FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3806

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August 16, 1993

MUR 3806

The Honorable Lawrence Noble
Office of the General Counsel
Federal Election Commission
Sixth Floor
999 E Street N.W.
Washington, D.C. 20463

Dear Mr. Noble:

James E. Folsom, Jr., is governor of the state of Alabama. Correspondence can be sent to the Alabama State Capitol Building, 600 Dexter Ave., Montgomery, AL 36130, 205-242-7100. In 1980, Gov. Folsom made a bid for the U.S. Senate. After defeating the incumbent senator Donald Stewart, Gov. Folsom faced Jeremiah Denton in the November election. During the course of the campaign, Gov. Folsom took out several loans which were questioned at the time by the Federal Election Commission. These loans were in the amounts of $15,000, $10,000, and $2,200.

The $15,000 loan was originally questioned by the FEC because it is against FEC regulations for one person to sign as guarantor for more than $1000. A Birmingham investment banker Hugh Morrow, Jr., had guaranteed the entire loan. After being questioned by the Commission, Folsom amended his disclosure document at the Secretary of State's Office so the loan was spread over a number of supporters, none guaranteeing more than the $1000 limit.

On his "Report of Receipts and Disbursements" received in the Secretary of State's Office on February 25, 1982, covering the period from 7/1/81 through 12/31/81, Gov. Folsom indicates on line 10 that the "Debts and Obligations owed by the Committee" total $17,006.65. Schedule C of the report details a loan from City National Bank of Birmingham in the amount of $15,000 incurred on 7/18/80 and due 10/16/80 with an interest rate of 7.25%APR. The form shows that he paid $1300 leaving an outstanding balance of $13,700 due and payable to City National Bank. Sixteen different guarantors are listed.

The next filing on record in the Secretary of State's Office was received in January of 1983. This form indicates the same level of indebtedness $17,006.65 and "Cash on Hand," $2299.69. What is strikingly different about this report is that Schedule C now shows the Loan Source to be Hugh Morrow, Jr. The amount owed is still $13,700; however, the Date Due indicates "demand" and Interest Rate indicates "none". The only guarantor listed is Jim Folsom, Jr. There are also two outstanding debts carried over from the earlier form as well owed to Boswell & Cooper, Inc. of Huntsville for air plane rental

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totaling $1306.86 and $1999.79 owed to American Abrasive Air & Service, Inc. for travel.

The last filing on record with the Secretary of State's Office and with the FEC is dated 9/27/84. This filing indicates the same levels of cash on hand and debt owed by the committee. There are no changes and no later letters or records of any sort.

It is my understanding that Gov. Folsom has not filed since this time, clearly violating Title 2 of the United States Code, Chapter 14, Subchapter 1, Section 434(a)(2)(B) which states: "in any other calendar year the following reports shall be filed (i)a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31; and (ii)a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following calendar year."

In addition, it is also my understanding that a committee cannot just stop filing as Gov. Folsom's has apparently done without authorization as long as there is an outstanding debt of any sort according to Title 2 of the United States Code, Chapter 14, Subchapter 1, Section 433(d)(1) which states: "A political committee may terminate only when such a committee files a written statement, in accordance with section 432(g) of this title, that it will no longer receive any contributions or make any disbursements and that such committee has no outstanding debts or obligations."

If these records are correct, Mr. Morrow's loan of $13,700 to pay off the bank debt of the same amount constitutes a contribution according to the definition of a contribution as provided in Title 2, Chapter 14, Subchapter 1, Section 431(8)(A) which clearly states: "The term contribution includes (i) 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. . ."

This is also in excess of the $1000 level allowable by law according to Title 2 of the United States Code, Chapter 14, Subchapter 1, Section 441a(a)(1)which states: "No person shall make contributions(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1000..."

There is another troubling related matter. September 30, 1980, Mr. Folsom filed a "Senate Public Financial Disclosure Report" with the Secretary of State and the Secretary of the Senate. This form indicates that Mr. Folsom had two outstanding personal liabilities which exceeded $10,000 during the calendar year 1980. One of these is described as: "Personal note owed to City National Bank of Birmingham, 7.5% annual interest beginning July 18, 1980, due October 16, 1980, Category B."

The bank named and the dates match exactly the campaign loan but the interest rate differs slightly. Can it be that the Folsom campaign loan, paid by Hugh Morrow, was actually a personal loan? If this is indeed a personal loan, Gov. Folsom may have violated Section

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432(b)(3) of the title, chapter, and subchapter which reads: "All funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual."

The second loan listed as a personal liability from Alabama National Bank of Montgomery at 11% annual interest is not mentioned in FEC filings. Was this then really a personal debt, or was this loan also to benefit the campaign effort?

While the campaign itself falls outside the statute of limitations, the lack of filings does not. Only a thorough investigation will reveal whether or not there is, in 1993, a campaign committee debt remaining. I have asked Gov. Folsom in a letter of July 23, 1993, to explain his reasoning for not filing annual reports after 1984 and to explain the remaining cash on hand and the debts owed.

The matter of the apparently excessive contribution by Mr. Morrow should be investigated. Several questions surround this issue and are deserving of answers. Why and how was this deal made? Does the drop in the interest rate constitute a gift? Gov. Folsom does appear to have been the recipient of a gift of considerable value as the interest rate of 7.5% on the original bank loan was reduced to 0% by Mr. Morrow.

Our society is governed by a complex body of civil law. Therefore, it is possible that Gov. Folsom may not have been aware of the status of his 1980 Senatorial campaign. It is common for the losers of Federal elections to quit filing, but Gov. Folsom has remained active in public life for years and now occupies the highest office Alabama offers. As governor, he leads the way by setting an example and carrying out and administering public policy. He should close his 1980 Senatorial campaign as Federal regulations require rather than flaunting the law.

Sincerely,

Thomas H. Mills

Thomas H. Mills
502 Elizabeth St. N.E.
Cullman, AL 35055
205-734-3790

Thomas H. Mills, subscribed and sworn to before me on this 24 day of August 1993.
Notary Betty C Traylor
Cullman Alabama
My Comm Exp Date 1-12-97

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 19, 1993

Thomas H. Mills
502 Elizabeth Street, NE
Cullman, AL 35055

Dear Mr. Mills:

This is to acknowledge receipt on August 17, 1993, of your letter dated August 16, 1993. The Federal Election Campaign Act of 1971, as amended ("the Act") and Commission Regulations require that the contents of a complaint meet certain specific requirements. One of these requirements is that a complaint be sworn to and signed in the presence of a notary public and notarized. Your letter was not properly sworn to.

In order to file a legally sufficient complaint, you must swear before a notary that the contents of your complaint are true to the best of your knowledge and the notary must represent as part of the jurat that such swearing occurred. The preferred form is "Subscribed and sworn to before me on this _____ day of _____, 19__." A statement by the notary that the complaint was sworn to and subscribed before her also will be sufficient. We are sorry for the inconvenience that these requirements may cause you, but we are not statutorily empowered to proceed with the handling of a compliance action unless all the statutory requirements are fulfilled. See 2 U.S.C. § 437g.

Enclosed is a Commission brochure entitled "Filing a Complaint." I hope this material will be helpful to you should you wish to file a legally sufficient complaint with the Commission.

If you have any questions concerning this matter, please contact me at (202) 219-3410.

Sincerely,

Retha Dixon

Retha Dixon
Docket Chief

Enclosure
cc: Governor James E. Folsom, Jr.

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FEDERAL ELECTION COMMISSION

August 16, 1993

The Honorable Lawrence Noble
Office of the General Counsel
Federal Election Commission
Sixth Floor
999 E Street N W
Washington, D C 20463

Dear Mr Noble

James E Folsom, Jr , is governor of the state of Alabama Correspondence can be sent to the Alabama State Capitol Building, 600 Dexter Ave , Montgomery, AL 36130, 205-242-7100 In 1980, Gov Folsom made a bid for the U S Senate After defeating the incumbent senator Donald Stewart, Gov Folsom faced Jeremiah Denton in the November election During the course of the campaign, Gov Folsom took out several loans which were questioned at the time by the Federal Election Commission These loans were in the amounts of $15,000, $10,000, and $2,200

The $15,000 loan was originally questioned by the FEC because it is against FEC regulations for one person to sign as guarantor for more than $1000 A Birmingham investment banker Hugh Morrow, Jr , had guaranteed the entire loan After being questioned by the Commission, Folsom amended his disclosure document at the Secretary of State's Office so the loan was spread over a number of supporters, none guaranteeing more than the $1000 limit

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Sincerely,

Thomas H. Mills

Thomas H. Mills
502 Elizabeth St. N.E.
Cullman, AL 35055
205-734-3790

Betty C. Douglas Notary, Cullman Al
exp. 1-12-97

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 31, 1993

Thomas H. Mills
502 Elizabeth Street, N.E.
Cullman, AL 35055

RE: MUR 3806

Dear Mr. Mills:

This letter acknowledges receipt on August 25, 1993, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Governor James E. Folsom, Jr. and Hugh Morrow, Jr.. 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 3806. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

9404352409 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 31, 1993

John J. Guthrie, Treasurer
Friends of Jim Folsom, Jr.
1483 South Perry Street
Montgomery, AL 36104

RE: MUR 3806

Dear Mr. Guthrie:

The Federal Election Commission received a complaint which indicates that the Friends of Jim Folsom, Jr. ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3806. 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 Committee and you, as treasurer, 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 call (202) 219-3690 and ask to speak with a member of the Central Enforcement Docket (CED). For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 31, 1993

Governor James E. Folsom, Jr.
Alabama State Capitol Building
600 Dexter Avenue
Montgomery, AL 36130

RE: MUR 3806

Dear Governor Folsom:

The Federal Election Commission received a complaint which indicates 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 3806. 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.

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If you have any questions, please call (202) 219-3690 and ask to speak with a member of the Central Enforcement Docket (CED). For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 31, 1993

Hugh Morrow, Jr.
202 Woodward Building
1927 1st Avenue, North
Birmingham, AL 35203

RE: MUR 3806

Dear Mr. Morrow:

The Federal Election Commission received a complaint which indicates 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 3806. 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.

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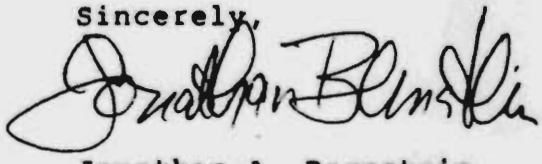
Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

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

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A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

ROBERT F. BAUER
(202) 434-1602

September 15, 1993

93 SEP 16 PM 3:27

VIA FACSIMILE

Jonathan A. Bernstein
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3806

Dear Mr. Bernstein:

Enclosed you will find the designation of counsel identifying this firm as counsel to Friends of Jim Folsom, Jr. in MUR 3806.

The Complaint alleges violations of the Act arising out of events over a decade ago. For this reason, additional time beyond 15 days will be required to assemble all information and documentation available. The Committee respectfully requests therefore an extension of 20 days within which to respond, which would be October 12, 1993.

The Committee appreciates your prompt consideration of this request.

Very truly yours,

Robert F. Bauer

Enclosure

RFB:rfb

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FEDERAL ELECTION COMMISSION
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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3806

NAME OF COUNSEL: Robert F. Bauer

ADDRESS: Suite 800
607 14th Street NW
Washington, DC 20005

TELEPHONE: (202) 434-1602

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.

9/8/93
Date

Jim Folsom
Signature

RESPONDENT'S NAME: Friends of Folsom, Jr.

ADDRESS: Post Office Box 1949
Montgomery, AL 36101

TELEPHONE: HOME(205) 834-3022
BUSINESS(205) 242-4758

9404352410 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 17, 1993

Robert F. Bauer, Esq.
Perkins Coie
607 Fourteenth Street, N.W.
Washington, D.C. 20005

RE: MUR 3806
Friends of Jim Folsom, Jr.

Dear Mr. Bauer:

This is in response to your facsimile dated September 15, 1993, which we received on that same day, requesting an extension of 20 days to respond to the Commission's Notification of Complaint. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 12, 1993.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Erik Morrison

Erik Morrison
Paralegal

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 OCT 13 PM 4: 19

October 13, 1993

Erik Morrison, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Response to MUR 3806; Extension

Dear Mr. Morrison:

Pursuant to our telephone conversation yesterday October 12, 1993, The Friends of Jim Folsom, Jr. Committee is submitting this response by hand-delivery today, rather than by mail on October 12, based upon our agreement that a response today by hand delivery will be considered timely.

Very truly yours,

Robert F. Bauer

Robert F. Bauer

RFB:kms

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PERKINS COIE

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
607 FOURTEENTH STREET, N.W. • WASHINGTON, D.C. 20005-2011
(202) 628-6600 • FACSIMILE (202) 434-1690

October 12, 1993

Lawrence Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3806

Dear Mr. Noble:

The Friends of Jim Folsom, Jr., a principal campaign committee active 13 years ago in support of the Senate candidacy of Jim Folsom in 1980, files this reply, through counsel, to notification of the Complaint by Thomas H. Mills of Cullman, Alabama dated August 16, 1993.[1] The Complaint requests that the Commission revisit certain questions, already raised by the agency some 13 years ago, about lending and reporting activities by the Committee.

For the reasons set forth below, the Committee respectfully requests the Commission to dismiss this Complaint forthwith.

THE MILLS COMPLAINT

Mr. Mills, working from public records, reminds the Commission that in the course of the 1980 campaign, the Committee reported a $15,000 bank loan which was apparently supported by a single individual guarantee. Mr. Mills does not claim that the issue raised by the loan escaped Commission notice. Nor does he or could he suggest that the Commission came to the issue only belatedly. In fact, he concedes that this guarantee was "questioned at the time by the Federal Election Commission." Compl. ¶ 1.

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[1] The reply is submitted under an extension of time for response granted by the Office of General Counsel by letter dated September 17, 1993.

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Mr. Mills acknowledges also that the Commission "question" about the guarantee prompted a response from the Committee.[2] The Committee advised the Commission that the loan had been restructured with 16 guarantors, so that no one guarantee would exceed the limitations established by the Act. The Committee Treasurer, in a letter dated August 20, 1980, forwarded the amendment and stated that "this should correct the item in question." Reports Analysis responded, through analyst Mary Jo Mesner, that "[T]he Commission notes that the excessive individual loans have been changed to include a sufficient number of guarantors."[3]

Mr. Mills also details the remaining information available about the treatment of the loan from that date to the time in 1984 when the Committee ceased reporting. Over that period, spanning Mr. Folsom's unsuccessful general election and some four years thereafter, the Committee continued to file reports reflecting the additional guarantees. Then, in 1983, for reasons unknown, the loan appeared in different form with one of the guarantors appearing as lender and the candidate as guarantor. In 1984, Mr. Mills correctly states, the Committee ceased reporting altogether.[4]

Against this background, Mr. Mills seeks renewed Commission attention to those issues associated with this loan and related loan guarantees, such as contribution limit and reporting issues.

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[2] Mills errs only in stating that the nature of the correction was reported after the campaign, in February of 1982. Compl. ¶ 3. In fact, the correction was reported immediately along with a letter from the Committee Treasurer, dated August 20, 1980, bringing the remedial action to the Commission's attention.

[3] The letter from Ms. Mesner is undated. A copy is attached herewith as an Exhibit for the Commission and your Office's convenient review.

[4] Mr. Mills also seeks attention to personal loans reported by Mr. Folsom on his personal financial disclosure statement, but he does so by way of attempting to strengthen his argument in support of a reopened Commission inquiry into the loans arranged by or for the Committee to support its 1980 campaign.

COMMITTEE COMPLIANCE AND RECORDS

Status of Committee.

The Committee does not for all practical purposes exist at this time. The campaign in which it was active ended 13 years ago; reporting to the Commission terminated roughly four years after that campaign, now almost a decade past. Committee personnel have long dispersed and Committee records have not been maintained. Certain of the individuals who assisted the Committee with the bank loan, such as guarantor Hugh Morrow, are now dead, and the bank issuing the loan passed on to new ownership and management and no longer does business under its former name.

The records on which the Mills Complaint is based are those on file with the Commission. They demonstrate that the Committee, when still active, disclosed at all times its actions in managing the loan in question. Also reflected in those records is a continuing dialogue between the Committee and the Commission about this and other issues present in the course of the former's compliance efforts.

Communication between Committee and Commission.

As noted, the Commission questioned the original single guarantee (by the now-deceased Mr. Morrow) and received prompt notice from the Committee that it had been restructured with the appropriate number of guarantees to conform with the applicable contribution limitations. The Commission acknowledged that notice.

The Commission remained attentive to the loans and their management. In additional letters from Ms. Mesner dated October 20 and November 19, 1993, the Reports Analysis Division stressed to the Committee that continuous reporting of these loans until final disposition was required under the Act.

From fall of 1980, when the Committee's active phase ended with the Alabama Senate election, until 1983, the Committee communicated by letter with the Commission on a range of issues. By 1981, it appears that the responsibility for the Committee's reports passed from Ms. Mesner to John Gibson who signed the various letters. Still, whether through efforts of Ms. Mesner or Mr. Gibson, RAD maintained continuous oversight over the Committee's reports from the election year until 1984, the year that the Committee terminated reporting.

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Nor, for its part, was the Committee silent, but rather kept RAD informed of difficulties encountered in managing its reporting without staff, volunteers or any of the apparatus of an active organization. By December 1980, counsel to the Committee advised the Commission that owing to "the general disorganization that has resulted from the departure of numerous campaign workers after defeat," delays had developed in the completion of the post-general election report. These difficulties affected the Committee's compliance efforts through 1984, as evidenced by other similar letters in which those problems were reported to the Commission.[5]

The record before the Commission demonstrates that at all times the Committee maintained contact with the Commission and followed its guidance in preparing amendments and taking other corrective action, such as the restructuring the original loan with the appropriate number of guarantees.

Termination of reporting and active status.

The Committee terminated reporting in 1984. It heard nothing more on any of these matters until this year, when Mr. Mills filed his Complaint. None of those concerned with the Committee had any cause to assume that the Committee was in any way a still active. As stated, records have not been maintained, and all those involved with the 1980 campaign have turned to other matters in the intervening 13 years and can no longer be expected to add meaningful information on any of the matters raised in the Complaint. Some of the details Mr. Mills seeks are simply no longer available.

But it cannot be suggested that this is a function of Committee refusal in the course of active operations to attend to compliance. The Committee came into existence late in the reporting cycle, as the public record also demonstrates, and at no time were its effort well funded or its staff substantial. Regardless, throughout the period of active operation, the Committee maintained continuous communication with the Commission on all these matters.

By 1984, the Committee somehow concluded that termination was possible and it terminated. Whether this was done with the active or passive concurrence of RAD cannot be known: the record is silent on this point. Nevertheless, it was done without Commission objection.

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[5] See Committee letters of January 2, 1981 and December 21, 1983.

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DEFECTS IN MILLS COMPLAINT

The Mills Complaint seeks to reopen questions closed some 13 years ago about the finances and reporting of a Committee which ceased reporting nine years ago and no longer in any meaningful sense exists.[6] In these circumstances, the "relief" he seeks--the reopening of these issues -- cannot properly be granted.

Mills seeks to usurp Commission discretion.

The Commission determined nine years ago to allow the Committee to terminate. The Committee ceased reporting then and has not resumed this or any other activity to the present day. The Committee has not, for example, raised funds over that period or initiated any activities in support of the political purposes of Folsom or any other individual.

In these circumstances, it appears that the Commission concluded that the Committee qualified for "administrative termination," or in some other fashion, the Committee's intention to terminate was noted without objection. At this time, it cannot be said how this decision was reached or in what way; but somehow it *was* reached and those involved with the Committee have properly assumed -- and relied on the assumption -- that the Committee's obligations were satisfied in full.

Mills wishes to overturn this assumption, by compelling the Commission to reconsider this decision and to reopen matters now long concluded. However, the Commission has long insisted that its enforcement discretion is "prosecutorial," that is, virtually unfettered. While the Courts have seen fit to apply some limits, Democratic Congressional Campaign Committee v. Federal Election Commission, 645 F. Supp. 169 (1986), it remains the Commission's position, by and large vindicated upon review, that Congress conferred the broadest latitude on the agency to determine which actions do, or do not, merit investigation. Mr. Mills by his Complaint would introduce the claim that this discretion may be disturbed by an action brought nine years after the Commission -- well

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[6] The Committee exists at least for purposes of this response. Mr. Folsom, seeking to address the matter responsibly, authorized retention of counsel to address the Mills Complaint. But counsel is replying on behalf of an entity which is pure fiction at the present time -- without staff or office or resources, and fully inactive for the last nine years.

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aware of the contribution and reporting issues -- effectively declined enforcement and allowed a Committee to terminate.

Further proceedings would be inappropriate.

Federal law has long reflected a concern with stale claims. For example, the FECA does not require the keeping of records beyond three years after the date of the reports to which they relate. See 2 U.S.C. § 432(d); 11 C.F.R. §§ 104.10(b)(5), 104.14(b)(3). And while the Act does not contain limitation on the initiation of civil proceedings per se, a limitation does apply under 28 U.S.C. § 2462 which provides as follows:

> Except as otherwise provided by Act of Congress, an action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

Courts have routinely held that Section 2462 specifically limits the federal government's right to seek penalties and fines for statutory violations. See, e.g., United States v. Core Laboratories, Inc., 759 F.2d 480, 483 (5th Cir. 1985); United States v. Ancorp Nat'l Services, Inc., 516 F.2d 198, 200 n.5 (2d Cir. 1975); United States v. SCM Corp, 667 F. Supp. 1110, 1123 (D. Md. 1987). Furthermore, courts have held that the broad language of Section 2462 applies against the United States with equal force in administrative penalty proceedings.[7]

The operation of limitations such as Section 2462 are not simply a technical defense. Board of Regents v. Tomanio, 446 U.S. 478, 487 (1980). Rather, they properly reflect the legislative judgment that after a prescribed period, even if one has a valid claim, a defendant's interest in repose and protection from loss of evidence prevails over the right to

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[7] The well-established federal rule of limitations, including Section 2462, is that the claim accrues when the violation occurs. See, e.g., Core Laboratories, Inc., 759 F.2d at 482 ("A review of [cases under Section 2462] clearly demonstrates that the date of the underlying violation has been accepted without question as the date when the claim first accrued . . . ."); see also H.P. Lambert v. Secretary of the Treasury, 354 F.2d 819 (1st Cir. 1965); United States v. Noble Oil Co., 28 Env't Rep. Cas. (BNA) 1460, 1467 (D.N.J. 1988).

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enforce. United States v. Kubrick, 444 U.S. 111, 117 (1979); Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 349 (1944). Such limitations provide potential defendants with security against stale claims and with freedom to plan without fear of potential future liability. Wilson v. Johns-Mansville Sales Corp., 684 F.2d 111, 118-19 & nn. 40-41 (D.C. Cir. 1982). Statutes of limitations also reflect the concern that loss of evidence, "'whether by death or disappearance of witnesses, fading memories, disappearance of documents, or otherwise,'" seriously impairs the search for truth. Id. (quoting Kubrick, 444 U.S. at 117).

The application of these principles to the present case is plain. The proceeding sought by Mr. Mills would be inappropriate at this time.

CONCLUSION

On all the grounds cited in this response, the Committee requests prompt dismissal of the Mills Complaint.

Very truly yours,

Robert F. Bauer/sb

Robert F. Bauer

RFB:smb

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EXHIBIT

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Marsha G. Folsom, Treasurer
Friends of Jim Folsom Jr.
925 S. Court Street
Montgomery, AL 36102

Identification No: C00133595

Reference: 12 DAY PRE-PRIMARY REPORT (7/2/80 - 8/13/80)

Dear Ms. Folsom:

This letter is prompted by the Commission's preliminary review of your 12 Day Pre-Primary Report. The review raised questions concerning certain information contained in the report. An itemization of these areas follows:

-The Commission notes that the excessive individual loans have been changed to include a sufficient number of guarantors. Although the Commission may take further legal steps concerning the acceptance of excessive loans, your prompt correction will be taken into consideration by the Commission.

-Please itemize all loans on Lines 13a and 13b of Schedule A.

-Line 10 of the Summary Page should reflect the total amount on Schedules C and D. Please amend your report accordingly.

-Schedule A of your report (pertinent portion attached) discloses an apparent contribution from a corporation. You are advised that a contribution from a corporation is prohibited by 2 U.S.C. 441b, unless made from a separate segregated fund established by the corporation. If you have received a corporate contribution, the Commission recommends that you refund the full amount to the donor. (Any refund should appear on Line 21 of Schedule B on your next report.)

If you find that the source of the contribution is permissible and was disclosed incorrectly or incompletely on your report, please amend your original report with the clarifying information.

Although the Commission may take further legal steps concerning the acceptance of a prohibited contribution, your

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prompt refund of the contribution to the donor will be taken into consideration by the Commission.

Any amendment or clarification should be filed with the Secretary of the Senate, 119 D Street, N.E., Washington, D.C. 20510. If you need assistance, please feel free to contact me on our toll free number, (800)424-9530. My local number is (202)523-4172.

Sincerely,

Mary Jo Mesner

Mary Jo Mesner
Reports Analyst
Reports Analysis Division

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GENERAL COUNSEL'S REPORT, DATED APRIL 5, 1994,
AND CERTIFICATION OF COMMISSION VOTE, DATED MAY 5, 1994,
ARE FILED AT THE FOLLOWING MICROFILM LOCATION:

MUR ROLL: 352 FRAMES: 2832-2847

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 6, 1994

Thomas H. Mills
502 Elizabeth Street, N.E.
Cullman, AL 35055

RE: MUR 3806

Dear Mr. Mills:

On August 25, 1993, the Federal Election Commission received your complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against the respondents. See attached narrative. Accordingly, the Commission closed its file in this matter on June 3, 1994. This matter will become part of the public record within 30 days.

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

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 3806
FRIENDS OF JAMES FOLSOM

Thomas Mills filed a complaint alleging that Friends of Jim Folsom has failed to file reports since 1984 and accepted excessive contributions from Hugh Murrow in regard to a 1980 loan guarantee and a 1983 loan. In its response, the Committee states that it terminated nine years ago but that remaining records indicate that in 1980, when the Committee was notified by the Reports Analysis Division of a possible violation regarding the loan, the Committee reattributed the loan to 16 guarantors and filed amended reports. The Committee states that the 1983 loan appears to be an error in the reporting of the 1980 loan.

There is no indication of any serious intent to violate FECA. This matter involves less significant issues relative to the other issues pending before the Commission. The Committee took remedial action in 1980 when it was notified of a possible violation.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 6, 1994

Robert F. Bauer, Esq.
Perkins Coie
697 Fourteenth Street, N.W.
Washington, D.C. 20005

RE: MUR 3806
Friends of Jim Folsom, Jr. and
John J. Guthrie, as treasurer and
Governor James E. Folsom, Jr.

Dear Mr. Bauer:

On August 31, 1993, the Federal Election Commission notified your clients, the Friends of Jim Folsom, Jr. and John J. Guthrie, as treasurer, and Governor James E. Folsom, Jr., of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against your clients. See attached narrative. Accordingly, the Commission closed its file in this matter on June 3, 1994.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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If you have any questions, please contact Joan McEnery at (202) 219-3690.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 3806
FRIENDS OF JAMES FOLSOM

Thomas Mills filed a complaint alleging that Friends of Jim Folsom has failed to file reports since 1984 and accepted excessive contributions from Hugh Murrow in regard to a 1980 loan guarantee and a 1983 loan. In its response, the Committee states that it terminated nine years ago but that remaining records indicate that in 1980, when the Committee was notified by the Reports Analysis Division of a possible violation regarding the loan, the Committee reattributed the loan to 16 guarantors and filed amended reports. The Committee states that the 1983 loan appears to be an error in the reporting of the 1980 loan.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

June 6, 1994

Hugh Morrow, Jr.
202 Woodward Building
1927 1st Avenue, Norht
Birmingham, AL 32503

RE: MUR 3806

Dear Mr. Morrow:

On August 31, 1993, the Federal Election Commission notified you of a complaint alleging certain violations of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was enclosed with that notification.

After considering the circumstances of this matter, the Commission has determined to exercise its prosecutorial discretion and to take no action against you. See attached narrative. Accordingly, the Commission closed its file in this matter on June 3, 1994.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record prior to receipt of your additional materials, any permissible submissions will be added to the public record when received.

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If you have any questions, please contact Joan McEnery at (202) 219-3690.

Sincerely,

Mary L. Taksar

Mary L. Taksar
Attorney

Attachment
Narrative

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MUR 3806
FRIENDS OF JAMES FOLSOM

Thomas Mills filed a complaint alleging that Friends of Jim Folsom has failed to file reports since 1984 and accepted excessive contributions from Hugh Murrow in regard to a 1980 loan guarantee and a 1983 loan. In its response, the Committee states that it terminated nine years ago but that remaining records indicate that in 1980, when the Committee was notified by the Reports Analysis Division of a possible violation regarding the loan, the Committee reattributed the loan to 16 guarantors and filed amended reports. The Committee states that the 1983 loan appears to be an error in the reporting of the 1980 loan.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3806

DATE FILMED 6/15/94 CAMERA NO. 2

CAMERAMAN E.E.S.

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