursday, March 1, 1984, Mr. Saunders "volunteered [his] services" to work for Mondale. Saunders Affidavit, paragraph 2. His offer was "immediately accepted," id., and for the next 11 days he was actively engaged in performing functions in support of the Mondale candidacy. Specifically:

Friday, March 2, 1984: "check[ed] a list of volunteers and a reception guest list against the Democratic Club list, checking off known Mondale supporters." Id. at paragraph 3.

Sunday, March 4, 1984: "call[ed] members of the Democratic Club and ask[ed] their preference among the candidates. If they were for anyone other than Mondale, they were thanked for their time and the conversation ended. If they were uncommitted, they were asked if they would like some literature on Mondale. If they were for

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Mondale, they were asked if they could help out or if they needed transportation to the polls. A notation was made next to each name on the list as to that Democratic Club member's preference." Id. at paragraph 6.

Monday, March 5, 1984: "called individuals on the Democratic Club list." Id. at paragraph 9.

Thursday, March 8, 1984: "worked the telephone bank at AEA headquarters from 6:00 to 9:00 p.m. [calling] five pages of geographical listings of registered voters." Id. at paragraph 10.

Friday, March 9, 1984: "made calls from the 'John Knight' list eliciting twice as many Mondale responses than any others." Id. at paragraph 11.

Sunday, March 11: made calls from "the 'John Knight' list." Id. at paragraph 12.

Monday, March 12: "worked the telephone bank at AEA headquarters [and] made approximately fifty (50) calls." Id. at paragraphs 13-14.

Although Mr. Saunders obviously performed the above functions for different reasons than did the other "volunteers," this apparently did not diminish his effectiveness. To the contrary, Ms. Neville, who was the person "in charge," was so impressed that she "asked that [Saunders] run the telephone bank" on March 11, 1984, which he in fact did "starting at 1 p.m. and ending at 3:30 p.m." Id. at paragraph 12. And Mr. Saunders motives are, of course, irrelevant vis-a-vis the impact this his activities may have had on potential voters.

Inasmuch as the foregoing activities were engaged in by Mr. Saunders while he was being paid by, and with the full knowledge of NRWC, it is clear that NRWC funds were expended in violation of 2 U.S.C. § 441(b). Moreover, unlike the situation with AEA, we have here a knowing and willful violation by an entity that is thoroughly familiar with the requirements of the

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Act -- and, as the complaint in MUR 1776 indicates, with the requirements of 2 U.S.C. § 441(b) in particular. We ask that the Commission, on the basis of this information ascertained in the normal course of carrying out its supervisory responsibilities, take appropriate action to remedy this violation (including assessing NRWC the maximum allowable civil penalty) and to prevent similar violations in the future.

Sincerely,



Robert H. Chanin

Attorney for Respondent  
Alabama Education Association

RHC:sf

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Complaint Filed By )  
THE NATIONAL RIGHT TO WORK COMMITTEE )  
AND )  
RALPH MARTIN (BUD) HETTINGA, JR. )

MUR 1776

State of Alabama )  
County of Montgomery ) ss.

AFFIDAVIT OF PAUL R. HUBBERT

PAUL R. HUBBERT, being duly sworn, deposes and says:

1. I am the Executive Director of the Alabama Education Association ("AEA"). In this capacity, I have primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment.

2. The AEA headquarters building is located at 422 Dexter Avenue, Montgomery, Alabama. This building operates on a five-day work week from Monday through Friday, and the regular AEA work day is from 8:15 a.m. to 4:45 p.m. Unless there is a specially scheduled meeting or other event, the AEA headquarters building generally is not used for AEA business, and I generally am not present in the building, other than at the above times.

3. I have reviewed the affidavit of Jeffrey Saunders in MUR 1776, in which he asserts that an AEA "telephone bank" was

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used by Mondale volunteers on Sundays and after 6:00 p.m. on week days from Sunday, March 4, 1984 through Monday, March 12, 1984. I was not present in the AEA headquarters building when this use allegedly took place and, since it allegedly involved "Mondale workers, not union employees," Saunders Affidavit, paragraph 6, I have no personal knowledge as to the specifics of such use. It should be noted, however, that Mr. Saunders' reference to an AEA "telephone bank" is inaccurate. There is (and for many years has been) on the second floor of the AEA headquarters building, a secretarial pool which consists of approximately 10 desks, each with a telephone, separated by partitions. It is these telephones to which Mr. Saunders presumably is referring.

4. In paragraph 5 of his Affidavit, Mr. Saunders states that Elizabeth Neville "told [him] that use of the telephones had been authorized by Paul Hubbard." To the best of my recollection, the circumstances surrounding this authorization are as follows:

a. In late February, 1984, I was contacted by Elizabeth Dunn, who is my neighbor. Ms. Dunn and I had several conversations during this period regarding both her candidacy for the position of Mondale delegate and the candidacy of Mr. Mondale for President of the United States. In one of these conversations, Ms. Dunn indicated that she was a

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volunteer worker for Mr. Mondale, and asked whether she and other volunteers could use the AEA telephones outside of AEA's regular business hours to make local calls on behalf of Mr. Mondale. I assented to such use, and indicated that I would instruct my administrative assistant to provide her with a key to the AEA headquarters building, which I subsequently did.

b. Although I did not specifically monitor the use of the AEA telephones by the Mondale volunteers, I was aware that they were in fact using the telephones in the secretarial pool on the second floor of the AEA headquarters building during off-hours for approximately a ten-day period immediately preceding the Alabama primary election on Tuesday, March 13, 1984.

c. When I authorized the use of the AEA telephones by the Mondale volunteers in late February, 1984, I was not familiar with the requirements of 2 U.S.C. §441(b) of the Federal Election Campaign Act ("Act"), and did not feel that it was necessary to consult with an attorney. Inasmuch as the off-hours use of the AEA telephones by the Mondale volunteers to make local calls did not involve any additional expenditure of AEA resources,

I concluded that AEA was not required to impose a charge for such use. I based this conclusion, at least in part, on the Alabama election law, which as I understand it would in like circumstances permit AEA to make its facilities available for use by candidates for state and local political office without charge.

5. I have now been informed by the attorneys representing AEA in this MUR of the position taken by the Commission vis-a-vis the requirements of 2 U.S.C. §441(b) -- i.e., that under this section, AEA was required to charge the Mondale volunteers for the off-hours use of its telephones to make local calls. To the extent there was a violation of the Act, it was inadvertent, and AEA is prepared to send a bill for the amount in question to Ms. Neville or Ms. Dunn, and/or to take such other remedial steps as may be appropriate.

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\_\_\_\_\_  
PAUL R. HUBBERT

Sworn to before me and  
subscribed in my presence  
this \_\_\_\_ day of \_\_\_\_\_, 1984.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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Complaint Filed By )  
 )  
 THE NATIONAL RIGHT TO WORK COMMITTEE )  
 )  
 AND )  
 )  
 RALPH MARTIN (BUD) HETTINGA, JR. )  
 )

MUR 1776

14 OCT 12 12  
 pd: 22  
 RECEIVED  
 CENTRAL  
 DIVISION

State of Alabama )  
 ) ss.  
 County of Montgomery )

AFFIDAVIT OF PAUL R. HUBBERT

PAUL R. HUBBERT, being duly sworn, deposes and says:

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3. I have reviewed the affidavit of Jeffrey Saunders in MUR 1776, in which he asserts that an AEA "telephone bank" was

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used by Mondale volunteers on Sundays and after 6:00 p.m. on week days from Sunday, March 4, 1984 through Monday, March 12, 1984. I was not present in the AEA headquarters building when this use allegedly took place and, since it allegedly involved "Mondale workers, not union employees," Saunders Affidavit, paragraph 6, I have no personal knowledge as to the specifics of such use. It should be noted, however, that Mr. Saunders' reference to an AEA "telephone bank" is inaccurate. There is (and for many years has been) on the second floor of the AEA headquarters building, a secretarial pool which consists of approximately 10 desks, each with a telephone, separated by partitions. It is these telephones to which Mr. Saunders presumably is referring.

4. In paragraph 5 of his Affidavit, Mr. Saunders states that Elizabeth Neville "told [him] that use of the telephones had been authorized by Paul Hubbard." To the best of my recollection, the circumstances surrounding this authorization are as follows:

a. In late February, 1984, I was contacted by Elizabeth Dunn, who is my neighbor. Ms. Dunn and I had several conversations during this period regarding both her candidacy for the position of Mondale delegate and the candidacy of Mr. Mondale for President of the United States. In one of these conversations, Ms. Dunn indicated that she was a

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volunteer worker for Mr. Mondale, and asked whether she and other volunteers could use the AEA telephones outside of AEA's regular business hours to make local calls on behalf of Mr. Mondale. I assented to such use, and indicated that I would instruct my administrative assistant to provide her with a key to the AEA headquarters building, which I subsequently did.

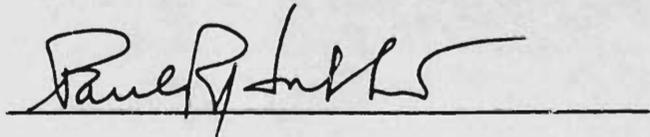
b. Although I did not specifically monitor the use of the AEA telephones by the Mondale volunteers, I was aware that they were in fact using the telephones in the secretarial pool on the second floor of the AEA headquarters building during off-hours for approximately a ten-day period immediately preceding the Alabama primary election on Tuesday, March 13, 1984.

c. When I authorized the use of the AEA telephones by the Mondale volunteers in late February, 1984, I was not familiar with the requirements of 2 U.S.C. §441(b) of the Federal Election Campaign Act ("Act"), and did not feel that it was necessary to consult with an attorney. Inasmuch as the off-hours use of the AEA telephones by the Mondale volunteers to make local calls did not involve any additional expenditure of AEA resources,

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I concluded that AEA was not required to impose a charge for such use. I based this conclusion, at least in part, on the Alabama election law, which as I understand it would in like circumstances permit AEA to make its facilities available for use by candidates for state and local political office without charge.

5. I have now been informed by the attorneys representing AEA in this MUP of the position taken by the Commission vis-a-vis the requirements of 2 U.S.C. §441(b) -- i.e., that under this section, AEA was required to charge the Mondale volunteers for the off-hours use of its telephones to make local calls. To the extent there was a violation of the Act, it was inadvertent, and AEA is prepared to send a bill for the amount in question to Ms. Neville or Ms. Dunn, and/or to take such other remedial steps as may be appropriate.



PAUL R. HUBBERT

Sworn to before me and subscribed in my presence this 11<sup>th</sup> day of October 1984.

  
Notary Public

My Commission Expires: 11/11/85

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October 10, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street NW  
Washington, D.C. 20463

Re: MUR 1776

Dear Mr. Steele:

8 5 0 4 0 5 2 0 0 9 1  
This letter is the response of the Mondale for President Committee, Inc. ("the Committee") to the complaint filed with the Commission by the National Right to Work Committee ("NRWC") and Ralph Martin (Bud) Hettinga, Jr. (together "the Complainants") on September 6, 1984. 1/ This complaint alleges that the Committee failed to pay for and report the use of labor phones or facilities in violation of 2 U.S.C. Sections 441b and 434(b). Complainants base their allegations on an affidavit from Jeffrey Saunders, a paid informant of NRWC who apparently was employed to pose as a volunteer with the Mondale campaign in Montgomery, Alabama. Mr. Saunders claims that he made phone calls to identify potential Mondale supporters on six occasions between March 4 and 12, from the Alabama Education Association ("AEA") offices in Montgomery.

1/The other named respondent is the Alabama Education Association.

Attachment 4(1)

Complainants infer from the fact that two individuals mentioned in the affidavit subsequently received or are owed minimal expense reimbursements from the Committee, that MPC "knew or must have known" of the use of AEA's phones by Mondale volunteers. However, based on the Committee's inquiries into the allegations of this complaint, no use of AEA phones or facilities by volunteers from the Montgomery field office was authorized, approved or, known to the Committee until this past September when Complainants announced to the press that this complaint was being filed.

Those Committee employees in Alabama who had the responsibility for authorizing and overseeing phone bank use in Alabama were never told of the use of AEA phones or facilities. Committee volunteers from the Montgomery field office, who were unaware of the FECA requirements regarding labor phones or facilities, used AEA phones without authorization from anyone within the Committee. Because such use by these volunteers was both unauthorized and unknown to the Committee, the Commission should find no reason to believe that a violation of 2 U.S.C. 441b or 434(b) occurred, and accordingly should dismiss this complaint.

I. Factual Background

procedures is incorporated in this response.

In Alabama, it was the Committee's intent and policy to not use any labor facilities. Two individuals, Scott Davis, Alabama state coordinator, and Joel Odum, a consultant to the Committee, were responsible for authorizing and overseeing all phone bank operations in the state. As evidenced by their affidavits attached hereto as exhibits A and B, neither of them authorized the use of any labor phones or facilities in Alabama and it was never brought to their attention that there was such use.

Elizabeth Dunn and Elizabeth Nevil were, to the best knowledge of the Committee, volunteers who worked in the Mondale Montgomery office. Both are local residents of Montgomery, Alabama. At no time were they reimbursed by the Committee for their services or for their expenses.

Mrs. Dunn performed general political organizing in the Alabama 2nd Congressional District and Ms. Nevil organized volunteer phoning. Based on our inquiries with Ms. Nevil concerning the allegations of this complaint it would appear that any use of AEA phones by these volunteers was limited to use of 8 to 10 phones for approximately 10 days to 2 weeks before the primary. Phoning was done in the evenings and weekend afternoons for about 3 hours from lists of local area residents. Ms. Nevil was unaware of any long distance calls having been made by herself or any other individual. As evidenced by Ms. Neville's affidavit, attached hereto as Exhibit C, she did not receive authorization from anyone in the Committee to use these phones. Mr. Davis had very little contact with either individual. On a

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few occasions, he was asked to provide them with campaign materials to distribute and with information concerning Mr. Mondale's projected visits to the Montgomery area. Mr. Odum visited the office on at least one occasion but assumed from his conversations with Mrs. Dunn and Ms. Nevil that they were doing their phoning only from the Mondale office. Neither Mr. Davis nor Mr. Odum at any time suggested that these volunteers should use labor phones.

Notwithstanding that neither the Committee nor any authorized agent of the Committee ever consulted, consented, suggested, authorized, or approved the use of these phones. Complainants would have the Commission infer that because two individuals, Tina Hester and John Knight, subsequently received or were owed minimal expense reimbursements for items completely unrelated to any use of phones, that this was sufficient to put the Committee on notice that labor phones were being used. There is not one shred of evidence to support such a tenuous conclusion. Mr Knight was never employed by the Committee. He apparently was reimbursed approximately \$280.00 for travel which was paid from drafts to cover the cost of a car rental. If he did in fact give these volunteers a list of registered voters, as is claimed, there is no evidence to show that he had any knowledge of AEA phone use.

Tina Hester was briefly employed by the Committee and spent approximately one week in Alabama. The Committee reimbursed her for some expenses in the amount of \$150.00 and still owes her \$92.42. These expenses were primarily for food. She was also

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paid out of drafts. There is no evidence that she took part in the AEA phone bank except apparently to make a few calls on one evening unrelated to the calls that other volunteers were making. There is similarly no evidence that she ever discussed or informed anyone from the Committee that AEA phones were being used. It is clear that she did not do so. Such use as Ms. Hester may have made of these phones was clearly unauthorized, isolated and de minimus.

II. Conclusion

Based on the facts as determined by our inquiries into this matter, any use of AEA phones or facilities in Montgomery by these volunteers was clearly unauthorized and unknown to the Committee. Recognizing the importance of establishment of management controls by a publicly financed campaign, the Committee set up its system of use agreements and the requirement of prior consent precisely in order to maintain control over its expenditures for phones. In this instance, such use was not made with the cooperation, prior consent, in consultation with or at the request of Mr. Mondale, the Committee or any authorized agent

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of the Committee. Such use was against the policy of the Committee in Alabama and against the established procedures of the Committee. The Commission should find that such unauthorized use was not a contribution to or an expenditure by the Committee.

Respectfully submitted,

*David M. Ifshin*  
David M. Ifshin  
General Counsel

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

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Affidavit of Scott Davis

Scott Davis, being duly sworn, deposes and says:

I served as Alabama state coordinator for the Mondale for President Committee from October 1, 1983 to March 15, 1984.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil served as unreimbursed volunteers in the Mondale field office in Montgomery, Alabama.

At no time did I authorize Elizabeth Dunn or Elizabeth Nevil to use labor phones or facilities at the Alabama Education Association or at any other labor organization facilities.

At no time did I suggest that any volunteers, employees, or field offices should use labor phones or facilities.

At no time during the Alabama primary campaign did I authorize or was I aware of any use of labor phones or facilities in the state of Alabama by Mondale volunteers.

My first knowledge of any use of labor phones or facilities in Alabama was on or about September 13, 1984 when I was advised of and subsequently read an article in the Birmingham Post-Herald which alleged that labor phones had been used by some Mondale volunteers in Montgomery, Alabama.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746

Signed \_\_\_\_\_

Executed on: \_\_\_\_\_

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Affidavit of Joel Odum

Joel Odum, being duly sworn, deposes and says:

I served in Alabama as consultant for the Mondale for President Committee from February 19 to March 13, 1984.

My area of responsibility was to oversee GOTV and polling operations throughout the state of Alabama. I had authority to authorize use of phones for GOTV and polling operations.

To my knowledge, the only other representative of the Mondale campaign who had authority to allow or approve the use of labor phones for the primary campaign in Alabama was Scott Davis, the Alabama state coordinator.

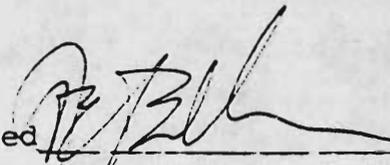
I did not set up any phone banks at the Alabama Education Association or at any other labor organization's facilities in the State of Alabama, whereby Mondale volunteers used a labor organizations phones or facilities.

I did not authorize, suggest, or approve the use of phones or facilities of the Alabama Education Association by Mondale volunteers.

I was unaware that phones or facilities of the Alabama Education Association in Montgomery, Alabama were being used by Mondale volunteers.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil were volunteers in the Mondale field office in Montgomery who were making calls only from the phones in the Montgomery field office.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed 

Executed on: 10/9/84

Affidavit of Elizabeth Nevil

Elizabeth Nevil, being duly sworn, deposes and says:

I was a volunteer who organized some phoning in Montgomery, Alabama.

I was not paid by the Mondale Committee nor were my expenses reimbursed by the Committee.

I did not consult with or receive authorization to use these phones or facilities from Scott Davis, Joel Odum or from any other individual from the Mondale Campaign and no such individual suggested that I use AEA phones to call Mondale supporters.

I did not discuss my use of labor phones or facilities with any individual from the Campaign and was not aware that such use could, under any circumstances, violate any law or regulation of the Federal Election Campaign Act since such use is permitted under Alabama state law and labor phones are frequently used for state and local elections.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed \_\_\_\_\_

Executed on: \_\_\_\_\_

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Mondale for President  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1600

066A 5237  
**MONDALE**

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

14 OCT 19 5:13

Re: MUR 1776

Dear Mr. Steele:

On October 10, 1984, the Mondale for President Committee, Inc. submitted its response to MUR 1776. At that time, as noted in our cover letter, we did not have signed affidavits from Scott Davis and Elizabeth Nevil and therefore we submitted unsigned copies.

We have now received the signed copy of Mr. Davis' affidavit and would request that it be attached to our response and made part of the record in this matter. We will submit a signed copy of Ms. Nevil's affidavit as soon as it is returned to us.

Very truly yours,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

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Affidavit of Scott Davis

Scott Davis, being duly sworn, deposes and says:

I served as Alabama state coordinator for the Mondale for President Committee from October 1, 1983 to March 15, 1984.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil served as unreimbursed volunteers in the Mondale field office in Montgomery, Alabama.

At no time did I authorize Elizabeth Dunn or Elizabeth Nevil to use labor phones or facilities at the Alabama Education Association or at any other labor organization facilities.

At no time did I suggest that any volunteers, employees, or field offices should use labor phones or facilities.

At no time during the Alabama primary campaign did I authorize or was I aware of any use of labor phones or facilities in the state of Alabama by Mondale volunteers.

My first knowledge of any use of labor phones or facilities in Alabama was on or about September 13, 1984 when I was advised of and subsequently read an article in the Birmingham Post-Herald which alleged that labor phones had been used by some Mondale volunteers in Montgomery, Alabama.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746

Signed \_\_\_\_\_

Executed on: \_\_\_\_\_

Sworn to and subscribed before me this the 10th day of October, 1984.

Sara L. Carden  
NOTARY PUBLIC

2-16-88

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Mondale for President  
2201 Wisconsin Avenue N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1600

GCC#5487  
**MONDALE**

November 5, 1984

Charles N. Steele, Esq.  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RE: MUR 1776

Attention: Maura White

Dear Mr. Steele:

Enclosed please find a signed affidavit from Elizabeth Nevil. We originally submitted a copy of this affidavit unsigned as Exhibit C to our response in MUR 1776.

We regret the delay in providing you with a signed affidavit from Ms. Nevil. However, the original affidavit was lost in the mail and a new one had to be drafted and signed.

Very truly yours,



Carolyn U. Oliphant  
Deputy General Counsel

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Affidavit of Elizabeth Nevil

Elizabeth Nevil, being duly sworn, deposes and says:

I was a volunteer who organized some phoning in Montgomery, Alabama.

I was not paid by the Mondale Committee nor were my expenses reimbursed by the Committee.

I did not consult with or receive authorization to use these phones or facilities from Scott Davis, Joel Odum or from any other individual from the Mondale Campaign and no such individual suggested that I use AEA phones to call Mondale supporters.

I did not discuss my use of labor phones or facilities with any individual from the Campaign and was not aware that such use could, under any circumstances, violate any law or regulation of the Federal Election Campaign Act since such use is permitted under Alabama state law and labor phones are frequently used for state and local elections.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed

*Elizabeth Boyd Nevil*

Executed on:

*November 2, 1984*

Sworn and subscribed before me this 2nd day of November, 1984.

*Kevin D. Byers*  
Notary Public

85040520103



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert Chanin, Esquire  
Joy Koletsky, Esquire  
National Education Association  
1201 - 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

The Federal Election Commission notified your client, the Alabama Education Association, on September 14, 1984, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time. We acknowledge receipt of your client's explanation of this matter which was dated October 9, 1984.

Upon further review of the allegations contained in the complaint and information supplied by your client, the Commission, on \_\_\_\_\_, 1984, determined that there is reason to believe the Alabama Education Association violated 2 U.S.C. § 441b(a), a provision of the Act, by making a prohibited expenditure in connection with a federal election when it permitted its facilities and telephones to be utilized to support the candidacy of Walter Mondale.

You may submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter within 15 days of your receipt of this notification. In addition, please submit answers to the enclosed order to answer questions within 15 days of your receipt of this letter.

The Office of General Counsel would like to settle this matter through conciliation prior to a finding of probable cause; however, in the absence of any information which demonstrates that no further action should be taken against your client, the Office of General Counsel must proceed to the next compliance stage as noted on page 2, paragraph 2 of the enclosed procedures.

Attachment 5(1)

85040520104

Letter to Robert Chanin  
Page 2

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 your client wishes the matter to be made public. If you have any questions, please contact Maura White, the staff member assigned to this matter, at (202)523-4143.

Sincerely,

Lee Ann Elliot  
Chairman

Enclosures  
Procedures  
Order with questions

85040520105

s(2)



Interrogatories to: Alabama Education Association

1. State the fair market value of the facilities, including space, furniture and utilities, used by volunteers on behalf of Walter Mondale during the period of March 4, 1984, through March 12, 1984, at the Alabama Education Association, 422 Dexter Avenue, Montgomery, Alabama.

2. a) State the fair market value of the telephones utilized by volunteers on behalf of Walter Mondale during the period of March 4, 1984, through March 12, 1984, at the Alabama Education Association, 422 Dexter Avenue, Montgomery, Alabama.

b) State the amount of any additional telephone charges to the Alabama Education Association, including the cost of long distance calls, related to or resulting from, the volunteers' use of the telephones.

85040520107

5(4)



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee, Inc.  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

On September 14, 1984, the Commission notified your clients, Walter F. Mondale, Mondale for President Committee, and Michael S. Berman, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

The Commission, on \_\_\_\_\_, 1984, determined that on the basis of the information in the complaint, and information provided by you, there is no reason to believe that your clients violated 2 U.S.C. §§ 441b(a) and 434(b). Accordingly, the Commission closed its file in this matter as it pertains to your clients.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all respondents. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Charles N. Steele  
General Counsel

By Kenneth A. Gross  
Associate General Counsel

85040520108  
S(S)

Mondale for President  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-825-1800

000-3457  
**MONDALE**

November 5, 1984

Charles N. Steele, Esq.  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RE: MUR 1776

Attention: Maura White

Dear Mr. Steele:

Enclosed please find a signed affidavit from Elizabeth Nevil. We originally submitted a copy of this affidavit unsigned as Exhibit C to our response in MUR 1776.

We regret the delay in providing you with a signed affidavit from Ms. Nevil. However, the original affidavit was lost in the mail and a new one had to be drafted and signed.

Very truly yours,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

85040520109

34 NOV 5 11:35  
RECEIVED  
GENERAL COUNSEL

Affidavit of Elizabeth Nevil

Elizabeth Nevil, being duly sworn, deposes and says:

I was a volunteer who organized some phoning in Montgomery, Alabama.

I was not paid by the Mondale Committee nor were my expenses reimbursed by the Committee.

I did not consult with or receive authorization to use these phones or facilities from Scott Davis, Joel Odum or from any other individual from the Mondale Campaign and no such individual suggested that I use AEA phones to call Mondale supporters.

I did not discuss my use of labor phones or facilities with any individual from the Campaign and was not aware that such use could, under any circumstances, violate any law or regulation of the Federal Election Campaign Act since such use is permitted under Alabama state law and labor phones are frequently used for state and local elections.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed Elizabeth Bays Nevil  
Executed on: November 2, 1984

Sworn and subscribed before me this 2nd day of November, 1984.

Richard J. Bays  
Notary Public

85040520110



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 23, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

William A. Wilson, Vice-President  
The National Right to Work Committee  
8801 Braddock Road  
Suite 500  
Springfield, Virginia 22160

Dear Mr. Wilson:

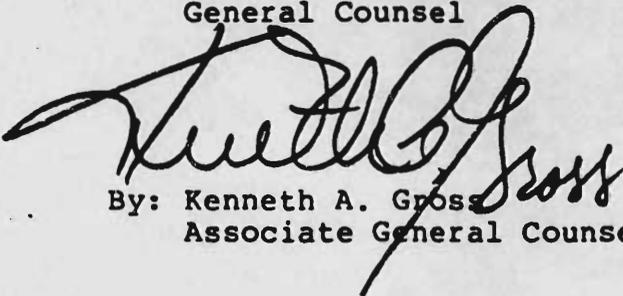
On October 10, 1984, the Federal Election Commission received a letter alleging that the National Right to Work Committee violated sections of the Federal Election Campaign Act, as amended. The allegations do not meet certain specified requirements for the proper filing of a complaint. Thus, no action will be taken on this matter unless the allegations are refiled meeting the requirements for a properly filed complaint. If the matter is refiled, you will be notified at that time.

This matter will remain confidential for 15 days to allow for the correction of the defects. If the defects are not cured and the allegations are not refiled, no additional notification will be provided and the file will be closed.

If you have any questions, please call Maura White, at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel



By: Kenneth A. Gross  
Associate General Counsel

Enclosure  
Copy of Improper Complaint

85040520111



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 23, 1984

Robert H. Chanin, Esquire  
National Education Association  
1201 - 16th Street, N.W.  
Washington, D.C. 20036

Dear Mr. Chanin:

We have received the response you submitted on behalf of your client, the Alabama Education Association, on October 10, 1984, in connection with MUR 1776. Within your response you raise the possibility of a violation of the Federal Election Campaign Act of 1971, as amended ("the Act") by the National Right to Work Committee.

The 1976 amendments to the Act and Commission regulations require that a complaint meet certain specific requirements. Since your letter does not meet these requirements, the Commission can take no action at this time to investigate this matter.

However, if you desire the Commission to look into the matter discussed in your letter of October 10, 1984, to determine if the Act has been violated, a formal complaint as described in 2 U.S.C. § 437g(a)(1) must be filed. Requirements of this section of the law and Commission regulations at 11 C.F.R. § 111.4 which are a prerequisite to Commission action are detailed below:

- (1) A complaint must be in writing. (2 U.S.C. § 437g(a)(1)).
- (2) Its contents must be sworn to and signed in the presence of a notary public and shall be notarized. (2 U.S.C. § 437g(a)(1)).
- (3) A formal complaint must contain the full name and address of the person making the complaint. (11 C.F.R. § 111.4).
- (4) A formal complaint should clearly identify as a respondent each person or entity who is alleged to have committed a violation. (11 C.F.R. § 111.4).

85040520112

- (5) A formal complaint should identify the source of information upon which the complaint is based. (11 C.F.R. § 111.4).
- (6) A formal complaint should contain a clear and concise recitation of the facts describing the violation of a statute or law over which the Commission has jurisdiction. (11 C.F.R. § 111.4).
- (7) A formal complaint should be accompanied by supporting documentation if known and available to the person making the complaint. (11 C.F.R. § 111.4).

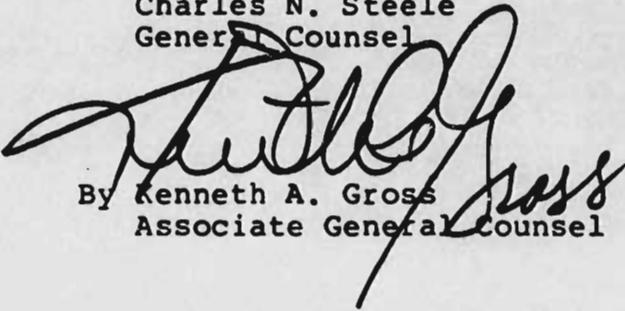
Finally, please include your telephone number, as well as the full names and addresses of all respondents.

Enclosed is a copy of Commission regulations, and your attention is directed to 11 C.F.R. §§ 111.4 through 111.10 that deal with preliminary enforcement procedures. Also, enclosed is a compilation of Federal Election Campaign laws on which these regulations are promulgated. I trust these materials will be helpful to you should you wish to file a legally sufficient complaint with the Commission. The file regarding this correspondence will remain confidential for a fifteen day time period during which you may file an amended complaint as specified above.

If we can be of any further assistance, please do not hesitate to contact me at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

  
By Kenneth A. Gross  
Associate General Counsel

Enclosures  
Excerpts  
Procedures

cc: National Right to Work Committee

85040520113

Mondale for President  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1600

88C-5237  
**MONDALE**

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: MUR 1776

Dear Mr. Steele:

On October 10, 1984, the Mondale for President Committee, Inc. submitted its response to MUR 1776. At that time, as noted in our cover letter, we did not have signed affidavits from Scott Davis and Elizabeth Nevil and therefore we submitted unsigned copies.

We have now received the signed copy of Mr. Davis' affidavit and would request that it be attached to our response and made part of the record in this matter. We will submit a signed copy of Ms. Nevil's affidavit as soon as it is returned to us.

Very truly yours,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

34 OCT 19 5 13 PM '84

RECEIVED  
GENERAL COUNSEL

85040520114

Affidavit of Scott Davis

Scott Davis, being duly sworn, deposes and says:

I served as Alabama state coordinator for the Mondale for President Committee from October 1, 1983 to March 15, 1984.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil served as unreimbursed volunteers in the Mondale field office in Montgomery, Alabama.

At no time did I authorize Elizabeth Dunn or Elizabeth Nevil to use labor phones or facilities at the Alabama Education Association or at any other labor organization facilities.

At no time did I suggest that any volunteers, employees, or field offices should use labor phones or facilities.

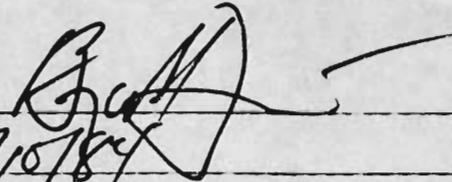
At no time during the Alabama primary campaign did I authorize or was I aware of any use of labor phones or facilities in the state of Alabama by Mondale volunteers.

My first knowledge of any use of labor phones or facilities in Alabama was on or about September 13, 1984 when I was advised of and subsequently read an article in the Birmingham Post-Herald which alleged that labor phones had been used by some Mondale volunteers in Montgomery, Alabama.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746

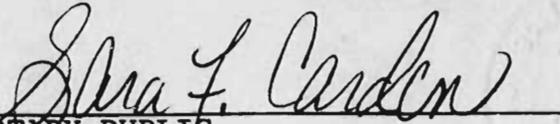
Signed

Executed on:

  
\_\_\_\_\_

Sworn to and subscribed before me this the 10th day of October,

1984.

  
\_\_\_\_\_  
NOTARY PUBLIC

2-16-88

85040520115

© Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

85040520119



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 12, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert H. Chanin, Esquire  
Joy L. Koletsky, Esquire  
National Education Association  
1201 - 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

On September 14, 1984, you were notified that the Federal Election Commission received a complaint from Ralph Hettinga and the National Right to Work Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, by your client, the Alabama Education Association. We acknowledge receipt of your response on October 9, 1984.

This is to inform you that on October 10, 1984, the Commission received a supplemental letter from the complainant pertaining to the allegations in the complaint. We are enclosing a copy of this letter. Please note that your response time is not enlarged by receipt of this supplemental material.

If you have any questions, please contact Maura White, the staff member assigned to this matter at (202)523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By

*Kenneth A. Gross (Signature)*  
Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520117

# National Right To Work Committee

600-5044  
84 OCT 10 AM 8:40  
1776

A COALITION OF EMPLOYEES AND EMPLOYERS  
HEADQUARTERS AT THE NATION'S CAPITAL

October 4, 1984

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

400110  
:000:

Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph M. Hettinga, Jr., filed a complaint alleging that Alabama Education Association had illegally provided a phone bank subsidy to the Mondale campaign.

Since that date, both Mondale campaign officials and AEA officials have essentially admitted the violations to newspaper reporters. See the enclosed article from the Birmingham Post-Herald.

More important, Elizabeth Dunn, coordinator for Mondale's campaign in Alabama's Second Congressional District, is quoted as saying, "We had lots of phone banks, not just AEA's, ..." This indicates that illegal subsidies may extend beyond the AEA situation, and the investigation should be expanded accordingly.

Sincerely,

William A. Wilson, Vice President

WAW/gh

cc: Mr. Hettinga

Enclosure

th Subscribed and sworn to before me, a notary public, this day of October, 1984:

  
Notary Public

My commission expires: November 30, 1987.

85040520118

# Mondale volunteers concede AEA phones used in campaign

**MONTGOMERY** — Volunteers for Walter Mondale conceded yesterday that they used a telephone bank at the Alabama Education Association office to campaign for him, but they said nothing improper was done.

The National Right to Work Committee has filed a complaint with the Federal Election Commission charging that the Mondale presidential campaign should have paid for the use of the telephones.

Paul Hubbert, the AEA executive secretary, said last week that he had no knowledge of the AEA's phones being used by Mondale volunteers.

But Elizabeth Dunn, coordinator for Mondale's campaign in the 2nd Congressional District, admitted they were used before Alabama's March 13 presidential primary. Mondale, who is supported by the AEA leadership, carried Alabama in the primary.

"We had lots of phone banks, not just AEA's, but we did use seven of their (phones), and we did have calls going on every single night," Mrs. Dunn said. "AEA people didn't use the phones. They were all Mondale volunteers."

Mrs. Dunn said a key to the AEA office was made available to the Mondale group. Hubbert said he did not

know the Mondale workers used the AEA facilities and or that they had a key to the AEA office.

"I really don't know how they got the key," Hubbert said. "There are many keys around. I assume they must have gotten it from somebody who had one."

Hubbert said he authorized the use of the telephones for AEA members to contact other members.

The Right to Work Committee's complaint said the contribution was not reported in Mondale's financial disclosure reports.

Mondale supporters said there was no violation of election laws because the telephones and office space are standard AEA expenses.

Julian McPhillips, a Montgomery lawyer and Mondale supporter, said the Right to Work Committee complaint was frivolous. "It involved no cost to the AEA," he said.

Mrs. Dunn said that in an election "when anybody donates anything, they think of it as an in-kind contribution, which is legal."

The Right to Work complaint was accompanied by an affidavit signed by Jeffrey Saunders, who reportedly was hired to infiltrate the Mondale campaign.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, DC 20463

October 12, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee, Inc.  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

On September 14, 1984, you were notified that the Federal Election Commission received a complaint from Ralph Hettinga and the National Right to Work Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, by your clients, Walter F. Mondale, Mondale for President Committee, Inc., and Michael S. Berman. We acknowledge receipt of a part of your response on October 10, 1984, the remainder being due by October 16, 1984.

This is to inform you that on October 10, 1984, the Commission received a supplemental letter from the complainant pertaining to the allegations in the complaint. Enclosed please find a copy of this letter. Please note that your response time is not enlarged by receipt of this supplemental material.

If you have any questions, please contact Maura White, the staff member assigned to this matter at (202)523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By

*Kenneth A. Gross*  
Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520120

# National Right To Work Committee

64 OCT 10 8:40

A COALITION OF EMPLOYEES AND EMPLOYERS  
HEADQUARTERS AT THE NATION'S CAPITAL

October 4, 1984

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

4 OCT 10 1984

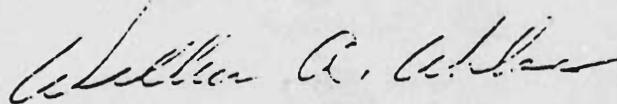
Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph M. Hettinga, Jr., filed a complaint alleging that Alabama Education Association had illegally provided a phone bank subsidy to the Mondale campaign.

Since that date, both Mondale campaign officials and AEA officials have essentially admitted the violations to newspaper reporters. See the enclosed article from the Birmingham Post-Herald.

More important, Elizabeth Dunn, coordinator for Mondale's campaign in Alabama's Second Congressional District, is quoted as saying, "We had lots of phone banks, not just AEA's, ..." This indicates that illegal subsidies may extend beyond the AEA situation, and the investigation should be expanded accordingly.

Sincerely,



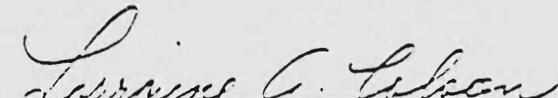
William A. Wilson, Vice President

WAW/gh

cc: Mr. Hettinga

Enclosure

*WAW* Subscribed and sworn to before me, a notary public, this day of October, 1984:

  
Notary Public

My commission expires: November 30, 1987.

85040520121

# Mondale volunteers concede AEA phones used in campaign

Local Post-Herald

MONTGOMERY — Volunteers for Walter Mondale conceded yesterday that they used a telephone bank at the Alabama Education Association office to campaign for him, but they said nothing improper was done.

The National Right to Work Committee has filed a complaint with the Federal Election Commission charging that the Mondale presidential campaign should have paid for the use of the telephones.

Paul Eubbert, the AEA executive secretary, said last week that he had no knowledge of the AEA's phones being used by Mondale volunteers.

But Elizabeth Dunn, coordinator for Mondale's campaign in the 2nd Congressional District, admitted they were used before Alabama's March 13 presidential primary, Mondale, who is supported by the AEA leadership, carried Alabama in the primary.

"We had lots of phone banks, not just AEA's, but we did use seven of them (phones), and we did have calls going on every single night," Mrs. Dunn said. "AEA people didn't use the phones. They were all Mondale volunteers."

Mrs. Dunn said a key to the AEA office was made available to the Mondale group. Eubbert said he did not

know the Mondale workers used the AEA facilities and or that they had a key to the AEA office.

"I really don't know how they got the key," Eubbert said. "There are many keys around. I assume they must have gotten it from somebody who had one."

Eubbert said he authorized the use of the telephones for AEA members to contact other members.

The Right to Work Committee's complaint said the contribution was not reported in Mondale's financial disclosure reports.

Mondale supporters said there was no violation of election laws because the telephones and office space are standard AEA expenses.

Julian McPhillips, a Montgomery lawyer and Mondale supporter, said the Right to Work Committee complaint was frivolous. "It involved no cost to the AEA," he said.

Mrs. Dunn said that in an election "when anybody donates anything, they think of it as an in-kind contribution, which is legal."

The Right to Work complaint was accompanied by an affidavit signed by Jeffrey Saunders, FDC reportedly was filed to initiate the Mondale campaign.

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OFFICE OF GENERAL COUNSEL  
NATIONAL EDUCATION ASSOCIATION  
1201 Sixteenth Street, N.W.  
Washington, D.C. 20036  
(202) 822-7035

DATE: October 12, 1984

TO: Charles Steele

FROM: JOY L. KOLETSKY *JK*  
Staff Counsel

3 RE: MUR 1776

2  
1 With respect to my letter to you of  
0 October 9, 1984, I have enclosed the  
executed affidavit in connection with the  
0 above MUR.

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white

Complaint Filed By )  
 )  
 THE NATIONAL RIGHT TO WORK COMMITTEE )  
 )  
 AND )  
 )  
 RALPH MARTIN (BUD) HETTINGA, JR. )  
 )

MUR 1776

34 OCT 12 4:22

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL

State of Alabama )  
 ) ss.  
 County of Montgomery )

AFFIDAVIT OF PAUL R. HUBBERT

PAUL R. HUBBERT, being duly sworn, deposes and says:

1. I am the Executive Director of the Alabama Education Association ("AEA"). In this capacity, I have primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment.

2. The AEA headquarters building is located at 422 Dexter Avenue, Montgomery, Alabama. This building operates on a five-day work week from Monday through Friday, and the regular AEA work day is from 8:15 a.m. to 4:45 p.m. Unless there is a specially scheduled meeting or other event, the AEA headquarters building generally is not used for AEA business, and I generally am not present in the building, other than at the above times.

3. I have reviewed the affidavit of Jeffrey Saunders in MUR 1776, in which he asserts that an AEA "telephone bank" was

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used by Mondale volunteers on Sundays and after 6:00 p.m. on week days from Sunday, March 4, 1984 through Monday, March 12, 1984. I was not present in the AEA headquarters building when this use allegedly took place and, since it allegedly involved "Mondale workers, not union employees," Saunders Affidavit, paragraph 6, I have no personal knowledge as to the specifics of such use. It should be noted, however, that Mr. Saunders' reference to an AEA "telephone bank" is inaccurate. There is (and for many years has been) on the second floor of the AEA headquarters building, a secretarial pool which consists of approximately 10 desks, each with a telephone, separated by partitions. It is these telephones to which Mr. Saunders presumably is referring.

4. In paragraph 5 of his Affidavit, Mr. Saunders states that Elizabeth Neville "told [him] that use of the telephones had been authorized by Paul Hubbard." To the best of my recollection, the circumstances surrounding this authorization are as follows:

a. In late February, 1984, I was contacted by Elizabeth Dunn, who is my neighbor. Ms. Dunn and I had several conversations during this period regarding both her candidacy for the position of Mondale delegate and the candidacy of Mr. Mondale for President of the United States. In one of these conversations, Ms. Dunn indicated that she was a

85040520125

volunteer worker for Mr. Mondale, and asked whether she and other volunteers could use the AEA telephones outside of AEA's regular business hours to make local calls on behalf of Mr. Mondale. I assented to such use, and indicated that I would instruct my administrative assistant to provide her with a key to the AEA headquarters building, which I subsequently did.

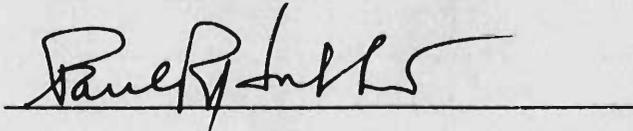
b. Although I did not specifically monitor the use of the AEA telephones by the Mondale volunteers, I was aware that they were in fact using the telephones in the secretarial pool on the second floor of the AEA headquarters building during off-hours for approximately a ten-day period immediately preceding the Alabama primary election on Tuesday, March 13, 1984.

c. When I authorized the use of the AEA telephones by the Mondale volunteers in late February, 1984, I was not familiar with the requirements of 2 U.S.C. §441(b) of the Federal Election Campaign Act ("Act"), and did not feel that it was necessary to consult with an attorney. Inasmuch as the off-hours use of the AEA telephones by the Mondale volunteers to make local calls did not involve any additional expenditure of AEA resources,

85040520126

I concluded that AEA was not required to impose a charge for such use. I based this conclusion, at least in part, on the Alabama election law, which as I understand it would in like circumstances permit AEA to make its facilities available for use by candidates for state and local political office without charge.

5. I have now been informed by the attorneys representing AEA in this MUR of the position taken by the Commission vis-a-vis the requirements of 2 U.S.C. §441(b) -- i.e., that under this section, AEA was required to charge the Mondale volunteers for the off-hours use of its telephones to make local calls. To the extent there was a violation of the Act, it was inadvertent, and AEA is prepared to send a bill for the amount in question to Ms. Neville or Ms. Dunn, and/or to take such other remedial steps as may be appropriate.



PAUL R. HUBBERT

Sworn to before me and subscribed in my presence this 10<sup>th</sup> day of October 1984.

Carole A. Vandiver  
Notary Public

My Commission Expires: March 9, 1985

85040520127

NATIONAL EDUCATION ASSOCIATION 8 5 0 4 0 5 2 0 1 2 8  
OF THE UNITED STATES  
101 Sixteenth Street, N. W.  
Washington, D. C. 20036

OFFICE OF GENERAL COUNSEL  
NATIONAL EDUCATION ASSOCIATION

TO:

Mr. Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

600-5010

Mondale for President  
2301 Wisconsin Avenue, N.W.  
Washington, D.C. 20007  
Telephone: 202-625-1000

# MONDALE

October 10, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, NW  
Washington, D.C. 20463

Re: MUR 1776

9:58 AM  
OCT 10 1984

Dear Mr. Steele:

As we indicated in discussing our extension of time to respond to this matter, we have made every effort to file our completed response by today, October 10, 1984. In order to submit this response as soon as possible, however, we have submitted copies of two unsigned affidavits-Exhibit A, Affidavit of Scott Davis and Exhibit C, Affidavit of Elizabeth Nevil. The signed copies of these exhibits have not yet been received by MPC from Mr. Davis and Ms. Nevil, who both reside in Alabama.

We will submit signed Affidavits as soon as they are received.

Very truly yours,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

85040520129

October 10, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street NW  
Washington, D.C. 20463

Re: MUR 1776

Dear Mr. Steele:

8 5 0 4 0 5 2 0 1 3 0  
This letter is the response of the Mondale for President Committee, Inc. ("the Committee") to the complaint filed with the Commission by the National Right to Work Committee ("NRWC") and Ralph Martin (Bud) Hettinga, Jr. (together "the Complainants") on September 6, 1984. 1/ This complaint alleges that the Committee failed to pay for and report the use of labor phones or facilities in violation of 2 U.S.C. Sections 441b and 434(b). Complainants base their allegations on an affidavit from Jeffrey Saunders, a paid informant of NRWC who apparently was employed to pose as a volunteer with the Mondale campaign in Montgomery, Alabama. Mr. Saunders claims that he made phone calls to identify potential Mondale supporters on six occasions between March 4 and 12, from the Alabama Education Association ("AEA") offices in Montgomery.

1/The other named respondent is the Alabama Education Association.

Complainants infer from the fact that two individuals mentioned in the affidavit subsequently received or are owed minimal expense reimbursements from the Committee, that MPC "knew or must have known" of the use of AEA's phones by Mondale volunteers. However, based on the Committee's inquiries into the allegations of this complaint, no use of AEA phones or facilities by volunteers from the Montgomery field office was authorized, approved or, known to the Committee until this past September when Complainants announced to the press that this complaint was being filed.

Those Committee employees in Alabama who had the responsibility for authorizing and overseeing phone bank use in Alabama were never told of the use of AEA phones or facilities. Committee volunteers from the Montgomery field office, who were unaware of the FECA requirements regarding labor phones or facilities, used AEA phones without authorization from anyone within the Committee. Because such use by these volunteers was both unauthorized and unknown to the Committee, the Commission should find no reason to believe that a violation of 2 U.S.C. 441b or 434(b) occurred, and accordingly should dismiss this complaint.

I. Factual Background

procedures, is incorporated in this response.

In Alabama, it was the Committee's intent and policy to not use any labor facilities. Two individuals, Scott Davis, Alabama state coordinator, and Joel Odum, a consultant to the Committee, were responsible for authorizing and overseeing all phone bank operations in the state. As evidenced by their affidavits attached hereto as exhibits A and B, neither of them authorized the use of any labor phones or facilities in Alabama and it was never brought to their attention that there was such use.

Elizabeth Dunn and Elizabeth Nevil were, to the best knowledge of the Committee, volunteers who worked in the Mondale Montgomery office. Both are local residents of Montgomery, Alabama. At no time were they reimbursed by the Committee for their services or for their expenses.

Mrs. Dunn performed general political organizing in the Alabama 2nd Congressional District and Ms. Nevil organized volunteer phoning. Based on our inquiries with Ms. Nevil concerning the allegations of this complaint it would appear that any use of AEA phones by these volunteers was limited to use of 8 to 10 phones for approximately 10 days to 2 weeks before the primary. Phoning was done in the evenings and weekend afternoons for about 3 hours from lists of local area residents. Ms. Nevil was unaware of any long distance calls having been made by herself or any other individual. As evidenced by Ms. Neville's affidavit, attached hereto as Exhibit C, she did not receive authorization from anyone in the Committee to use these phones. Mr. Davis had very little contact with either individual. On a

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few occasions, he was asked to provide them with campaign materials to distribute and with information concerning Mr. Mondale's projected visits to the Montgomery area. Mr. Odum visited the office on at least one occasion but assumed from his conversations with Mrs. Dunn and Ms. Nevil that they were doing their phoning only from the Mondale office. Neither Mr. Davis nor Mr. Odum at any time suggested that these volunteers should use labor phones.

Notwithstanding that neither the Committee nor any authorized agent of the Committee ever consulted, consented, suggested, authorized, or approved the use of these phones, Complainants would have the Commission infer that because two individuals, Tina Hester and John Knight, subsequently received or were owed minimal expense reimbursements for items completely unrelated to any use of phones, that this was sufficient to put the Committee on notice that labor phones were being used. There is not one shred of evidence to support such a tenuous conclusion. Mr Knight was never employed by the Committee. He apparently was reimbursed approximately \$280.00 for travel which was paid from drafts to cover the cost of a car rental. If he did in fact give these volunteers a list of registered voters, as is claimed, there is no evidence to show that he had any knowledge of AEA phone use.

Tina Hester was briefly employed by the Committee and spent approximately one week in Alabama. The Committee reimbursed her for some expenses in the amount of \$150.00 and still owes her \$92.42. These expenses were primarily for food. She was also

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paid out of drafts. There is no evidence that she took part in the AEA phone bank except apparently to make a few calls on one evening unrelated to the calls that other volunteers were making. There is similarly no evidence that she ever discussed or informed anyone from the Committee that AEA phones were being used. It is clear that she did not do so. Such use as Ms. Hester may have made of these phones was clearly unauthorized, isolated and de minimus.

II. Conclusion

Based on the facts as determined by our inquiries into this matter, any use of AEA phones or facilities in Montgomery by these volunteers was clearly unauthorized and unknown to the Committee. Recognizing the importance of establishment of management controls by a publicly financed campaign, the Committee set up its system of use agreements and the requirement of prior consent precisely in order to maintain control over its expenditures for phones. In this instance, such use was not made with the cooperation, prior consent, in consultation with or at the request of Mr. Mondale, the Committee or any authorized agent

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of the Committee. Such use was against the policy of the Committee in Alabama and against the established procedures of the Committee. The Commission should find that such unauthorized use was not a contribution to or an expenditure by the Committee.

Respectfully submitted,

*David M. Ifshin* *By end*  
David M. Ifshin  
General Counsel

*Carolyn U. Oliphant*  
Carolyn U. Oliphant  
Deputy General Counsel

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Affidavit of Scott Davis

Scott Davis, being duly sworn, deposes and says:

I served as Alabama state coordinator for the Mondale for President Committee from October 1, 1983 to March 15, 1984.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil served as unreimbursed volunteers in the Mondale field office in Montgomery, Alabama.

At no time did I authorize Elizabeth Dunn or Elizabeth Nevil to use labor phones or facilities at the Alabama Education Association or at any other labor organization facilities.

At no time did I suggest that any volunteers, employees, or field offices should use labor phones or facilities.

At no time during the Alabama primary campaign did I authorize or was I aware of any use of labor phones or facilities in the state of Alabama by Mondale volunteers.

My first knowledge of any use of labor phones or facilities in Alabama was on or about September 13, 1984 when I was advised of and subsequently read an article in the Birmingham Post-Herald which alleged that labor phones had been used by some Mondale volunteers in Montgomery, Alabama.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746

Signed \_\_\_\_\_

Executed on: \_\_\_\_\_

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Affidavit of Joel Odum

Joel Odum, being duly sworn, deposes and says:

I served in Alabama as consultant for the Mondale for President Committee from February 19 to March 13, 1984.

My area of responsibility was to oversee GOTV and polling operations throughout the state of Alabama. I had authority to authorize use of phones for GOTV and polling operations.

To my knowledge, the only other representative of the Mondale campaign who had authority to allow or approve the use of labor phones for the primary campaign in Alabama was Scott Davis, the Alabama state coordinator.

I did not set up any phone banks at the Alabama Education Association or at any other labor organization's facilities in the State of Alabama, whereby Mondale volunteers used a labor organizations phones or facilities.

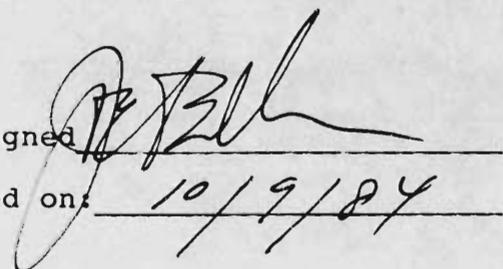
I did not authorize, suggest, or approve the use of phones or facilities of the Alabama Education Association by Mondale volunteers.

I was unaware that phones or facilities of the Alabama Education Association in Montgomery, Alabama were being used by Mondale volunteers.

To my knowledge, Elizabeth Dunn and Elizabeth Nevil were volunteers in the Mondale field office in Montgomery who were making calls only from the phones in the Montgomery field office.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed



Executed on:

10/9/84

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Affidavit of Elizabeth Nevil

Elizabeth Nevil, being duly sworn, deposes and says:

I was a volunteer who organized some phoning in Montgomery, Alabama.

I was not paid by the Mondale Committee nor were my expenses reimbursed by the Committee.

I did not consult with or receive authorization to use these phones or facilities from Scott Davis, Joel Odum or from any other individual from the Mondale Campaign and no such individual suggested that I use AEA phones to call Mondale supporters.

I did not discuss my use of labor phones or facilities with any individual from the Campaign and was not aware that such use could, under any circumstances, violate any law or regulation of the Federal Election Campaign Act since such use is permitted under Alabama state law and labor phones are frequently used for state and local elections.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. 28 U.S.C. Section 1746.

Signed \_\_\_\_\_

Executed on: \_\_\_\_\_

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**MONDALE**

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K St. N.W.  
Washington, DC 20463

Attention: Maura White

GCC #5041



LEGAL SERVICES  
OFFICE OF GENERAL COUNSEL

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035

MARY HATWOOD FUTRELL, President  
KEITH GEIGER, Vice President  
ROXANNE E. BRADSHAW, Secretary-Treasurer

DON CAMERON, Executive Director

October 9, 1984

Mr. Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

4 OCT 9 1984  
P 5:33

Re: MUR 1776

Dear Mr. Steele:

Attached is the response of the Alabama Education Association ("AEA") to the above MUR. As you will note, the response includes an affidavit from Paul Hubbert, Executive Director of AEA. Because of certain unanticipated logistical problems, we have not yet received the executed affidavit and, in order to meet the filing deadline, are submitting an unexecuted copy. As soon as we receive the executed affidavit, which should be within the next few days, we will hand deliver it to you. We apologize for any inconvenience that this may cause you.

Sincerely,

*Joy L. Koletsky*  
Joy L. Koletsky  
Staff Counsel

JLK:ew

Attachments

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LEGAL SERVICES  
OFFICE OF GENERAL COUNSEL

NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035  
MARY HATWOOD FUTRELL, President  
KEITH GEIGER, Vice President  
ROXANNE E. BRADSHAW, Secretary-Treasurer  
DON CAMERON, Executive Director

October 9, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

Re: MUR 1776

Dear Mr. Steele:

On September 14, 1984, you wrote to the Alabama Education Association ("AEA") regarding the above MUR, which is based upon a complaint filed by the National Right to Work Committee ("NRWC") and Ralph Martin (Bud) Hettinga, Jr. The complaint alleges that AEA violated the Federal Election Campaign Act of 1971 ("Act") by "permitt[ing] the Mondale Campaign the use of its offices and telephone bank to conduct a partisan get-out-the-vote campaign on Walter Mondale's behalf directed at members of the general public," without charging fair market value for such use. The "facts" in support of this allegation are set forth in an affidavit by Jeffrey Saunders that is attached to the complaint. Mr. Saunders is a private investigator who was retained by the NRWC. I have been authorized to represent AEA in this MUR, and this response is submitted on its behalf.

Dr. Paul R. Hubbert is the Executive Director of AEA, and has primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment. Attached to this letter is an affidavit by Dr. Hubbert, in which he sets forth the circumstances regarding the use of the AEA telephones that is alleged in the Saunders Affidavit. Although Dr. Hubbert's affidavit speaks for itself, it is helpful to emphasize certain key points:

1. Inasmuch as the alleged use of the AEA telephones took place outside of AEA's regular business hours (i.e., on Sundays and after 6:00 p.m. on week days), and involved "Mondale workers,

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not union employees," Saunders Affidavit, ¶ 6, Dr. Hubbert has no personal knowledge of the specifics of such use;

2. In late February 1984, Dr. Hubbert authorized Elizabeth Dunn and other Mondale volunteers to use the telephones in the AEA headquarters building during off-hours to make local calls in support of the candidacy of Mr. Mondale; and

3. This off-hours use of the AEA telephones did not involve any additional expenditure of AEA resources, and, being unfamiliar with the requirements of federal election law, Dr. Hubbert concluded that it was unnecessary to impose a charge for such use. This conclusion was based, at least in part, on the fact that it would have been permissible under Alabama law, with which Dr. Hubbert was familiar, for candidates for state and local political office to have used AEA facilities in like circumstances without charge.

I have discussed this MUR with Dr. Hubbert, and informed him of the position taken by the Commission -- i.e., that AEA was required to charge the Mondale volunteers for the fair market value of their use of the AEA telephones. To the extent there was a violation of the Act, it was inadvertent and AEA is prepared to send Ms. Dunn or Ms. Neville a bill and/or take such other remedial steps as may be appropriate. We would appreciate guidance from the Commission in this regard.

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The Saunders Affidavit refers to some volunteer "Mondale workers," (paragraph 6), one of whom allegedly "told [him] that the use of the telephones had been authorized by Paul Hubbard." Id. at paragraph 5. The affidavit does not even refer to the Mondale for President Committee, and as Scott Davis, Alabama State Coordinator for the Committee, declares in the affidavit.

To my knowledge, the Mondale Committee did not enter into any use agreements with any labor organizations for the use of their facilities in Alabama, nor did we make use of any labor facilities or equipment in Alabama.

Whereas MUR 1776 may involve, at worst, an inadvertent and relatively inconsequential violation of the Act, the Saunders Affidavit documents a far more significant breach of law. For the reasons set forth below, we submit that NRWC has violated 2 U.S.C. § 441(b) by utilizing its resources to support the candidacy of Walter Mondale.

We begin with the undisputed fact that during the period covered by his affidavit -- i.e., March 1 through March 12, 1984 -- Mr. Saunders was being paid by NRWC. On Thursday, March 1, 1984, Mr. Saunders "volunteered [his] services" to work for Mondale. Saunders Affidavit, paragraph 2. His offer was "immediately accepted," id., and for the next 11 days he was actively engaged in performing functions in support of the Mondale candidacy. Specifically:

Friday, March 2, 1984: "check[ed] a list of volunteers and a reception guest list against the Democratic Club list, checking off known Mondale supporters." Id. at paragraph 3.

Sunday, March 4, 1984: "call[ed] members of the Democratic Club and ask[ed] their preference among the candidates. If they were for anyone other than Mondale, they were thanked for their time and the conversation ended. If they were uncommitted, they were asked if they would like some literature on Mondale. If they were for

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Mondale, they were asked if they could help out or if they needed transportation to the polls. A notation was made next to each name on the list as to that Democratic Club member's preference." Id. at paragraph 6.

Monday, March 5, 1984: "called individuals on the Democratic Club list." Id. at paragraph 9.

Thursday, March 8, 1984: "worked the telephone bank at AEA headquarters from 6:00 to 9:00 p.m. [calling] five pages of geographical listings of registered voters." Id. at paragraph 10.

Friday, March 9, 1984: "made calls from the 'John Knight' list eliciting twice as many Mondale responses than any others." Id. at paragraph 11.

Sunday, March 11: made calls from "the 'John Knight' list." Id. at paragraph 12.

Monday, March 12: "worked the telephone bank at AEA headquarters [and] made approximately fifty (50) calls." Id. at paragraphs 13-14.

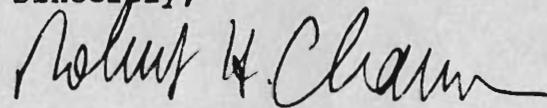
Although Mr. Saunders obviously performed the above functions for different reasons than did the other "volunteers," this apparently did not diminish his effectiveness. To the contrary, Ms. Neville, who was the person "in charge," was so impressed that she "asked that [Saunders] run the telephone bank" on March 11, 1984, which he in fact did "starting at 1 p.m. and ending at 3:30 p.m." Id. at paragraph 12. And Mr. Saunders motives are, of course, irrelevant vis-a-vis the impact this his activities may have had on potential voters.

Inasmuch as the foregoing activities were engaged in by Mr. Saunders while he was being paid by, and with the full knowledge of NRWC, it is clear that NRWC funds were expended in violation of 2 U.S.C. § 441(b). Moreover, unlike the situation with AEA, we have here a knowing and willful violation by an entity that is thoroughly familiar with the requirements of the

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Act -- and, as the complaint in MUR 1776 indicates, with the requirements of 2 U.S.C. § 441(b) in particular. We ask that the Commission, on the basis of this information ascertained in the normal course of carrying out its supervisory responsibilities, take appropriate action to remedy this violation (including assessing NRWC the maximum allowable civil penalty) and to prevent similar violations in the future.

Sincerely,

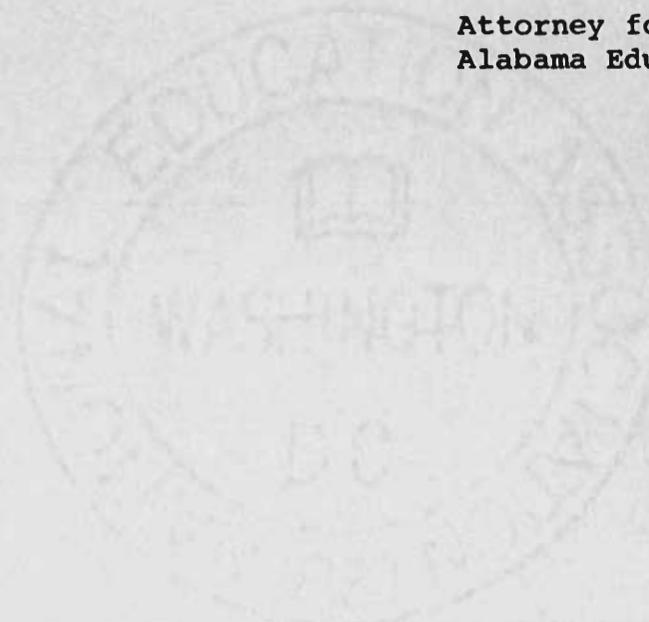


Robert H. Chanin

Attorney for Respondent  
Alabama Education Association

RHC:sf

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Complaint Filed By )  
 )  
THE NATIONAL RIGHT TO WORK COMMITTEE )  
 )  
AND )  
 )  
RALPH MARTIN (BUD) HETTINGA, JR. )  
 )

MUR 1776

State of Alabama )  
 ) ss.  
County of Montgomery )

AFFIDAVIT OF PAUL R. HUBBERT

PAUL R. HUBBERT, being duly sworn, deposes and says:

1. I am the Executive Director of the Alabama Education Association ("AEA"). In this capacity, I have primary responsibility for the day-to-day operation of AEA, including the utilization of its facilities and equipment.

2. The AEA headquarters building is located at 422 Dexter Avenue, Montgomery, Alabama. This building operates on a five-day work week from Monday through Friday, and the regular AEA work day is from 8:15 a.m. to 4:45 p.m. Unless there is a specially scheduled meeting or other event, the AEA headquarters building generally is not used for AEA business, and I generally am not present in the building, other than at the above times.

3. I have reviewed the affidavit of Jeffrey Saunders in MUR 1776, in which he asserts that an AEA "telephone bank" was

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used by Mondale volunteers on Sundays and after 6:00 p.m. on week days from Sunday, March 4, 1984 through Monday, March 12, 1984. I was not present in the AEA headquarters building when this use allegedly took place and, since it allegedly involved "Mondale workers, not union employees," Saunders Affidavit, paragraph 6, I have no personal knowledge as to the specifics of such use. It should be noted, however, that Mr. Saunders' reference to an AEA "telephone bank" is inaccurate. There is (and for many years has been) on the second floor of the AEA headquarters building, a secretarial pool which consists of approximately 10 desks, each with a telephone, separated by partitions. It is these telephones to which Mr. Saunders presumably is referring.

4. In paragraph 5 of his Affidavit, Mr. Saunders states that Elizabeth Neville "told [him] that use of the telephones had been authorized by Paul Hubbard." To the best of my recollection, the circumstances surrounding this authorization are as follows:

a. In late February, 1984, I was contacted by Elizabeth Dunn, who is my neighbor. Ms. Dunn and I had several conversations during this period regarding both her candidacy for the position of Mondale delegate and the candidacy of Mr. Mondale for President of the United States. In one of these conversations, Ms. Dunn indicated that she was a

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volunteer worker for Mr. Mondale, and asked whether she and other volunteers could use the AEA telephones outside of AEA's regular business hours to make local calls on behalf of Mr. Mondale. I assented to such use, and indicated that I would instruct my administrative assistant to provide her with a key to the AEA headquarters building, which I subsequently did.

b. Although I did not specifically monitor the use of the AEA telephones by the Mondale volunteers, I was aware that they were in fact using the telephones in the secretarial pool on the second floor of the AEA headquarters building during off-hours for approximately a ten-day period immediately preceding the Alabama primary election on Tuesday, March 13, 1984.

c. When I authorized the use of the AEA telephones by the Mondale volunteers in late February, 1984, I was not familiar with the requirements of 2 U.S.C. §441(b) of the Federal Election Campaign Act ("Act"), and did not feel that it was necessary to consult with an attorney. Inasmuch as the off-hours use of the AEA telephones by the Mondale volunteers to make local calls did not involve any additional expenditure of AEA resources,

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I concluded that AEA was not required to impose a charge for such use. I based this conclusion, at least in part, on the Alabama election law, which as I understand it would in like circumstances permit AEA to make its facilities available for use by candidates for state and local political office without charge.

5. I have now been informed by the attorneys representing AEA in this MUR of the position taken by the Commission vis-a-vis the requirements of 2 U.S.C. §441(b) -- i.e., that under this section, AEA was required to charge the Mondale volunteers for the off-hours use of its telephones to make local calls. To the extent there was a violation of the Act, it was inadvertent, and AEA is prepared to send a bill for the amount in question to Ms. Neville or Ms. Dunn, and/or to take such other remedial steps as may be appropriate.

---

PAUL R. HUBBERT

Sworn to before me and  
subscribed in my presence  
this \_\_\_\_ day of \_\_\_\_\_, 1984.

---

Notary Public

My Commission Expires: \_\_\_\_\_

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NATIONAL EDUCATION ASSOCIATION  
OF THE UNITED STATES  
1201 Sixteenth Street, N.W.  
Washington, D. C. 20036

OFFICE OF GENERAL COUNSEL  
NATIONAL EDUCATION ASSOCIATION

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TO:  
Mr. Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

05102504059

# National Right to Work Committee



A COALITION OF EMPLOYEES AND EMPLOYERS

HEADQUARTERS AT THE NATION'S CAPITAL

RECEIVED AT THE FEC  
GCC # 5044  
84 OCT 10 AM: 48  
min  
1776

October 4, 1984

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

14 OCT 10  
A10: 48

Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph M. Hettinga, Jr., filed a complaint alleging that Alabama Education Association had illegally provided a phone bank subsidy to the Mondale campaign.

Since that date, both Mondale campaign officials and AEA officials have essentially admitted the violations to newspaper reporters. See the enclosed article from the Birmingham Post-Herald.

More important, Elizabeth Dunn, coordinator for Mondale's campaign in Alabama's Second Congressional District, is quoted as saying, "We had lots of phone banks, not just AEA's, ..." This indicates that illegal subsidies may extend beyond the AEA situation, and the investigation should be expanded accordingly.

Sincerely,

William A. Wilson, Vice President

WAW/gh

cc: Mr. Hettinga

Enclosure

4th Subscribed and sworn to before me, a notary public, this day of October, 1984.

  
Notary Public

My commission expires: November 30, 1987.

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# Mondale volunteers concede AEA phones used in campaign

United Press International

MONTGOMERY — Volunteers for Walter Mondale conceded yesterday that they used a telephone bank at the Alabama Education Association office to campaign for him, but they said nothing improper was done.

The National Right to Work Committee has filed a complaint with the Federal Election Commission charging that the Mondale presidential campaign should have paid for the use of the telephones.

Paul Hubbert, the AEA executive secretary, said last week that he had no knowledge of the AEA's phones being used by Mondale volunteers.

But Elizabeth Dunn, coordinator for Mondale's campaign in the 2nd Congressional District, admitted they were used before Alabama's March 13 presidential primary. Mondale, who is supported by the AEA leadership, carried Alabama in the primary.

"We had lots of phone banks, not just AEA's, but we did use seven of their (phones), and we did have calls going on every single night," Mrs. Dunn said. "AEA people didn't use the phones. They were all Mondale volunteers."

Mrs. Dunn said a key to the AEA office was made available to the Mondale group. Hubbert said he did not

know the Mondale workers used the AEA facilities and or that they had a key to the AEA office.

"I really don't know how they got the key," Hubbert said. "There are many keys around. I assume they must have gotten it from somebody who had one."

Hubbert said he authorized the use of the telephones for AEA members to contact other members.

The Right to Work Committee's complaint said the contribution was not reported in Mondale's financial disclosure reports.

Mondale supporters said there was no violation of election laws because the telephones and office space are standard AEA expenses.

Julian McPhillips, a Montgomery lawyer and Mondale supporter, said the Right to Work Committee complaint was frivolous. "It involved no cost to the AEA," he said.

Mrs. Dunn said that in an election "when anybody donates anything, they think of it as an in-kind contribution, which is legal."

The Right to Work complaint was accompanied by an affidavit signed by Jeffrey Saunders, who reportedly was hired to infiltrate the Mondale campaign.

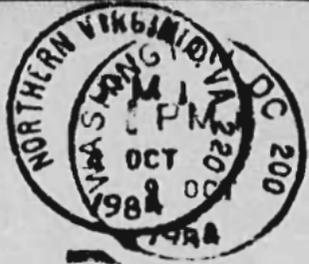
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**NATIONAL RIGHT TO WORK COMMITTEE**

8001 BRADDOCK ROAD  
SPRINGFIELD, VIRGINIA 22160

85040520153

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463



84 OCT 10 8:49

RECEIVED AT THE REG



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 28, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Robert H. Chanin, Esquire  
Joy L. Koletsky, Esquire  
National Education Association  
1201 - 16th Street, N.W.  
Washington, D.C. 20036

Re: MUR 1776

Dear Mr. Chanin and Ms. Koletsky:

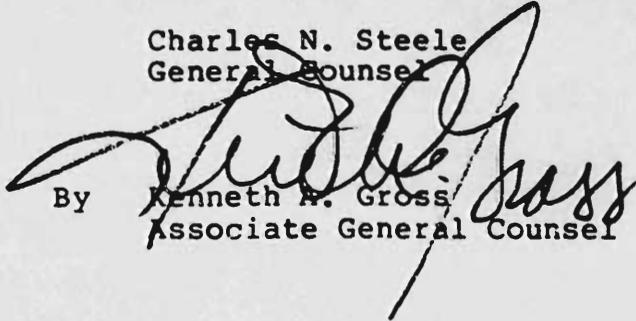
On September 14, 1984, you were notified that the Federal Election Commission received a complaint from Ralph Hettinga and the National Right to Work Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, by your client, the Alabama Education Association. You were also given a copy of the complaint and informed that your response to the complaint should be submitted within fifteen days of your receipt of the notification. This is to inform you that the Commission received a letter from the complainant pertaining to the allegations in the complaint. We are enclosing a copy of this letter.

With respect to your request dated September 21, 1984, for a five day extension of time to respond to the instant complaint, please be advised that I have agreed to the extension. The response of your client is due, therefore, on October 8, 1984.

If you have any questions, please contact Maura White, the staff member assigned to this matter at (202)523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By  Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520154



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 28, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President Committee, Inc.  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

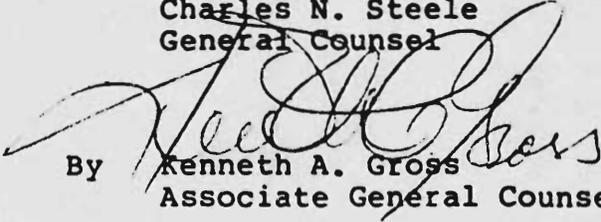
On September 14, 1984, you were notified that the Federal Election Commission received a complaint from Ralph Hettinga and the National Right to Work Committee alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended, by your clients, Walter F. Mondale, Mondale for President Committee, Inc., and Michael S. Berman. You were also given a copy of the complaint and informed that your response to the complaint should be submitted within fifteen days of your receipt of the notification. This is to inform you that the Commission received a letter from the complainants pertaining to the allegations in the complaint. Enclosed please find a copy of this letter.

With respect to your request dated September 21, 1984, for a 15 day extension of time to respond to the instant complaint, please be advised that I have agreed to grant the extension with the understanding that you will make every effort to provide a response by October 10, 1984.

If you have any questions, please contact Maura White, the staff member assigned to this matter at (202)523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By   
Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520155

GLCT# 4795

# MONDALE/FERRARO

---

---

for America

---

---

September 21, 1984

Charles N. Steele  
General Counsel  
Federal Election Commission  
1325 K Street NW  
Washington, D.C. 20463

Re: MUR 1776

RECEIVED  
OF THE  
GENERAL COUNSEL  
14 SEP 24 AID: 57

85040520156

Dear Mr. Steele:

On September 15, 1984, the Mondale for President Committee, Inc. received the above referenced complaint filed by the National Right to Work Committee. The MPC response is due October 1.

The current general election activities of the campaign have substantially increased the work load of the legal staff. Because of the increased demands, the staff would have a difficult time preparing an adequate response by the current date.

Additionally, many of the people that we will have to contact in order to respond to the factual allegations of the complaint live out of the area and we have encountered difficulty in reaching them.

Thus, MPC requests an additional 15 days beyond the current due date of October 1 in order to prepare its response to this complaint. Your attention to this request is appreciated.

Sincerely,

*Carolyn U. Oliphant*  
Carolyn U. Oliphant

# MONDALE FERRARO

Wisconsin Avenue, N.W., Washington, D.C. 20007

504052015

CHARLES N. STEELE

GENERAL COUNSEL

FEDERAL ELECTION COMMISSION

1325 K STREET NW

WASHINGTON

D.C. 20463



NATIONAL EDUCATION ASSOCIATION • 1201 16th St., N.W., Washington, D C 20036 • (202) 822-7035

MARY HATWOOD FUTRELL, President  
KEITH GEIGER, Vice President  
ROXANNE E. BRADSHAW, Secretary-Treasurer

LEGAL SERVICES  
OFFICE OF GENERAL COUNSEL

DON CAMERON, Executive Director

GCC#4818  
RECEIVED AT THE FEC

BY SEP 21 12: 33

September 21, 1984

Ms. Maura White  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL  
14 SEP 24 11 57 AM '84

Re: MUR 1776

Dear Ms. White:

This will confirm our conversation today regarding MUR 1776. First, I indicated that Robert H. Chanin, General Counsel, National Education Association, will be representing the Alabama Education Association. Second, we requested an extension until October 8, 1984 in order to prepare our response. This extension is necessary because we are in the process of compiling information, which, since our client is in Alabama, is particularly time-consuming, and because we will be occupied with prior litigation commitments for much of the next two weeks.

Please call if you have any questions regarding the above.

Sincerely,

Joy L. Koletsky  
Staff Counsel

JLK:ew

85040520158

na

AL EDUCATION ASSOCIATION

St., N.W.

, D C 20036



Ms. Maura White  
Office of General Counsel  
Federal Election Commission  
Washington, D.C. 20463

40520159

84 SEP 24 12: 33

RECEIVED BY THE FEC



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 14, 1984

Ralph Martin (Bud) Hettinga, Jr.  
645 Compress Road  
Las Cruces, New Mexico 88001

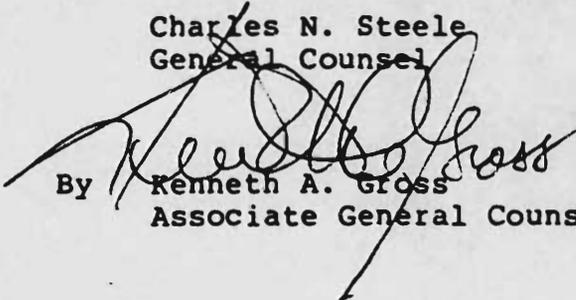
Dear Mr. Hettinga:

This letter is to acknowledge receipt of your complaint which we received on September 6, 1984, against Walter F. Mondale; Mondale for President Committee, Inc.; Michael S. Berman; and Alabama Education Association, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Barbara A. Johnson at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By   
Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520160



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 14, 1984

William A. Wilson  
Vice President  
The National Right to  
Work Committee  
8001 Braddock Road, Suite 500  
Springfield, Virginia 22160

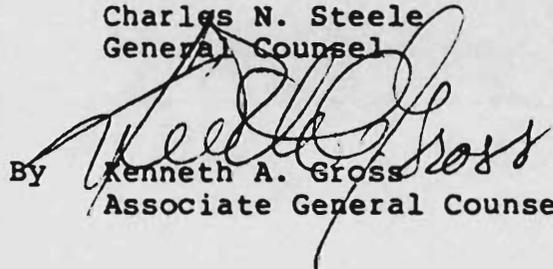
Dear Mr. Wilson:

This letter is to acknowledge receipt of your complaint which we received on September 6, 1984, against Walter F. Mondale; Mondale for President Committee, Inc.; Michael S. Berman; and Alabama Education Association, which alleges violations of the Federal Election Campaign laws. A staff member has been assigned to analyze your allegations. The respondent will be notified of this complaint within five days.

You will be notified as soon as the Commission takes final action on your complaint. Should you have or receive any additional information in this matter, please forward it to this office. We suggest that this information be sworn to in the same manner as your original complaint. For your information, we have attached a brief description of the Commission's procedure for handling complaints. If you have any questions, please contact Barbara A. Johnson at (202) 523-4143.

Sincerely,

Charles N. Steele  
General Counsel

By   
Kenneth A. Gross  
Associate General Counsel

Enclosure

85040520161



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 14, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

David Ifshin, Esquire  
Carolyn Oliphant, Esquire  
Mondale for President, Inc.  
2201 Wisconsin Avenue, N.W.  
Washington, D.C. 20007

Re: MUR 1776

Dear Mr. Ifshin and Ms. Oliphant:

This letter is to notify you that on September 6, 1984 the Federal Election Commission received a complaint which alleges that your clients, Walter F. Mondale; Mondale for President, Inc.; and Michael S. Berman, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1776. 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 your clients in connection with this matter. Your response 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.

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.

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.

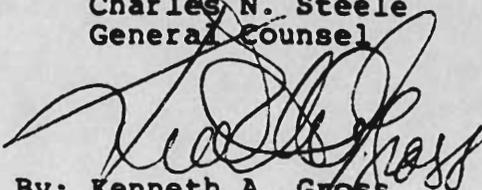
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040520162

If you have any questions, please contact Maura White, the staff person assigned to this matter at (202) 523-4143. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele  
General Counsel



By: Kenneth A. Gross  
Associate General Counsel

Enclosures

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

85040520163



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 14, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Alabama Education Association  
422 Dexter Street  
Montgomery, Alabama 36104

Re: MUR 1776

Dear Sir/Madam:

This letter is to notify you that on September 6, 1984 the Federal Election Commission received a complaint which alleges that the Alabama Education Association, may have violated certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 1776. 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 the Alabama Education Association, in connection with this matter. Your response 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.

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.

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.

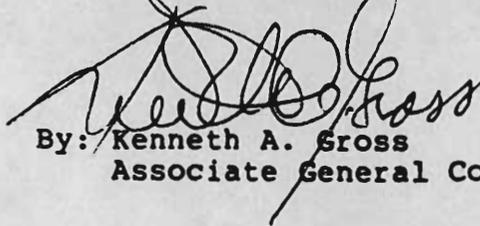
If you intend to be represented by counsel in this matter please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

85040520164

If you have any questions, please contact Maura White, the staff person assigned to this matter at (202) 523-4143. For your information, we have attached a brief description of the Commission's procedure for handling complaints.

Sincerely,

Charles N. Steele  
General Counsel



By: Kenneth A. Gross  
Associate General Counsel

Enclosures

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

85040520165

# National Right to Work Committee



A COALITION OF EMPLOYEES AND EMPLOYERS  
HEADQUARTERS AT THE NATION'S CAPITAL

RECEIVED AT THE FCC  
GCC #1662  
84 SEP 12 P12: 10

1796

September 11, 1984

Kenneth A. Gross  
Associate General Counsel  
Federal Election Commission  
1325 K Street, N.W.  
Washington, D.C. 20463

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL  
84 SEP 12 P 4: 09

Dear Mr. Gross:

On September 5, 1984, The National Right to Work Committee and Ralph Martin (Bud) Hettinga, Jr., filed a complaint alleging violations of the federal election laws by Walter F. Mondale and Mondale for President Campaign Committee, as well as Alabama Education Association.

The excerpts from Mondale's July filing with the Commission, which are referred to on page two of our complaint, may have been omitted. Copies are enclosed with this letter.

Sincerely,

THE NATIONAL RIGHT TO WORK COMMITTEE

BY: William A. Wilson  
William A. Wilson, Vice President

WW/gh

cc: Mr. Hettinga

Enclosures

85040520166

Hertz System Licensee Post Office Box B Des Moines, Iowa 50315	583.08	-0-	-0-	583.08
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Nature of Debt (Purpose):  
car rental

B. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hertz Corporation Post Office Box 26141 Oklahoma City, Oklahoma 73126	2992.39	6/1/84 153.90	-0-	3146.29
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Nature of Debt (Purpose):  
car rental

C. Full Name, Mailing Address and Zip Code of Debtor or Creditor Tina Hester 4301 - 38th Street, N.W. Washington, D.C. 20016	92.42	-0-	-0-	92.42
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Nature of Debt (Purpose):  
expense reimbursement

D. Full Name, Mailing Address and Zip Code of Debtor or Creditor Highlander Inn and Supper Club Rural Route 2 Iowa City, Iowa 52240	420.01	-0-	-0-	420.01
--	--------	-----	-----	--------

Nature of Debt (Purpose):  
lodging

E. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hillsborough Cnty Cntr. Labor Cte. 1701 North Franklin Tampa, Florida 33602	250.58	-0-	-0-	250.58
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Nature of Debt (Purpose):  
telephones

F. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hill Stapler Company 2200 Evergreen Street Baltimore, Maryland 21216	51.46	-0-	-0-	51.46
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Nature of Debt (Purpose):  
equipment repair

1) SUBTOTALS This Period This Page (optional)				4543.84
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2) TOTAL This Period (last page this line only)				
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3) TOTAL OUTSTANDING LOANS from Schedule OF (last page only)				
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RONDALE FOR PRESIDENT  
RONDALE  
SCHEDULE B-P  
FOR THE PERIOD OF: 06/01/84 TO 06/30/84

OPERATING EXPENDITURES - FEC JP LINE NO. 23

PAGE: 3

	DATE	EXPENDITURE DESCRIPTION	AMOUNT		
VEND: 108165 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108166 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108167 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108168 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108169 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108170 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108171 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108172 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00
VEND: 108173 NAME: JOHN P KNIGHT JR 3039 ALTA ROAD MONTGOMERY	AL36110 06/04/84	TRAVEL	AUTO	PRIMARY	20.00

RECEIVED AT THE  
**HAND DELIVERED**  
84 SEP 5 P2: 04  
GCC #4581

BEFORE THE  
FEDERAL ELECTION COMMISSION

THE NATIONAL RIGHT TO WORK COMMITTEE )

MUR 1776

and )

RALPH MARTIN (BUD) HETTINGA, JR., )

Complainants, )

v. )

WALTER F. MONDALE AND MONDALE FOR )  
PRESIDENT CAMPAIGN COMMITTEE, )

and )

ALABAMA EDUCATION ASSOCIATION, )

Respondents. )

RECEIVED  
OFFICE OF THE  
GENERAL COUNSEL  
84 SEP 5 P2: 01

COMPLAINT

Complainants, The National Right to Work Committee (the "Committee") and Ralph Martin (Bud) Hettinga, Jr., request an investigation of the matters alleged herein pursuant to 2 U.S.C. § 437g. The Committee's address is 8001 Braddock Road, Suite 500, Springfield, Virginia 22160, and its phone number is 703-321-9820. Mr. Hettinga's address is 645 Compress Road, Las Cruces, New Mexico 88001, and his phone number is 505-524-3551.

Respondents are Walter F. Mondale and Mondale for President Campaign Committee, 2201 Wisconsin Avenue, N.W., Washington, D.C. 20007, and Alabama Education Association (AEA), 422 Dexter Street, Montgomery, Alabama 36104.

85040520169

This Complaint, filed on information and belief, is based on the attached affidavit of a private investigator and on FEC filings of the Mondale campaign.

The affidavit reflects that, from March 4 through March 12, 1984, AEA permitted the Mondale campaign to use its offices and telephone bank to conduct a partisan get-out-the-vote campaign on Walter Mondale's behalf directed at members of the general public. A review of FEC filings made by the Mondale campaign through July 1984 reveals that Mondale has neither paid for nor been billed for the use of AEA's facilities and phones, even though two of the individuals mentioned in the affidavit, Tina Hester and John Knight, have received expense money from the Mondale campaign and, therefore, the Mondale campaign knew or must have known of the phone bank operation. (See attached excerpts from July filing for the month of June.)

This constitutes a violation of 2 U.S.C. § 441b inasmuch as Mondale is required to pay fair market value for the use of union facilities and phones, and it constitutes a violation of § 434(b)'s reporting requirements.

85040520170

WHEREFORE, Complainants request that the violations be remedied and that Respondents be assessed the maximum civil penalty for knowing and willful violations.

THE NATIONAL RIGHT TO WORK COMMITTEE

By: William A. Wilson  
William A. Wilson, Vice President

The foregoing Complaint was subscribed and sworn to before me this 4th <sup>(20) September</sup> ~~August~~, 1984, by William A. Wilson as Vice President of The National Right to Work Committee.

Lorraine A. Colson  
Notary Public

My Commission expires on November 30, 1987

Bud Hettinga  
Ralph Martin (Bud) Hettinga, Jr.

The foregoing Complaint was subscribed and sworn to before me this 23rd day of August, 1984, by Ralph Martin (Bud) Hettinga, Jr.

James Y. Forest  
Notary Public

My Commission expires on 1/5/87

85040520171

AFFIDAVIT

STATE OF VIRGINIA     )  
                          )   SS:  
COUNTY OF FAIRFAX    )

I, Jeffrey Saunders, being first duly sworn, depose and state:

1. I am an investigator with the firm of Associated Investigators, Inc., 1025 Vermont Ave., N.W., Washington, D.C. 20005.

2. On Thursday, March 1, 1984, I volunteered my services at Mondale's Montgomery headquarters, 492 South Court Street, Montgomery, Alabama 36104 (Telephone No. 205-265-4085), and was immediately accepted. Elizabeth "Liz" Nevile was in charge, but she deferred to Elizabeth Dunn who was not present.

3. On Friday, March 2, 1984, I again reported to Mondale's office. Liz Nevile and Elizabeth Dunn were the only other persons present. Dunn left shortly to visit her attorney. I was put to work checking a list of volunteers and a reception guest list against the Democratic Club list, checking off known Mondale supporters. Nevile told me that a telephone bank would be operating soon, and that AEA was contributing the telephones.

4. On Saturday, March 3, 1984, Nevile contacted me and requested assistance on the telephone bank for Sunday, March 4, 1984 at 2:00 p.m. She told me to report to Alabama Education Association (AEA) headquarters, 422 Dexter Street, Montgomery,

85040520172

Alabama 36104 (Telephone No. 205-834-9790). She stated that the phone banks would be operating from 2:00 p.m. to 6:00 p.m. on Sunday, and from 6:30 p.m. to 9:00 p.m. the rest of the week.

5. On Sunday, March 4, 1984, at 2:00 p.m., I proceeded to AEA headquarters. Nevile was the only person present. She had keys to the front door and was letting the people in. In response to questions, Nevile told me that use of the telephones had been authorized by Paul Hubbard.

6. Nevile escorted the workers to a second floor office with eight or nine desks, each with a telephone and separated by partitions. There were seven outside lines on the incoming telephone number of 834-9790. All volunteers were Mondale workers, not union employees. Three other volunteers came a few minutes later. Each was supplied with a one-page script (a copy was obtained and is attached as Exhibit 1), several sheets of volunteer information (a copy was obtained and is attached as Exhibit 2), and several pages of the Democratic Club membership roster. Volunteers were instructed to call members of the Democratic Club and ask their preference among the candidates. If they were for anyone other than Mondale, they were thanked for their time and the conversation ended. If they were uncommitted, they were asked if they would like some literature on Mondale. If they were for Mondale, they were asked if they could help out or if they needed transportation to the polls. A notation was made next to each name on the list as to that Democratic Club member's preference.

85040520173

7. The telephones were equipped with a WATS line, 1-800-392-5839, to which the volunteers had access but did not need for this list. Liz Nevile stated that she would have another list the following day, March 5th. When asked what this list was, she laughed slyly and stated, "Never mind, we'll just have it."

8. On Monday, March 5, 1984, at 3:45 p.m., I was phoned by Richard Carter and asked to assist at the telephone bank at AEA headquarters that evening.

9. At 6:00 p.m., I arrived at AEA headquarters and was greeted by Liz Nevile, who was holding a computer printout of approximately fifty (50) pages entitled, "AEA memberships." Four of us called individuals on the Democratic Club list. A Tina Hester was telephoning Second Congressional District Delegates to advise them of an upcoming visit from Mondale. She made some long distance calls. One was placed to an individual named Jack in New Brackton (Coffee County) (Telephone No. 558-8410). Another was placed to Dothian, Alabama.

10. On Thursday, March 8, 1984, I worked the telephone bank at AEA headquarters from 6:00 to 9:00 p.m. I was let into the building by Liz Nevile. Richard Carter arrived at 6:45 p.m. and Nevile then went home. I was provided with five pages of geographical listings of registered voters. (A copy was obtained and is attached as Exhibit 3). I was told by Liz Nevile that the list had been provided by John Knight, a County Commissioner and an officer of the Alabama Democratic Conference. Richard Carter told me that this same list had been used repeatedly in numerous

85040520174

campaigns and had been obtained from another candidate. In response to further questions, Carter told me that AEA itself was not conducting any telephone banks.

11. On Friday, March 9, 1984, at 1:30 p.m., I again worked the telephone bank at AEA headquarters along with Richard Carter, Della Bryant, and three other individuals. Again, I made calls from the "John Knight" list eliciting twice as many Mondale responses than any others.

12. On Sunday, March 11, 1984, at 10:30 a.m., I was telephoned by Liz Nevile, who asked that I run the telephone bank that day starting at 1:00 p.m. and ending at 3:30 p.m. I picked up the key to AEA from Liz Nevile at Mondale headquarters, along with a stack of volunteer information sheets, scripts and the "John Knight" list. I entered AEA at 1:00 p.m. Only two volunteers showed up on this date, Redding Pitt and Randy Sutton.

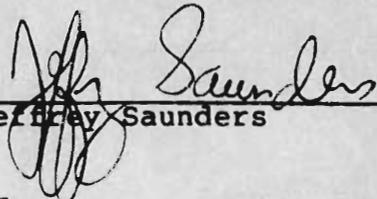
13. On Monday, March 12, 1984, from 6:00 p.m. until 9:00 p.m., I again worked the telephone bank at AEA headquarters. Eleven volunteers were present. Liz Nevile was in charge. Richard Carter was present along with Redding Pitt, a young Black male named Willie Mays, and a "plant doctor" by the name of David Stanton. Nevile told Stanton she was a paid employee of the Mondale campaign, but had not received a check in some time. I had previously met Stanton at Mondale headquarters.

14. On this same date, some individuals were calling from the "John Knight" list while Stanton, Pitt and I were calling from a new list. Each had approximately fifty alphabetized

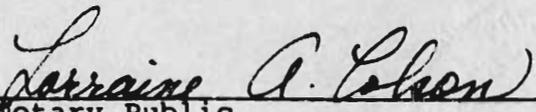
pages. Liz Nevile provided the list, which she said was predominantly white, blue collar workers. She stated that she did not know where the list came from. Of the approximately fifty (50) calls I made, about ten Mondale supporters were found, seven for Hart and approximately twelve for Reagan. (A copy of page 37 of this list was obtained and is attached as Exhibit 4).

15. On this date, Nevile made long distance telephone calls on AEA's WATS line (800-392-5839) in an effort to obtain beer for the victory party from a Tuskegee distributor called the Keg Place.

Further affiant sayeth not.

  
\_\_\_\_\_  
Jeffrey Saunders

Subscribed and sworn to before me, a notary public, this 21st day of August, 1984.

  
\_\_\_\_\_  
Notary Public

My Commission expires: November 30, 1987

85040520176



# MONDALE

## TELEPHONE BANK SCRIPT

Good ( afternoon / evening ), this is ( your name ) , As you know the Democratic Party Presidential Preference Primary is on **SU<sup>ER</sup> TUESDAY**, March 13th. Do you mind if I ask you who your preference is among the candidates?

IF YES....they do mind, Thank you for your time.

IF THEY DO NOT MIND.... Iam calling to see if you will be supporting Walter Mondale and if we can count on your support?

IF YES ....Thank you. Would you be able to volunteer some time to the campaign?

IF YES ....get address, phone number, and fill in all information on volunteer slip.

IF NO ....Thank them for their support of Vice President Mondale .

ASK ALL SUPPORTS IF THEY WILL NEED A RIDE TO THE POLLS ON MARCH 13th.

IF YES ....Fill out transportation need slip.

IF NO .... Thank them for their time.

IF UNDECIDED ... Could we send you some literature in the mail detailing Mr. Mondale's policies?

IF YES ... Get mailing address and fill out slip.

IF NO ....Thank them again for their time and their consideration.

85040520177



# MONDALE

## TELEPHONE BANK INFORMATION SLIPS

Check appropriate blanks:

- VOLUNTEER ( fill in all information)
- NEED TRANSPORTATION TO POLLS ( get address, phone number,
- UNDECIDED - SEND LITERATURE ( get address, include zip code)

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_

PHONE NUMBERS: WORK \_\_\_\_\_  
HOME \_\_\_\_\_

Time available to volunteer:

DAY, TIME \_\_\_\_\_

PHONEBANKS - WEEKNIGHTS 6:30 to 9:00 \_\_\_\_\_

WEEKENDS 2:00 to 6:00 \_\_\_\_\_

HEADQUARTERS OPEN 9:00 A.M. to 9:00 \_\_\_\_\_

MALLS, SHOPPING CENTERS, ETC.

WEEKENDS 12:00 to 6:00 \_\_\_\_\_

WEEK NIGHTS 7:00 to 9:00 \_\_\_\_\_

DRIVERS TO POLLS ON SUPER TUESDAY \_\_\_\_\_

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7 Ward, Roger Lee, Jr. 2B (Rebecca) 1929 Midway St. 36110 269-1992	7 Webb, Nathan J. W. 2B Martha H. 2124 Yarbrough Ct. 36110 265-6504	7 Whitaker, Jannie B. Frances K., Johnnie B. Jr. 2112 Gibson St. 36110 264-8924
7 Ward, Walter J. 2B Lela M. 1734 Yarbrough St. 36110 264-5561	2 Webb, Zelma Manning 2B 1970 Johnson St. 36110 264-2903	2 Whitehurst, Adrian W. - Hazel 1826 Speigle St. 36107 265-3059
7 Watkins, Ralph D., Jr. 2B Shirley H. 3023 La Rhonda 36110 264-2562	7 Welch, James M., Jr. 2B Flora T. 3065 Fairground Rd. 36110 263-9713	7 Whitley, Audie Blanton 2 Lillie M. 1738 Champion St. 263-5676
7 Watkins, William D. III 2B Margaret F. 1836 Austin St. 36110 265-3616	2 Weldon, Alma Spear 2B 2614 Skyline Dr. 36107 269-1900	7 Whittington, Joseph M. Linda C. 2160 Powell Lane 36110 262-5997
7 Watson, Bessie Mae 2B Mary Shelnett (George) 3211 Texas Ave. 36110 262-8972	7 Westfall, Woodward W. 2B Winifred P. 1820 Gibson Ct. 36110 262-7870	7 Whittington, Rebecca Lee 2 2029 Midway St. (Donald) 264-9029
2 Webb, Judson Leonard 2B Helen H. 1955 Johnson St. 36110 269-1634	2 Wethington, Legrande R. 2B Deborah F. (Pete) 2919 E/ Paso Ct. 36110 263-5418	2 Whynott, Joyce Peck Tina J. 2539 Clower St. 36107 264-7883
2 Webb, Maggie 2B (Nathan J.) 965 Speigle St. 36107 263-4871	2 Whetstone, Joseph E. 2B Mavis N. 1880 Speigle St. 36107 265-5320	7 Wickham, Jackie Gay 2 Dori Rae (Johns.) 3021 Lysterly Lane 36110 263-5854

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FEDERAL ELECTION COMMISSION

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THIS IS THE BEGINNING OF MUR # 1776

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