



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3425

DATE FILMED 5/29/92 CAMERA NO. 1

CAMERAMAN S.E.G

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RECEIVED
FEDERAL ELECTION COMMISSION

91 SEP 23 PM 12:51

September 17, 1991

MUR 3425

CERTIFIED/RETURN RECEIPT

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

91 SEP 23 PM 3:33

RECEIVED
FEDERAL ELECTION COMMISSION

Dear Mr. Noble:

Discussions among local political activists and recent press reports here and in Washington, D.C. indicate that Paul Coverdell may have raised substantial sums of money for an intended U.S. Senate race against Wyche Fowler, [D-Ga].

Upon information and belief, the Coverdell campaign has no formal organization, as of the date of this writing, and has not filed a Declaration of Candidacy or other committee organization papers with the Federal Election Commission.

Mr. Coverdell is the current Director of the U.S. Peace Corps, and is on the Federal payroll. While he continues to serve, he cannot, and should not, be raising substantial funds for an intended political campaign in Georgia. Federal law also requires the filing of a Declaration of Candidacy when an individual *decides* to run and raises or spends more than Five Thousand Dollars (\$5,000.00), or raises amounts that would reasonably exceed "testing the waters" needs.

Bob Barr is the only announced and filed candidate in this race to date. *Georgians for Bob Barr - U.S. Senate* was organized in March, 1991 in compliance with all applicable statutes.

TOUGH ENOUGH TO MAKE A DIFFERENCE

TWO PARKWAY CENTER • 1800 PARKWAY PLACE • SUITE 730 • MARIETTA, GEORGIA 30067
(404) 426-5667 • FACSIMILE (404) 426-1809

Paid for by Georgians for Bob Barr - U.S. Senate
David E. Stahl, Campaign Director

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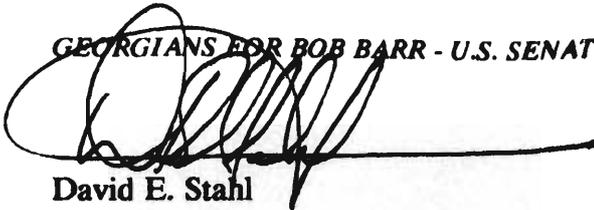
Mr. Lawrence M. Noble
September 17, 1991
Page Two

We respectfully call for a full and complete investigation of these statements, and ask that you contact us back with your decision and course of action.

Thanking you very much, I am,

Very truly yours,

GEORGIANS FOR BOB BARR - U.S. SENATE



David E. Stahl
Campaign Director

Sworn to and subscribed before me
this 17th day of September, 1991.

Dean R. Gordon
Notary Public, Notary Public, Cobb County, Georgia
My Commission Expires Aug. 31, 1992

DES:dj
cc: Bob Barr
James D. Hogan, Jr. - General Counsel

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METRO & STATE

The Atlanta Journal / The Atlanta Constitution

Strange logic for keeping old white judges

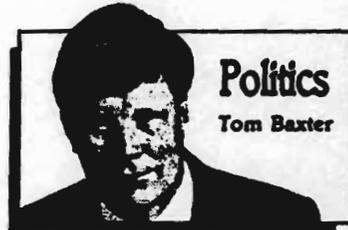
What a wondrous thing is the law, especially in the hands of skilled practitioners.

Supreme Court Justice George T. Smith and Court of Appeals Judge Harold Banke, two jurists who refuse to ride off into the sunset, have battled in court with Gov. Zell Miller and the state retirement system over the law that forces them to retire at age 75 or forfeit their pensions.

FRIENDLY FIRE: But now two plaintiffs, Bill Herndon and Harold Hill (not Judge Hill), have brought suit in federal court against the two judges and the state, seeking to block Smith's and Banke's retirement. Their argument, basically, is that the law forcing their retirement is one that affects elective office, but it wasn't cleared by the Justice Department under the terms of the 1965 Voting Rights Act.

We make no claims to legal expertise, but it's pretty certain this case is what you'd call a friendly suit.

Never mind that everyone involved in this case is a gray-haired white man, or that Miller said he vetoed two laws that



Politics

Tom Baxter

would have allowed Smith and Banke to stay on past 75 because he wanted to encourage racial and sexual diversity on the court. The law is the law, and it's there for those who know how to use it.

The opposing sides — if you can use a term like that in a case like this — met Wednesday in Judge Robert Vining's court, and an air of camaraderie prevailed. Vining scheduled a hearing on a motion to dismiss the suit for Monday morning.

Smith turns 75 Oct. 15. Banke has already reached the magic age, but the state has agreed not to fill his seat until Oct. 15 also.

If Vining refuses to dismiss the suit Monday, the case would go before a three-judge federal panel. If that happens, it's possible Smith could serve past his birthday simply because of the

time it would take to schedule a hearing before the three judges.

SENATE WATCH: Peace Corps Director Paul Coverdell's Senate campaign appears to be approaching liftoff. Supporters will meet in Atlanta Saturday to iron out details of his exploratory committee, which should be announced next week.

Oscar Persons, the state GOP's general counsel, has agreed to serve as political chairman. Coverdell reportedly has raised \$100,000 and has commitments for another \$400,000.

SPECIALTIES: A couple of parting thoughts on redistricting, a subject we left at the end of the special session, but could, depending on the Justice Department, be revisiting soon:

► One of the chestnuts about redistricting is that once every decade, black Democrats and white Republicans find common ground and unite to squeeze out white Democrats.

Yet perhaps the biggest nationwide redistricting story this year may be that this uncommon coalition doesn't seem to be coming together anywhere.

Blacks and Republicans fought each other openly in Mississippi, and they are about to do the same in Alabama.

The fabled coalition certainly didn't jell in Georgia. Sure, there were a few midnight meetings between blacks and Republicans, and the two groups voted solidly against the congressional plan that failed in an 86-75 House vote.

► For all the focus on what the Democrats did to Rep. Newt Gingrich, the congressional plan passed by the General Assembly isn't so bad for Republicans. Where they really got taken to the cleaners was in the state House and Senate plans, which in terms of grass-roots party-building is a far more devastating blow.

In 12 metro counties where Mack Mattingly got better than 55 percent of the vote in the 1986 Senate race, the GOP appears to have carved out two new Senate seats and six House seats, when it had a shot at three times that number. You can't blame that entirely on the brilliance of Democratic line drawers.



RECEIVED SEP 13 1991

TV war's western front
-- Page 4

Bill Shipp's Georgia

A Weekly Newsletter on Government and Business

Volume 5, No. 3
September 16, 1991

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Georgia Notes & Quotes

■ Gov. Zell Miller and Sen. Sam Nunn will host a campaign fund-raiser for Sen. Wyche Fowler on Nov. 2 with the goal of raising another \$1 million for Fowler's re-election effort. Senate Majority Leader George Mitchell, D-Me, will be on hand to praise Fowler. If the effort is successful, Fowler will have about \$2 million on hand compared with slightly more than \$100,000 for his main Republican competitor, former Peace Corps Director Paul Coverdell.

■ Architect/developer John Portman's deal with his lenders have given new life to his company and new energy for Portman who has put aside talk of retirement. When the recession bottoms out, Portman plans to be a major player again. The unsung hero of the Portman rescue is Sam Williams, executive vice president of the Portman Companies. He spent a year of tough negotiations with as many as 50 different lenders to keep Portman's firm afloat.

■ "Based on the new reapportionment plan, Buddy Darden may be the best congressman Alabama has ever had," Secretary of State Max Cleland joked last week at a dinner honoring Darden who seemed to agree. But 7th District Rep. George W. "Buddy" Darden may have wept over his new district lines without cause. It is safer for his re-election than his current 7th district. A Democratic analyst says 44 percent of the voters are "automatic Democrats;" they'll vote for a Democrat no matter whose in the race. Darden has only 38 percent "automatic Democrats" in his present district.

■ Believe state Sen. Gene Walker, D-DeKalb, when he says he is not interested in running for Congress from the new 11th district. Walker's ambition is to become president of Georgia State University. Former state Sen. Gary Parker, formerly of Columbus now of South DeKalb, is probably the leading contender for the new black congressional seat. PS: State officials expect to have in hand by the end of November the Justice Department's review of the Georgia congressional reapportionment plan.

■ In a survey of governors, *USA Today* ranks Gov. Pete Wilson of California and Gov. Ann Richards of Texas as the top performers. But one of the newspaper's judges, Political Hotline editor Robert Balkin, says Georgia Gov. Zell Miller hasn't captured national attention, but at home "he may be the most successful of all."

■ Historical oddity: On June 4, 1980, Roger Friedman, an attorney for convicted killer Jack Potts, petitioned the Public Service Commission to stop the execution of Potts because no official tariff had been obtained for the electric chair. Then PSC chair-

man Bobby Pafford dismissed the plea, saying it had not been filed on time. But Potts still lives.

■ Former President Jimmy Carter is showing up at the White House so much these days that some insiders speculate President Bush may offer him a job. Carter visited with the president in the company of former Japanese President Yasuhiro Nakasone to discuss ways to improve relations between the U.S. and Japan. But Bush and Carter talked mostly about the Middle East and the collapse of communism in the Soviet Union.

■ It was *deja vu* — sort of — when former gubernatorial aide Tom Perdue resigned under fire as head of the Southern Bank Group. It was just five years ago that Perdue was forced out as top assistant to gov. Joe Frank Harris in the wake of a State Patrol scandal. Problem loans and concerns of banking regulators are said to be the root causes of Perdue's latest exit. Insiders say his tenure as a banker was marked by the same kind of political intrigues that marked Perdue's stormy reign in the governor's office.

■ Two fallen candidates for governor are all but certain to be back in the Legislature next year. Former state Rep. Johnny Isakson, the Republican candidate, will be running for the state senate in a district tailored for him by his old school chum, Lt. Gov. Pierre Howard. And former state Rep. Roy Barnes, who ran third in the Democratic primary, ought to have an easy time winning election to the House in a new south Cobb district.

TV ad-gouging claims spread to California

The Georgia-based war between the television industry and politicians spread to California last week when Gov. Pete Wilson, R, and Lt. Gov. Leo McCarthy, D, sued 22 stations for alleged advertising overcharges in the 1988 election campaigns.

The assault on the TV stations began in Georgia late last year when 18 political candidates, including Gov. Zell Miller, filed overcharge claims against TV stations.

Gordon Giffin, an Atlanta attorney and a big gun in Democratic party circles, and Chip Nielsen, a leading GOP lawyer, are representing Wilson and McCarthy. The elected officials are seeking an unspecified amount of damages and attorneys' fees.

Among the defendants: stations owned by CBS, NBC and ABC. Also named as a defendant is Atlanta-based Cox Broadcasting, which owns KTVU in San Francisco. Cox also is expected to be named in FCC complaints and/or lawsuits to be filed in Georgia and Florida. □

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 24, 1991

David E. Stahl
1800 Parkway Place
Marietta, GA 30067

RE: MUR 3425

Dear Mr. Stahl:

This letter acknowledges receipt on September 23, 1991, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Paul D. Coverdell. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3425. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

If you have any questions, please contact Retha Dixon, Docket Chief, at (202) 219-3410.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner
BY: Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

92040902701



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

September 24, 1991

Paul D. Coverdell
3 Washington Circle, N.W.
Washington, D.C. 20037

RE: MUR 3425

Dear Mr. Coverdell:

The Federal Election Commission received a complaint which alleges that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3425. Please refer to this number in all future correspondence.

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

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

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If you have any questions, please contact Helen Kim, the staff member assigned to this matter, at (202) 219-3690. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Lawrence M. Noble
General Counsel

Lois G. Lerner

BY: Lois G. Lerner *by LGL*
Associate General Counsel

Enclosures

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

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RECEIVED
FEDERAL ELECTION COMMISSION

PAUL D. COVERDELL

91 OCT -4 PM 2: 04

2622 Piedmont Road, N.E.
Atlanta, Georgia 30324

MUR 3425

(404) 262-9100

October 2, 1991

The Federal Election Commission
Washington, D.C. 20463

Attention: Ms. Lois G. Lerner
Associate General Counsel

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 OCT -4 PM 3: 35

Dear Ms. Lerner:

I am in receipt of your letter of September 24, a copy of which is attached. My resignation as the Director of the United States Peace Corps was effective September 30. I returned to Atlanta October 1st. As one might expect, my concluding days of service with the Peace Corps and the moving and transfer arrangements from my apartment in Washington and my personal effects and papers from the Director's Office of the Peace Corps were rather all consuming. Consequently, mail that was delivered to my Washington apartment in those last few days was gathered up and brought to Atlanta to read.

As of this writing, I am not in a position to fully respond to your inquiry. I am confident that there is nothing that I have said or done prior to writing this letter that would lead anyone to the conclusion that I am now a candidate for the U.S. Senate. I have not raised nor spent any funds for such an activity.

I do know that an exploratory committee has been formed with a view towards exploring what would need to be done if I do become a candidate for the U.S. Senate. The group calls itself the Breakfast Club Explorers. From time to time one or more of the members of that exploratory committee have told me of some of the things that they have undertaken to do, and some of the information they have been able to gather. I am not fully aware of all of their activities, but I will be meeting with several members of the exploratory group very shortly to review their activities.

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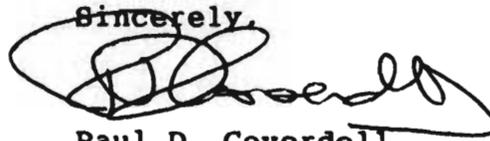
I do not know to what extent the Breakfast Club Explorers has raised and spent money. I have been informed that they have raised some money and have spent some money in their exploratory efforts. I understand one of their efforts was to obtain pledges from people who have been supportive of my prior political activities, which pledges were conditional upon my becoming a candidate. I do not know the extent of such pledges, but hope to receive that information before the week is out.

The complaint which you forwarded to me is apparently based on two newspaper articles but neither article quotes any individual or official source for their reports.

Let me assure you that I will cooperate with the Commission and your staff. I will ask our long time family attorney, S. Jarvin Levison of the Atlanta firm of Arnall Golden & Gregory to contact you. I have completed your form Statement of Designation Of Counsel which I am enclosing in this letter.

It is my preference that this matter remain confidential in accordance with the Sections of United States Code cited in your letter unless we come to a different conclusion at a later date.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D. Coverdell", written over the typed name below.

Paul D. Coverdell

5th204

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3425

NAME OF COUNSEL: S. Jarvin Levison

ADDRESS: Arnall Golden & Gregory

55 Park Place, Suite 400

Atlanta, Georgia

TELEPHONE: (404) 527-4602

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/2/91
Date


Signature Paul D. Coverdell

RESPONDENT'S NAME: Paul D. Coverdell

ADDRESS: 2622 Piedmont Road, N.E.

Atlanta, Georgia 30324

HOME PHONE: (404) 233-3667

BUSINESS PHONE: (404) 262-9100

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RECEIVED
F.E.C.
SECRETARIAT

FEDERAL ELECTION COMMISSION
999 E Street, N.W. DEC 27 PM 1:00
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3425
DATE COMPLAINT RECEIVED
BY OGC: 9-23-91
DATE OF NOTIFICATION TO
RESPONDENTS: 9-24-91
STAFF MEMBER: Helen J. Kim

COMPLAINANT: David E. Stahl
Campaign Director
Georgians for Bob Barr-
U.S. Senate

RESPONDENTS: Paul D. Coverdell
Coverdell Senate Committee and
Marvin Smith, as treasurer

Breakfast Club Explorers
and its treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(2)
2 U.S.C. § 432(e)(1)
2 U.S.C. § 432(f)(2)
2 U.S.C. § 433(a)
11 C.F.R. § 100.3(a)
11 C.F.R. § 100.7(b)(1)
11 C.F.R. § 100.8(b)(1)
11 C.F.R. § 102.1(a)
11 C.F.R. § 102.1(b)

INTERNAL REPORTS CHECKED: Public Record

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arose from a complaint submitted to the Commission on September 23, 1991, by David E. Stahl, Campaign Director of Georgians for Bob Barr - U.S. Senate. The complaint alleges that Paul D. Coverdell, former Peace Corps Director,

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violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), for failing to register as a candidate and designate a principal campaign committee.

The complaint was forwarded to Mr. Coverdell and circulated to the Commission on September 24, 1991. On October 7, 1991, Mr. Coverdell filed a Statement of Candidacy designating a principal campaign committee and one other authorized committee. The principal campaign committee, the Coverdell Senate Committee, filed a Statement of Organization on October 23, 1991. To date, a Statement of Organization has not been filed for the other authorized committee, the Breakfast Club Explorers.

II. FACTUAL AND LEGAL ANALYSIS

A. Statutory and Regulatory Provisions

The Act defines a "candidate" as an individual who seeks nomination for election, or election, to federal office. 2 U.S.C. § 431(2). An individual becomes a candidate when she, or another person on her behalf, has received contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2) and 11 C.F.R. § 100.3(a). There is however, an exception to this threshold for amounts spent while an individual is "testing the waters" for candidacy. Under the Commission's regulations, the terms "contribution" and "expenditure" do not include funds received or payments made solely to determine whether an individual should become a candidate. 11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i). Once the individual becomes a candidate, all contributions and expenditures made

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within the "testing the waters" period must be reported with the first report filed by the principal campaign committee.

11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i). Only funds permitted by the Act may be used for "testing the waters."

The purpose of this exception is to provide individuals an opportunity to evaluate the viability of becoming a candidate. An activity is permissible under the exception if it is undertaken solely to determine whether one should become a candidate and cannot be for activities designed to affirm a private decision to become a candidate. See, e.g., Advisory Opinion 1985-40. Examples of permissible "testing the waters" activity are polling, telephone calls, and travel. See 11 C.F.R. §§ 100.7(b)(1)(i) and 100.8(b)(1)(i).

Thus, this exception does not apply to campaign activities indicating that an individual has decided to become a candidate for federal office. 11 C.F.R. §§ 100.7(b)(1)(ii) and 100.8(b)(1)(ii). According to the regulations, raising funds in excess of what could reasonably be expected to be used for "testing the waters" or undertaking activities designed to amass campaign funds that would be spent after becoming a candidate, can be construed as activities that indicate an individual has decided to become a candidate. 11 C.F.R. §§ 100.7(b)(1)(ii)(B) and 100.8(b)(1)(ii)(B).

If the "testing the waters" exception does not apply and the individual meets the threshold for candidacy, he must designate a principal campaign committee within fifteen days by filing with the appropriate office, either a Statement of

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Candidacy or a letter containing the same information.¹
2 U.S.C. § 432(e)(1); 11 C.F.R. §§ 101.1(a) and 102.12. The principal campaign committee must file a Statement of Organization within ten days after being designated by the candidate. 2 U.S.C. § 433(a); 11 C.F.R. § 102.1(a).

A candidate may also designate other authorized committees to receive contributions or make expenditures on his or her behalf, by filing a written designation with the candidate's principal campaign committee. 11 C.F.R. §§ 101.1(b) and 102.13(a)(1). All such committees must file a Statement of Organization within ten days after designation. 2 U.S.C. § 433(a). Under the Act, the authorized committee must file its Statement of Organization with the principal campaign committee. 2 U.S.C. § 432(f)(1) and 11 C.F.R. § 102.1(b). The principal campaign committee must, in turn, file the candidate's designation and the authorized committee's Statement of Organization with the appropriate office. 2 U.S.C. § 432(f) and 11 C.F.R. § 102.1(a).

B. Analysis

The complaint alleges that according to press reports in early September, the \$100,000 raised on Paul Coverdell's behalf exceeds what would be reasonably necessary for "testing the waters" activities. The complaint is based on two newspaper articles submitted with the complaint. The articles report that

1. The letter must list the individual's name and address, party affiliation and office sought, the District and State in which federal office is sought, and the name and address of his principal campaign committee.

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at least \$100,000 has been raised on Paul Coverdell's behalf for the U.S. Senate race. See Atlanta Journal and Constitution, Sept. 12, 1991, p. D-2; Bill Shipp's Georgia, Sept. 16, 1991, p. 4.

Mr. Coverdell responded to the complaint by letter dated October 2, 1991. In it, he denies raising or spending funds for any activity that would lead anyone to the conclusion that he was a candidate for the U.S. Senate. While respondent acknowledges the existence of an exploratory committee known as the Breakfast Club Explorers, he claims that he was not fully aware of all of its activities nor was he aware of the full extent of the committee's fundraising or spending activity. He did, however, identify the committee's efforts to obtain pledges conditional upon his candidacy. Moreover, respondent does not dispute the \$100,000 figure directly, but notes that neither newspaper article mentions an individual or official source for the amount.

The issue presented by this case is whether raising \$100,000 is raising more than what is reasonably necessary to fund exploratory activities or is an indication that respondent is amassing campaign funds. Raising an excessive amount of funds or amassing funds would indicate that Mr. Coverdell decided to become a candidate for U.S. Senate. Deciding to become a candidate would remove Mr. Coverdell from the safe harbors of the "testing the waters" exception and thus, trigger the reporting and registration requirements of the Act.

In one previous matter in which the Commission considered

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the issue of raising excessive exploratory funds, the Commission rejected the General Counsel's recommendation to find reason to believe that Judge Harvey Sloane had violated 2 U.S.C. § 432(e). In that matter, MUR 2710, the respondent had established an exploratory committee to determine his potential as a candidate in a senate race. The exploratory committee, which had voluntarily registered with the Commission, reported approximately \$212,000 in receipts and \$26,000 in disbursements on its Mid Year Report. The complaint argued, among other things, that by amassing campaign funds or raising funds in excess of what could be reasonably necessary for exploratory activities respondent had exceeded the scope of the "testing the waters" exception.

The General Counsel inferred that the funds raised were in excess of what could be reasonably necessary for exploratory efforts from evidence that respondent had made no disbursements during a period in which there was a substantial amount of receipts. Furthermore, this Office argued that turning funds over to the respondent's principal campaign committee suggests that the exploratory committee amassed funds to be used in the campaign.

In rejecting this Office's recommendation, the Commission concluded that by itself, evidence of funds received but not expended, or that the committee turned over funds to the principal campaign committee, does not necessarily impute candidacy. Statement of Reasons, p. 2. The Commission determined that the significance of such factual elements would

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depend on other or subsequent activity of the potential candidate. For example, a decision not to become a candidate, the making of more exploratory expenditures, or a declaration of candidacy within a reasonable time after substantial fundraising, mitigates the significance of receiving but not spending funds. See id. The Commission noted that "evidence of continuing and sustained fundraising activity would serve to support the inference of 'amassing' funds." Id. at 3. The Commission also took note of the fact that Sloane's committee had voluntarily disclosed its financial activity.² Id.

The present matter is distinguishable from the Sloane MUR in that Mr. Coverdell's exploratory committee has not yet disclosed its financial activity for the period before Mr. Coverdell filed his Statement of Candidacy.³ In the Sloane MUR, by disclosing its financial activity, Judge Sloane's committee had provided the Commission with information regarding the amount and date of receipts and disbursements, and the date and nature of the exploratory activities conducted by the committee.

2. By voluntarily disclosing its financial activity, Judge Sloane's exploratory committee had at least complied with the spirit of the Act's disclosure provisions.

3. Under the Act, once an individual becomes a candidate, all financial activity conducted during the "testing the waters" period must be disclosed along with the principal campaign committee's first disclosure report. In a non-election year, the Act requires political committees to file reports biannually. 2 U.S.C. § 434(a)(2)(B). Thus, Mr. Coverdell's designated principal campaign committee is not obligated to file a disclosure report until January 31, 1992, covering the period beginning July 1 and ending December 31 of 1991.

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In the present matter, the only evidence at hand is that \$100,000 may have been raised on Mr. Coverdell's behalf, but very little may have been spent on exploratory activities. The only identified exploratory activity undertaken by the Breakfast Club Explorers is obtaining pledges from potential supporters. It seems unlikely that such activity would involve expending a great deal of money, much less \$100,000. It is possible that funds were expended for other "testing the waters" activities, but the respondent has not identified any such activities. There remain a number of questions concerning the nature of activities undertaken by Mr. Coverdell and his exploratory committee, the exact amount raised, who raised the funds, when the funds were received, and how much was spent on "testing the waters" activities. Mr. Coverdell's response, however, failed to provide information regarding these questions.

The lack of information as to when funds were received and for how long funds were being raised makes it difficult to analyze the few available facts. In the Sloane Statement of Reasons, the Commission stated that the significance of receiving funds with little or no expenditures depends on other subsequent activity conducted by the individual. As noted above, evidence of continuing or sustained fundraising without exploratory expenditures would indicate that an individual was amassing campaign funds. Thus, in the present case, information as to when funds were received on Mr. Coverdell's behalf and the length of the period in which fundraising activities took place may determine whether Mr. Coverdell, or someone on his behalf,

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was raising funds in excess of what would be reasonably necessary for exploratory activities or was amassing campaign funds.

In sum, all of the above mentioned questions merit further investigation because the answers will be crucial in determining whether Mr. Coverdell, or someone on his behalf, was raising funds in excess of what would be reasonably necessary for "testing the waters" or was amassing campaign funds. If such is the case, then Mr. Coverdell became a candidate for purposes of the reporting and registration requirements of the Act and was obligated to designate a principal campaign committee within fifteen days. Therefore, this Office recommends that the Commission find reason to believe Paul D. Coverdell violated 2 U.S.C. § 432(e)(1) for failing to designate a principal campaign committee within fifteen days of becoming a candidate.

There also appears to be a facial violation of the Act's registration requirements. As noted above, on October 7, 1991, Mr. Coverdell designated the Coverdell Senate Committee (the "Committee") as his principal campaign committee and the Breakfast Club Explorers ("BCE") as an authorized committee. Under the Act, both of these committees are obligated to file a Statement of Organization within ten days of designation. The Committee filed its Statement of Organization on October 23, 1991, sixteen days after designation, but it did not include the Statement of Organization for BCE as required by 2 U.S.C. § 432(f). Thus, the Committee may have violated 2 U.S.C. § 433(a), for failing to file a Statement of Organization within

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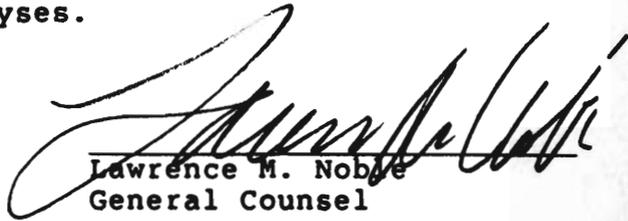
ten days of designation, and 2 U.S.C. § 432(f), for failing to file the registration documents of the authorized committee. Furthermore, there remains the question of whether BCE has filed a Statement of Organization in a timely manner or at all. The fact that the Committee has not filed BCE's registration documents raises the inference that BCE has not filed a Statement of Organization with the Committee as required by the Act. Thus, the Breakfast Club Explorers may have violated 2 U.S.C. § 433(a) for failing to file a Statement of Organization. Because the complaint did not name the two committees and their treasurers and did not allege any violation of 2 U.S.C. §§ 432(f) and 433(a) this finding is treated as internally generated.

III. RECOMMENDATIONS

1. Find reason to believe that Paul D. Coverdell violated 2 U.S.C. § 432(e)(1).
2. Find reason to believe that Coverdell Senate Committee and Marvin Smith, as treasurer, violated 2 U.S.C. §§ 432(f) and 433(a).
3. Find reason to believe that the Breakfast Club Explorers and its treasurer, violated 2 U.S.C. § 433(a).
4. Approve the appropriate letters and the attached Factual and Legal Analyses.

12/27/91

 Date



 Lawrence M. Noble
 General Counsel

- Attachments
 Complaint
 Response to Complaint
 Registration Documents
 Statement of Reasons in MUR 2710
 Factual and Legal Analyses (3)

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. FAISON *[Signature]*
COMMISSION SECRETARY

DATE: JANUARY 2, 1992

SUBJECT: MUR 3425 - FIRST GENERAL COUNSEL'S REPORT
DATED DECEMBER 17, 1991.

The above-captioned document was circulated to the Commission on Friday, December 27, 1991 at 4:00 p.m..

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	<u>XXX</u>
Commissioner Elliott	<u> </u>
Commissioner Josefiak	<u> </u>
Commissioner McDonald	<u>XXX</u>
Commissioner McGarry	<u> </u>
Commissioner Thomas	<u> </u>

This matter will be placed on the meeting agenda for Tuesday, January 7, 1992.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Paul D. Coverdell;) MUR 3425
Coverdell Senate Committee and)
Marvin Smith, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 14, 1992, do hereby certify that the Commission decided by a vote of 6-0 to delay consideration of MUR 3425 until such time as the respondent Committee's year-end report has been filed with the Commission.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

1-16-92
Date

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

92040902955

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3425
 Paul D. Coverdell)
 Coverdell for Senate and)
 Marvin Smith, as treasurer)
 Breakfast Club Explorers and)
 its treasurer)

GENERAL COUNSEL'S REPORT

I. BACKGROUND

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On January 14, 1992, the Commission determined to delay consideration of this matter until such time as when the respondent committee files its Year End Report. As detailed in the First General Counsel's Report, dated December 27, 1991, this matter involves the issue of whether raising \$100,000 indicated that Paul D. Coverdell became a candidate before he filed his Statement of Candidacy. In that report, this Office recommended a reason to believe finding against Paul D. Coverdell for failing to designate a principal campaign committee within fifteen days of becoming a candidate. That recommendation was based on the need for further inquiry to fully analyze the matter under Commission reasoning in its Statement of Reasons in MUR 2710 (In re Judge Harvey Sloane). See First General Counsel's Report at 5-9.

II. ANALYSIS

The Coverdell Senate Committee ("Committee") filed its Year End Report on January 31, 1992 (Attachment 1). This Office's analysis of the financial activity contained in the Committee's report (Attachment 2) reveals that the Committee received a total

amount of \$50,305.00 for the period beginning March 4, 1991 (the earliest receipt date) until October 7, 1991 (the date Paul Coverdell filed his Statement of Candidacy after notification of the complaint).¹ This amount is much less than the \$100,000 that the complaint alleged was raised on Mr. Coverdell's behalf.

The analysis of the disclosure report also shows that the Committee disbursed a total of \$34,944.64 from May 9, 1991 (the earliest disbursement date) to October 7, 1991. It appears that each of these disbursements could have been made for testing the waters activity.² Thus, based on the Commission's analysis in the Sloane NUR Statement of Reasons, it does not appear that Mr. Coverdell became a candidate for purposes of the Act before he filed his Statement of Candidacy.

Aside from the findings against Mr. Coverdell, this Office recommended findings against the Committee for failing to file a Statement of Organization for the other authorized committee (the Breakfast Club Explorers). This Office also recommended findings against the Breakfast Club Explorers for failing to file its Statement of Organization with the principal campaign committee.

1. Each receipt and disbursement reported by the Committee during the "testing the waters" period was entered into the DECALC spreadsheet which totaled the amounts by month and for the entire period.

2. The report stated that these disbursements were for "professional services" and "data entry." The stated purposes may not meet the standards in the Commission's regulations, see 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(4)(i)(A), and the Reports Analysis Division has sent a Request for Additional Information to the Committee inquiring about this point.

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To date, a Statement of Organization has not been filed for the Breakfast Club Explorers. Thus, the Committee may have violated the Act's filing requirements and the Breakfast Club Explorers may have violated the Act's registration requirements. It appears, however, that all the financial activity for the period in question has been disclosed in the principal campaign committee's Year End Report.

Therefore, this Office recommends that the Commission find reason to believe the Coverdell Senate Committee and Marvin Smith, as treasurer, violated 2 U.S.C. § 432(f), but take no further action. Furthermore, this Office recommends that the Commission find reason to believe the Breakfast Club Explorers and its treasurer violated 2 U.S.C. § 433(a), but take no further action. This Office intends to issue an admonishment letter to both the Committee and the Breakfast Club Explorers instructing them that a Statement of Organization must be filed for the Breakfast Club Explorers.

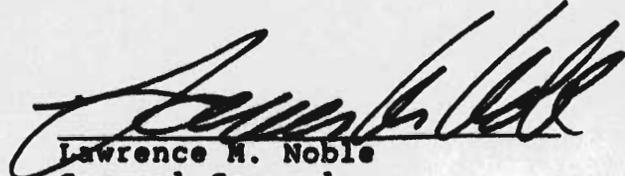
III. RECOMMENDATIONS

1. Find no reason to believe that Paul D. Coverdell violated 2 U.S.C. § 432(2)(1).
2. Find reason to believe that the Coverdell Senate Committee and Marvin Smith, as treasurer, violated 2 U.S.C. § 432(f), but take no further action.
3. Find reason to believe that the Breakfast Club Explorers and its treasurer, violated 2 U.S.C. § 433(a), but take no further action.

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4. Approve the appropriate letters.
5. Close the file.

3/26/92
Date


Lawrence M. Noble
General Counsel

Attachments

1. Committee's Year End Report
2. Spreadsheet Analysis

Staff: Helen J. Kim

92040902959

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Paul D. Coverdell;) MUR 3425
Coverdell for Senate and)
Marvin Smith, as treasurer;)
Breakfast Club Explorers and)
its treasurer.)

CERTIFICATION

I, Marjorie W. Emmons recording secretary for the Federal Election Commission executive session on April 7, 1992, do hereby certify that the Commission took the following actions in MUR 3425:

1. Find no reason to believe that Paul D. Coverdell violated 2 U.S.C. § 432(e)(1).
2. Find reason to believe that the Coverdell Senate Committee and Marvin Smith, as treasurer, violated 2 U.S.C. § 432(f), but take no further action.
3. Find reason to believe that the Breakfast Club Explorers and its treasurer violated 2 U.S.C. § 433(a), but take no further action.

(continued)

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4. Approve the appropriate letters as recommended in the General Counsel's report dated March 26, 1992.
5. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

4-8-92
Date

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

92040902961



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 24, 1992

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

David E. Stahl
Campaign Director
Georgians for Bob Barr --
U.S. Senate
1800 Parkway Place
Suite 730
Marietta, Georgia 30067

RE: MUR 3425

Dear Mr. Stahl:

On April 7, 1992, the Federal Election Commission reviewed the allegations of your complaint dated September 17, 1991, and found that on the basis of the information provided in your complaint, and information provided by Paul D. Coverdell, there is no reason to believe Paul D. Coverdell violated 2 U.S.C. § 432(e)(1). Accordingly, on April 7, 1992, the Commission closed the file in this matter.

Enclosed are copies of the General Counsel Reports containing recommendations for the Commission's consideration in this matter. Please note that the General Counsel's Report dated March 26, 1992, is supplemental to the First General Counsel's Report dated December 27, 1991, and contains recommendations that supersede the ones contained in the latter report.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
General Counsel's Reports

92040902962



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 21, 1992

CLOSED

Marvin Smith, Treasurer
Coverdell Senate Committee
1730 N.E. Expressway
Atlanta, Georgia 30329

RE: MUR 3425
Coverdell Senate Committee
and Marvin Smith, as
treasurer

Dear Mr. Smith:

On April 7, 1992, the Federal Election Commission found reason to believe that the Coverdell Senate Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 432(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file.

Enclosed are copies of the General Counsel Reports containing the Factual and Legal Analyses which formed a basis for the Commission's determination in this matter. Please note that the General Counsel's Report dated March 26, 1992, is supplemental to the First General Counsel's Report dated December 27, 1991, and contains an analysis and recommendations that supersede the ones contained in the earlier report.

The Commission reminds you that the failure of a principal campaign committee to file statements of another authorized committee of a candidate appears to be a violation of 2 U.S.C. § 432(f). You should take immediate steps to file statements for all authorized committees of the candidate and to insure that this activity does not occur in the future.

The file will be made 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 of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

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Marvin Smith
Page 2

If you have any questions, please direct them to
Helen J. Kim, the attorney assigned to this matter, at (202)
219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
General Counsel's Reports

92040902964



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 21, 1992

Breakfast Club Explorers
c/o S. Jarvin Levison
55 Park Place
Suite 400
Atlanta, Georgia 30335

RE: MUR 3425
Breakfast Club Explorers
and its treasurer

Dear Gentlemen:

On April 7, 1992, the Federal Election Commission found reason to believe that the Breakfast Club Explorers ("Committee") and its treasurer violated 2 U.S.C. § 433(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file.

Enclosed are copies of the General Counsel Reports containing the Factual and Legal Analyses which formed a basis for the Commission's determination in this matter. Please note that the General Counsel's Report dated March 26, 1992, is supplemental to the First General Counsel's Report dated December 27, 1991, and contains an analysis and recommendations that supersede the ones contained in the earlier report.

The Commission reminds you that the Committee's failure to file a Statement of Organization within ten days of being designated as an authorized committee appears to be a violation of 2 U.S.C. § 433(a). You should take immediate steps to file a Statement of Organization and to insure that this activity does not occur in the future.

The file will be made 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 of your receipt of this letter. Such materials should be sent to the Office of the General Counsel.

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Breakfast Club Explorers
Page 2

If you have any questions, please direct them to
Helen J. Kim, the attorney assigned to this matter, at (202)
219-3690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
General Counsel's Reports

92040902966



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

April 24, 1992

S. Jarvin Levison
Arnall, Golden & Gregory
55 Park Place
Suite 400
Atlanta, Georgia 30335

RE: MUR 3425
Paul D. Coverdell

Dear Mr. Levison:

On September 24, 1991, the Federal Election Commission notified your client, Paul D. Coverdell, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On April 7, 1992, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Paul D. Coverdell violated 2 U.S.C. § 432(e)(1). Accordingly, the Commission closed its file in this matter.

Enclosed are copies of the General Counsel Reports containing the Factual and Legal Analyses which formed a basis for the Commission's determination in this matter. Please note that the General Counsel's Report dated March 26, 1992, is supplemental to the First General Counsel's Report dated December 27, 1991, and contains an analysis and recommendations that supersede the ones contained in the latter report.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosures
General Counsel's Reports

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3425

DATE FILMED 5/29/98 CAMERA NO. 1

CAMERAMAN S.E.G

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

THE FOLLOWING DOCUMENTATION IS ADDED TO
THE PUBLIC RECORD IN CLOSED MUR 3425.

6/10/92

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COMMISSION
MAIL ROOM

JUN 1 11 59 AM '92

S. JARVIN LEVISON
SUITE 400
55 PARK PLACE
ATLANTA, GEORGIA 30335

(404) 527-4602

May 29, 1992

(404) 527-4602

The Federal Election Commission
Washington, D.C. 20463
Attn: Helen J. Kim
Office of the General Counsel

Re: MUR 3425 Breakfast Club Explorers

Dear Ms. Kim:

Request is made that this letter be made part of the record with respect to the above matter. As I understand it, the General Counsel's Report of March 26, 1992 recommended no further action be taken although it also recommended that the Commission could find reason to believe that the Coverdell Senate Committee and Mr. Marvin Smith as Treasurer and the Breakfast Club Explorers failed to comply with filing requirements in that the Breakfast Club Explorers did not file a Statement of Organization with the Coverdell Senate Committee and the latter did not file a Statement of Organization for the Breakfast Club Explorers.

The failure of the Breakfast Club Explorers to file a Statement of Organization with the Coverdell Senate Committee was due to a misunderstanding on my part. As you recall, we had one or more discussions with regard to the original complaint that Mr. Coverdell became a candidate for the U.S. Senate before he filed his Statement of Candidacy. During the course of those conversations I came to the understanding that the funds collected and disbursed by the Breakfast Club Explorers were to be incorporated in the initial financial filing of the Coverdell Senate Committee and that was all that was necessary. A Statement of Organization on behalf of the Breakfast Club Explorers has now been filed with the Coverdell Senate Committee and it is my understanding that the Coverdell

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The Federal Election Commission
May 29, 1992
Page 2

Senate Committee has filed an Amended Statement of Organization identifying the Breakfast Club Explorers as an other authorized committee. It would have been relatively simple to do the same thing last October but that was not my understanding at that time.

The Breakfast Club Explorers was an informal group of friends of Paul Coverdell who wanted to encourage Mr. Coverdell to leave government service and run for the U.S. Senate in 1992. It started with three or possibly four of his friends having breakfast one morning and deciding they would undertake to ascertain what might be required for Mr. Coverdell to conduct a statewide campaign for the U.S. Senate as a Republican. The group was never formally organized, had no chairman, no secretary or treasurer, although it was determined that we needed to raise some funds to properly explore what would be needed to conduct a campaign. Consequently, one of the individuals agreed to be responsible for maintaining a checking account to receive funds from anyone who thought we should explore the potential for Mr. Coverdell and disburse funds to the extent we incurred any costs. After Mr. Coverdell left government service and decided to seek the nomination as the Republican candidate for the U.S. Senate, there was no reason for the Breakfast Club Explorers to exist. The funds that were then on hand were turned over to the Coverdell Senate Committee and the receipts and disbursements of the Breakfast Club Explorers were included in the first report of the Senate Coverdell Committee.

Sincerely,


S. Jarvin Levison

SJL:jew

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