

THE BADHAM CONGRESSIONAL COMMITTEE

Chairman:

Mr. Paul Presley

Treasurer:

Mr. Robert W. Krone

Committee:

Mr. & Mrs. William C. Adams

Mr. & Mrs. Barr Allegaert

Mr. & Mrs. Robert G. Andrews

Mr. & Mrs. Victor Andrews

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Mr. & Mrs. Harry Ayers

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Mr. & Mrs. Kasper

August 15, 1977

**Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463**

**Attn: Mr. William C. Oldaker
General Counsel**

**Re: Badham Congressional
Committee HR-051438
Conciliation Agreement
MUR 121(76) and 156(76)**

Gentlemen:

This enclosed report is intended to represent the amended report of receipts and expenditures of the Badham Congressional Committee required by paragraph IV C of the referenced Conciliation Agreement executed by the Commission June 20, 1977.

General Condition C of the Agreement required this report to be filed within 30 days from June 20, 1977. Due to the lack of specific regulations or other information as to the form of the amended report, the undersigned Committee treasurer, was in telephone communication with Mr. Mike Filler of the Disclosure Division of the Commission for guidance. A decision on the form the amended report should take was not reached in time to meet the 30 day filing requirement. A request for a 30 day extension was requested but action on the request has not been received. A copy of the request is enclosed.

**FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
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Box 242 • Newport Beach • Ca. 92660

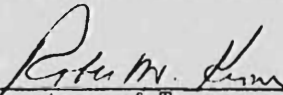
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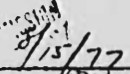
BADHAM CONGRESSIONAL COMMITTEE
HR-051438
AMENDMENT TO OCTOBER 10, 1975 AND JANUARY 31, 1976 REPORTS
PERIODS FROM SEPTEMBER 4 TO SEPTEMBER 30, 1975
AND FROM OCTOBER 1, 1975 TO DECEMBER 31, 1975

	<u>9/4 - 9/30/75</u>	<u>10/1 - 12/31/75</u>	<u>CALENDAR YEAR 1975</u>
Cash on hand at beginning of period (as previously reported)	-0-	26,400	-0-
Individual contributions (as previously reported)		4,025	4,025
Sales and collections (as previously reported)	26,400		26,400
Deemed transfer from the Badham Fund (Calif. ID 745130) representing payment for survey to examine prospects for election to Congress (among other offices) - See Note	20,000		20,000
Expenditures for media and other expenses (as previously reported)		(6,331)	(6,331)
Expenditures by The Badham Fund for survey:			
8/03/75 Opinion Research	(10,000)		(10,000)
8/13/75 Opinion Research	(10,000)		(10,000)
Cash on hand at close of reporting period (as previously reported)	<u>26,400</u>	<u>24,094</u>	<u>24,094</u>

NOTE: The Federal Election Commission and Robert E. Badham, in the matter identified by the Commission as MUR 121 and 156, agreed on June 20, 1977 that expenditures made by the Badham Fund (a political fund created by Badham for his re-election to the state assembly) for a survey prior to announcing his Congressional candidacy was an expenditure reportable by his Congressional Committee. Furthermore, it was agreed that of the subject \$20,000 in expenditures, \$3,389 represented monies originating from corporate contributions. This \$3,389 portion was repaid and reported by the Congressional Committee to the Fund on June 30, 1977 in accordance with the Conciliation Agreement. Attached are extracts of reports filed by The Badham Fund disclosing the source of the last \$24,769 in contributions received by the Fund prior to the subject expenditures of \$20,000.

I certify that I have examined this Report, and to the best of my knowledge and belief it is true, correct and complete.


(Signature of Treasurer or Candidate)
Robert W. Krone, Treasurer
(Typed Name of Treasurer or Candidate)


(Date)

SUMMARY

Statement covers period from Dec 9 1974 to Jan 6 1975

- \$ 500.00

\$ 500.00

Name The Bodine Fund

[illegible]

SUBTOTAL THIS PAGE \$ 500⁰⁰

- 3 -

SCHEDULE A MONETARY CONTRIBUTIONS

See Instruction Manual for directions and examples)

Name Robert Brennan
741

D. Number 7411229
(if committee)

SUMMARY

Statement covers period from 12/1/74 to 12/31/74
1. Total monetary contributions of \$100 or more this period (must be itemized on this schedule) \$5,100
2. Total monetary contributions under \$100 this period (need not be itemized) 125
3. TOTAL MONETARY CONTRIBUTIONS THIS PERIOD. (Lines 1 + 2. Enter this total on Line 1, column B of Summary Page.) \$5,225

FULL NAME **	CITY (and State if not California)	OCCUPATION	EMPLOYER (Place of business if self employed)	AMOUNT THIS PERIOD	CUMULATIVE AMOUNT
Inland Empire	San Diego	Title Ins.	Self (Corp)	200	-
San Diego Gas & Electric	San Diego	Corporate	" (Corp)	50	150
Shell Oil Company	Sacramento	"	" (Corp)	350	-
CAMPAC	ID# 7-12403	Next Back	"	200	-
Greenwood-Garland	Greenwood	Rep Club	"	50	-
Bank of America	San Francisco	Corporation	" (Corp)	500	-
First Savings	San Francisco	-	-	250	-
Trans By	# 741575	Leg Advocate	Various	-	-
Boise Cascade	Portland	Corporation	Self (Corp)	150	-
Trans By	Portland	Govt Affairs	Boise Cascade	-	-
State F Council	# 743265	-	-	500	-
Trans By	# 743266	Leg Advocate	Various	-	-
El Toro Food	El Toro	Drive In	McDonalds	100	-
Neale Goldford	# 743740	-	-	100	-
Golden State Racing	Los Alamitos	Horse Racing	Self (Corp)	200	-
Conci-Tower	Muscat Beach	Land Invest	Self (Corp)	200	-
Employees Food Co-Op	# 741577	-	-	600	-
Alco Financial Service	San Francisco	Land Invest	Corporation	200	-
Los Angeles Co	# 743794	-	-	300	-
SPEC 8 Summary	# 744310	-	-	250	-
Trans By	San Francisco	Leg Advocate	Various	-	-
Ed Heath	Muscat Beach	Self Estab	Self	25	-
J.C. Penney	Muscat Beach	Corporation	Self (Corp)	500	-
Redstone-Garland	# 742721	-	-	500	-
Trans By Leslie Allen	Sacramento	Executive	Cal. Retailers	-	-

Attach additional information on page 4.

SUBTOTAL THIS PERIOD \$5,225
FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
FOR RECORDS

** If the contributor is a committee, list the committee's name and I.D. number (or full name and street address of treasurer). Indicate if the contribution was made by an intermediary and provide information for both the intermediary and the principal contributor.

SUMMARY

Statement covers period from 10/8/74 to 10/26/74

**1. Total monetary contributions of \$100 or more this period
(must be itemized on this schedule)**

5422

150th

56.00

FULL NAME **	CITY (and State if not California)	OCCUPATION	EMPLOYER (Place of business if self employed)	AMOUNT THIS PERIOD	CUMULATIVE AMOUNT
Com. To Support Fed. A. L. B. Ballot Box	#7-11909	-	-		
Trans By G.T. Balbo	Rm 1705 225 S. St. San Francisco	Sin Ca TRIAS.	CR STAND OIL CO	350 ⁰⁰	
TIMMIE - was Mrs Bolt Act. Com	#743103	-	-		
Trans By Fred Balbo	461 Calif St. San Francisco	Exec V.P.	Jud. Ins Agency Assoc F Calif	200 ⁰⁰	
Barker Respon. Govt. Com.	#742694	-	-		
Trans By Richard E. Balbo	925 E ST. ST. 170 Sine	Attorney	Self	600 ⁰⁰	
Cal Pac - Calif Natl Political Action Com	#742617	-	-		
Trans By Phil Chmelar	221 Market St San Francisco	Physician	Self	1,000 ⁰⁰	
Public Vision League	#742642	-	-		
Trans By Charles H Olson	719 Olympic Berkeley Cal	Leg. Advocate	Charles H Olson Asst	200 ⁰⁰	
CANHE PAC - Calif League of Women Voters	#741816	-	-		
Trans By Charles H Olson	719 Olympic Berkeley Cal	Leg Advocate	Charles H Olson Asst	200 ⁰⁰	
Lampson & California Educational	#7422215	-	-		
Trans By Charles H Olson	719 Olympic Berkeley Cal	Leg Advocate	Charles H Olson Asst	200 ⁰⁰	
The Good Court Fund	#744219	-	-		
Trans By F. J. Peterson	773 Olive St San Francisco	Treasurer	Self	400 ⁰⁰	
Pacific Lightfry	810 South Flower Los Angeles	Corporation	None	50 ⁰⁰	250 ⁰⁰
San Diego Gas & Elec	San Diego	Corporation	None	100 ⁰⁰	
Trans By Travis Taylor Jr	Nobles Beach	Attorney	Self	-	
Calif Life Under Bolt Action Com	#743365	-	-	200 ⁰⁰	
Hawley & Co. Inc Local Govt Affair Co	#744066	-	-	200 ⁰⁰	
Ralph W. Dutton Clerk	Kilpatrick Bldg	Bldr	Self	50 ⁰⁰	
Track In. Activ. In.	Rollingame	Corporation	None	500 ⁰⁰	
Southern Calif. Mining Association	741729				
Trans By Victor H. Smith	4961 El Estillo San Francisco	Leg Advocate	Variuous	500 ⁰⁰	
AT&T Civic - Wash D.C. Office	#743453			500 ⁰⁰	

✓✓✓ SUBTOTAL THIS PAGE \$ 5.250

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EXHIBIT A
Continued
Elect Bidham 74

Statement covers period from 10/5/74 to 10/26/74

I.D. Number 741729
(if committee)

[illegible]

Attach additional information on appropriately labeled and numbered continuation sheets.

Indicate number of extra Schedule A pages attached: 1

SUBTOTAL THIS PAGE \$

22 If the contributor is a committee, list the committee's name and I.D. number (or full name and street address of treasurer). Indicate if the contribution was made by an intermediary and provide information for both the intermediary and the principal contributor.

SCHEDULE A

MONETARY CONTRIBUTIONS

See Instruction Manual for directions and examples

Name Elect Bidham 71

SUMMARY

Statement covers period from 7/5/74 to 10/8/74

1. Total monetary contributions of \$100 or more this period (must be itemized on this schedule) \$ 11,849⁰⁰

2. Total monetary contributions under \$100 this period (need not be itemized) -

3. TOTAL MONETARY CONTRIBUTIONS THIS PERIOD. (Lines 1 + 2. Enter this total on Line 1, column 8 of Summary Page.) \$ 11,849⁰⁰

I.D. Number 741729
(If committee)

FULL NAME **	CITY (and State if not California)	OCCUPATION	EMPLOYER (Place of business if self-employed)	AMOUNT THIS PERIOD	CUMULATIVE AMOUNT
Gary B. Burrell Calif. Auto Dealers Assoc.	Newport Beach #741623	Radio Stationer	Newport Beach	100 ⁰⁰	100 ⁰⁰
Trans B. Robert Beckus Calif. Loan & Finance Assoc.	Sacramento #742749	Treas.	Calif. Auto Dealers Assoc.	500 ⁰⁰	500 ⁰⁰
Trans B. Chas. B. Bell Calif. Railroad Assoc.	Los Angeles #742307	Leg. Advocate	Calif. Loan & Fin.	200 ⁰⁰	200 ⁰⁰
Trans B. L. R. E. Rogers Calif. Real Estate Political Action Com.	Sacramento #742276	Leg. Advocate	Calif. Rail Assoc.	300 ⁰⁰	300 ⁰⁰
Trans B. Melvin M. David Essexmen Assoc. Trust Account	Los Angeles #742411	Chairman	CREPAC	1000 ⁰⁰	1000 ⁰⁰
Trans B. Richard Kelly Pacific Lighting	Sacramento Los Angeles	Leg. Advocate Corporation	Calif. Forest Protect Assoc. Los Angeles	300 ⁰⁰ 200 ⁰⁰	300 ⁰⁰ 500 ⁰⁰
United For Calif. United For Calif.	Los Angeles #741634	Corporation	Los Angeles	500 ⁰⁰	500 ⁰⁰
Trans B. R. E. Torgler Public Finance	Santa Barbara St. Louis Mo.	Treasurer Finance Co.	United For Calif.	1000 ⁰⁰	1000 ⁰⁰
Trans B. Wendell K. Johnson Wine & Spirits Wholesalers Trust	Santa Ana #742521	Exec.	Santa Ana	100 ⁰⁰	100 ⁰⁰
Trans B. James D. Greibild Hollywood Book Store	Sacramento #741856	Leg. Advocate	Various	200 ⁰⁰	200 ⁰⁰
Trans B. James D. Greibild Laguna Hills Pop. Club	Sacramento Laguna Hills	Leg. Advocate Club	Various N/A	200 ⁰⁰	200 ⁰⁰
Trans B. Henry B. Boudry Bacell Co.	23130 Via Punta Laguna, N. Paces Tustin	Pres. Wholesale Bkg.	N/A Tustin	500 ⁰⁰ 499 ⁰⁰	500 ⁰⁰ 499 ⁰⁰
Trans B. James D. Greibild	#743793 San Bruno	Leg. Advocate	Various	1000 ⁰⁰	1000 ⁰⁰

Attach additional information on page 4.

SUBTOTAL THIS PAGE \$ 11,849⁰⁰

**If the contributor is a committee, list the committee's name and I.D. number (or full name and street address of treasurer). Indicate if the contribution was made by an intermediary and provide information for both the intermediary and the principal contributor.

Continued

Elect Badham 74

Statement covers period from _____ to _____

7/5/74

10/8/71

I.D. Number 741729
(if committee)

(Committee)

[illegible]

Attach additional information on appropriately labeled and numbered continuation sheets.

Indicate number of each Schedule A page attached.

SUBTOTAL THIS PAGE \$ 5.250

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* * If the contributor is a committee, list the committee's name and I.D. number (or full name and street address of treasurer). Indicate if the contribution was made by an intermediary and provide information for both the intermediary and the principal contributor.

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Mr. Robert Krone
THE BADHAM CONGRESSIONAL
COMMITTEE
P. O. Box 1962
Santa Ana, California
92701

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OFFICE OF GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463
Attn: Mr. William C. Oldaker

RETURN RECEIPT
REQUESTED

CERTIFIED

No. 985355

MAIL

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THE BADHAM CONGRESSIONAL COMMITTEE

Chairman:

Mr. Paul Preston

Treasurer:

Mr. Robert W. Kipke

Committee:

Mr. & Mrs. William C. Adams

Mr. & Mrs. John O. Maguire

Mr. & Mrs. Robert G. Andrews

Mr. & Mrs. Victor Andrews

Mr. & Mrs. Eugene A. Allen

Mr. & Mrs. Frank A. Allen

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July 18, 1977

77 JUL 21 1977 2:54

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

772200

Re: Robert E. Badham
MUR 121 (76) and 156 (76)

Dear Mr. Oldaker:

In connection with the Conciliation Agreement issued in the referenced matter and executed by you for the Commission on June 20, 1977, I respectfully request a 30 day extension of time in which to file the amended reports required in paragraph IV C of the Agreement.

I have been in contact with Mr. Mike Filler in the Disclosure Division of the Commission for guidance as to the proper reporting procedure. Due to the size (\$20,000) of the expenditure by the Badham Fund and the restriction on in-kind contributions, it was initially thought that the Badham Fund would have to qualify as an affiliated committee and Mr. Filler suggested that Form 2A be filed by Congressman Badham to that affect. This, however, would seem to result in all activity in that fund being reportable by the Congressional Committee from the effective date of affiliation (in September 1975) to the dissolution of that fund which pertained to Mr. Badham's election to the California Assembly. In addition, since the required \$3,389 repayment to the Badham Fund, which was made by the Badham Committee on June 30, 1977, is deemed to represent corporate contribution, the affiliation concept would not seem to satisfy the intent of the agreement.

With Mr. Filler's assistance at the Commission level, we are attempting to reach a solution to this reporting problem. It is expected

FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION
WASHINGTON, D.C. 20543

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THE BADIHAM CONGRESSIONAL COMMITTEE

Chairman:
Mr. Paul Presley

Treasurer:
Mr. Robert W. Krone

Committee:

[illegible]

Mr. William C. Oldaker
Re: Robert E. Badham

July 18, 1977
Page 2

that the problem will be resolved within the extension period requested. Upon resolution, the amended reports will be filed as required.

Yours very truly,


Robert W. Krone, Treasurer
Badham Congressional Committee
ID No. HR-051438

SM

cc: Mr. Mike Filler
Mr. Darryl R. Wold

Box 242 • Newport Beach • Ca 92660

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REGISTERED
NO.

RETURN RECEIPT
REQUESTED

2134
Mr. William C. Oldaker
General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463



LAW OFFICES
CUMMINS, McCLAIN AND WOLD
A LAW CORPORATION

WILLIAM McCLAIN
DARRYL R. WOLD

FEDERAL
CLERK

'77 JUN 2

JUN 17

SUITE 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 751-7400

June 23, 1977

771930

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

Re: MUR 121 and 156

Dear Mr. Oldaker:

Enclosed is the copy of the Conciliation Agreement, which I have signed at your request and am returning for your records.

I have previously requested by telephone to your staff attorney, Mr. Andrew Athy, that you send me a copy of the General Counsel's final report in this matter, which I understand will be a part of the file open to the public. I would appreciate receiving that at your earliest opportunity.

I appreciate the cooperation of your office, and your staff attorneys, Andrew Athy and David Spiegel, in resolving this matter to our mutual satisfaction.

Sincerely,

CUMMINS, McCLAIN & WOLD

Darryl R. Wold
Darryl R. Wold

DRW:s1
Enclosure
cc: Andrew Athy, Esq.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
ROBERT E. BADHAM

)
)
)

MUR 121 (76) and 156 (76)

CONCILIATION AGREEMENT

This matter having been initiated by separate complaints filed by Mr. Harry Jeffreys and Mr. John H. Schmitz, an investigation having been conducted, and the Commission having made the determinations required by 2 U.S.C. §437(b)(a)(5) relative to alleged violations of 2 U.S.C. §434(b) and §441b(a);

Now, therefore, the respective parties herein, the Federal Election Commission and the respondent Robert E. Badham, having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

II. That respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. That the pertinent facts in this matter are as follows:

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OFFICE OF GENERAL COUNSEL

A. That the respondent announced his candidacy for Congress on September 4, 1975.

B. That the Badham Congressional Committee is the principal campaign committee for Robert E. Badham's candidacy for Congress in 1976.

C. The Badham Fund is a political fund created by the respondent for his successive campaigns for re-election to the state assembly. Following the 1974 elections the name of the then current campaign fund "Elect Badham '74" was changed to "The Badham Fund." the receipts contained in this account consist primarily of transfers from Elect Badham '74 Committee which had received direct contributions from corporate treasury funds and individuals as well as transfers from previous checking, savings, or C.D. accounts established by or since January 1971. The receipt of monies from corporations is permissible under California law.

D. The Badham Fund, which made total expenditures of \$34,608.72 during 1975, paid \$10,000 on August 3, 1975 and a second \$10,000 on August 13, 1975 for a survey from Opinion Research.

E. That an investigation by Federal Election Commission personnel of the cash flow to and from the

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Badham Fund indicates that at the time of the payments to Opinion Research, 17.1% of the monies in the Fund consisted of corporate donations. Using this percentage, \$3,389 of the payment to Opinion Research consisted of corporate funds.

F. That the Opinion Research survey encompassed the California 74th Assembly District and the 40th Congressional and examined respondent's prospects for election to Congress in 1976 and State Senate or County Supervisor in 1978 with an emphasis on respondent's chances in the Congressional race.

G. The report on the findings of this survey were submitted to respondent on September 2, 1975 two days before he announced his candidacy.

H. That no part of the payment was reported pursuant to 2 U.S.C. §434(b).

I. That the payment was fully reported pursuant to California Law on reports filed with the California Secretary of State and with the Orange County Registrar of Voters on January 19, 1976.

IV. Wherefore, respondent agrees as follows:

A. (1) That as reflected in §100.7(b)(2) of the regulations promulgated by the Commission on April 13, 1977 the Commission has construed as an expenditure

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77040011271

within the meaning of 2 U.S.C. §431(f) any payments^s made for the purpose of determining whether an individual should become a candidate if that individual subsequently become a candidate.

(2) According to this construction the payment by respondent for a survey prior to announcing his candidacy was an expenditure within the meaning of 2 U.S.C. §431(f) and thus no part of that expenditure could, under 18 U.S.C. §610, (as amended 2 U.S.C. §441b(a)) permissably consist of contributions from corporations.

B. That during the entire course of the investigation undertaken by the Commission pursuant to complaints filed with the Commission relative to the payment in question by two of the respondent's 1976 congressional primary campaign opponents, respondent has cooperated fully with the Commission, and has repeatedly offered to file whatever amended reports the Commission feels appropriate.

C. Respondent will file within thirty days an amended report of receipts and expenditures with an entry indicating the \$20,000 expenditure at issue herein for the period during which the expenditure

OFFICE OF GENERAL COUNSEL
FBI
FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

7704001427

was made and to file an amended report for any subsequent period required on account of this expenditure.

D. Respondent will return to the Badham Fund \$3,389, said sum representing the amount of corporate monies used to pay Opinion Research.

GENERAL CONDITIONS:

A. The Commission on request of anyone filing a complaint under 2 U.S.C. §437g(a)(1) concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

B. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed same and the Commission has approved the entire agreement.

C. It is agreed that Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

FEDERAL BUREAU OF INVESTIGATION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040011271

6/20/77
DATE

William C. Oldaker
For the Federal Election
Commission
William C. Oldaker
General Counsel

6/22/77

Camyll R. Vold - Attorney for
Respondent Respondent

77040011271

OFFICE OF GENERAL COUNSEL
FEDERAL ELECTION COMMISSION
OFFICIAL USE COPY

LAW OFFICES

CUMMINS, McCLAIN AND WOLD

A LAW CORPORATION

SUITE 200

4630 CAMPU DRIVE

NEWPORT BEACH, CALIFORNIA 92660

Swallowtail



LIBERTY BELL



USA 13c

25 JUN 1977

1977

Portland, Oregon

USA 11c

LIBERTY OF THE PRESS

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

Wk (out)

Darryl R. Wold, Esq.
Suite 200
Newport Beach, CA 92660

27 JUN 1977

Re: MUR 121 and 156

Dear Mr. Wold:

Enclosed please find a copy of the General Counsel
Report in the above-matter.

Thank you for your cooperation in this entire matter.

Sincerely yours,

13/

Andrew A. Athy, Jr.

Athy

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

Athy fjs 6/27/77

77040014276

BEFORE THE FEDERAL ELECTION COMMISSION

June 8, 1977

IN THE MATTER OF)
)
Robert E. Badham) MUR 121 (76)
)
) MUR 156 (76)

Conciliation Report

7704001127
This matter involves a \$20,000 expenditure from a state political fund (the Badham Fund) containing corporate money for a poll relative to respondent's candidacy for Congress. On August 24, 1976, the Commission found that there was reason to believe a violation had occurred and an investigation was commenced. A team of Commission investigators conducted this investigation during the period from October 1, 1976 through October 8, 1976. In the course of the investigation, six persons were interviewed and the records of four committees related to Mr. Badham's campaign for Federal office were examined.

On November 23, 1976, the Commission found reasonable cause to believe that the expenditure involved a violation of 2 U.S.C. §434(b) and §441b(a) and conciliation began. This process has produced the attached agreement which has been signed by the respondent and which the General Counsel is recommending that the Commission approve.

The facts in this matter are uncontroverted. \$20,000 was paid to Opinion Research in August of 1975 for a pre-candidacy survey. Although Congressman Badham announced his

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

candidacy two days after learning the results of the survey, he failed to list the costs of the survey on his federal reports. Respondent agrees with the Commission's investigative finding that approximately 17% of that payment involved corporate moneys.

Respondent concedes in the agreement that the costs of the survey are an expenditure within the meaning of §431(f), as construed by the Commission in §100.7(b)(2) of its regulations (the "as construed" language was added at the request of respondent; in our opinion it is a reasonable addition). Respondent also concedes that under the construction of §431(f) made in the regulations, no part of the expenditure could consist of corporate contributions. Accordingly, the respondent agrees to return to the Badham fund \$3,389 which represents the amount of corporate monies used to pay Opinion Research and further to report the overall expenditure pursuant to 2 USC §434(b).

In our view the conciliation agreement is a fair and reasonable resolution of the issues in this matter. It should be noted that throughout the investigation of this matter, respondent has cooperated fully with the Commission. We recommend that the Commission approve the agreement.

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

6/9/77
Date

William C. Oldaker
William C. Oldaker
General Counsel

20 JUN 1977

Mr. Darryl R. Wold
Suite 200
4630 Campus Drive
Newport Beach, CA

Re: MUR 121 and 156

Dear Mr. Wold:

Enclosed is the Conciliation Agreement which the Commission ratified and authorized me to execute in its behalf. I am enclosing an additional copy to be signed and returned for our records.

Please note that the requirements of this agreement must be compiled within 30 days and that the Commission views the file as governed by the Freedom of Information Act.

Sincerely yours,

William C. Oldaker
General Counsel

Enclosures

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040014279

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
ROBERT E. BADHAM

)
)
)

MUR 121 (76) and 156 (76)

CONCILIATION AGREEMENT

77040014280
This matter having been initiated by separate complaints filed by Mr. Harry Jeffreys and Mr. John H. Schnitz, an investigation having been conducted, and the Commission having made the determinations required by 2 U.S.C. §437(b)(a)(5) relative to alleged violations of 2 U.S.C. §434(b) and §441b(a);

Now, therefore, the respective parties herein, the Federal Election Commission and the respondent Robert E. Badham, having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

II. That respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. That the pertinent facts in this matter are as follows:

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

A. That the respondent announced his candidacy for Congress on September 4, 1975.

B. That the Badham Congressional Committee is the principal campaign committee for Robert E. Badham's candidacy for Congress in 1976.

C. The Badham Fund is a political fund created by the respondent for his successive campaigns for re-election to the state assembly. Following the 1974 elections the name of the then current campaign fund "Elect Badham '74" was changed to "The Badham Fund." the receipts contained in this account consist primarily of transfers from Elect Badham '74 Committee which had received direct contributions from corporate treasury funds and individuals as well as transfers from previous checking, savings, or C.D. accounts established by or since January 1971. The receipt of monies from corporations is permissible under California law.

D. The Badham Fund, which made total expenditures of \$34,608.72 during 1975, paid \$10,000 on August 3, 1975 and a second \$10,000 on August 13, 1975 for a survey from Opinion Research.

E. That an investigation by Federal Election Commission personnel of the cash flow to and from the

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040014281

Badham Fund indicates that at the time of the payments to Opinion Research, 17.13 of the monies in the Fund consisted of corporate donations. Using this precentage, \$3,389 of the payment to Opinion Research consisted of corporate funds.

F. That the Opinion Research survey encompassed the California 74th Assembly District and the 40th Congressional and examined respondent's prospects for election to Congress in 1976 and State Senate or County Supervisor in 1978 with an emphasis on respondent's chances in the Congressional race.

G. The report on the findings of this survey were submitted to respondent on September 2, 1975 two days before he announced his candidacy.

H. That no part of the payment was reported pursuant to 2 U.S.C. §434(b).

I. That the payment was fully reported pursuant to California Law on reports filed with the California Secretary of State and with the Orange County Registrar of Voters on January 19, 1976.

IV. Wherefore, respondent agrees as follows:

A. (1) That as reflected in §100.7(b)(2) of the regulations promulgated by the Commission on April 13, 1977 the Commission has construed as an expenditure

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040014232

within the meaning of 2 U.S.C. §431(f) any payments made for the purpose of determining whether an individual should become a candidate if that individual subsequently become a candidate.

(2) According to this construction the payment by respondent for a survey prior to announcing his candidacy was an expenditure within the meaning of 2 U.S.C. §431(f) and thus no part of that expenditure could, under 18 U.S.C. §610, (as amended 2 U.S.C. §441b(a)) permissably consist of contributions from corporations.

B. That during the entire course of the investigation undertaken by the Commission pursuant to complaints filed with the Commission relative to the payment in question by two of the respondent's 1976 congressional primary campaign opponents, respondent has cooperated fully with the Commission, and has repeatedly offered to file whatever amended reports the Commission feels appropriate.

C. Respondent will file within thirty days an amended report of receipts and expenditures with an entry indicating the \$20,000 expenditure at issue herein for the period during which the expenditure

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040011281

was made and to file an amended report for any subsequent period required on account of this expenditure.

D. Respondent will return to the Badham Fund \$3,389, said sum representing the amount of corporate monies used to pay Opinion Research.

GENERAL CONDITIONS:

A. The Commission on request of anyone filing a complaint under 2 U.S.C. §437g(a)(1) concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

B. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed same and the Commission has approved the entire agreement.

C. It is agreed that Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040011231

6/20/77
DATE

William C. Oldaker
For the Federal Election
Commission
William C. Oldaker
General Counsel

May 25, 1976

Richard L. Hall, Attorney for
Respondent

7704001423

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Robert E. Badham)

MUR 121 (76)
MUR 156 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on June 15, 1977, the Commission determined by a vote of 5-0 to approve the proposed conciliation agreement submitted by the staff in the above-captioned matter. Voting for this determination were Commissioners Aikens, Harris, Springer, Tiernan, and Staebler; Commissioner Thomson was not present at the time of the vote.

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

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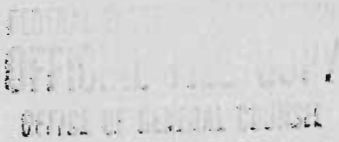
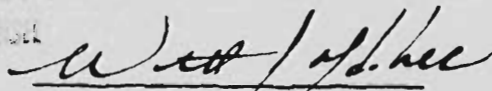
770100133

candidacy two days after learning the results of the survey, he failed to list the costs of the survey on his federal reports. Respondent agrees with the Commission's investigative finding that approximately 17% of that payment involved corporate moneys.

770400113
Respondent concedes in the agreement that the costs of the survey are an expenditure within the meaning of §431(f), as construed by the Commission in §100.7(b)(2) of its regulations (the "as construed" language was added at the request of respondent; in our opinion it is a reasonable addition). Respondent also concedes that under the construction of §431(f) made in the regulations, no part of the expenditure could consist of corporate contributions. Accordingly, the respondent agrees to return to the Badham fund \$3,389 which represents the amount of corporate monies used to pay Opinion Research and further to report the overall expenditure pursuant to 2 USC §434(b).

In our view the conciliation agreement is a fair and reasonable resolution of the issues in this matter. It should be noted that throughout the investigation of this matter, respondent has cooperated fully with the Commission. We recommend that the Commission approve the agreement.

6/9/77
Date



William C. Oldaker
General Counsel

77040014289

May 11, 1977

Darryl R. Wold
4630 Campus Drive
Newport Beach, California

Re: MURA 121 and 156

Dear Mr. Wold:

Pussuant to our conversation of May 9, 1977, I am enclosing for your information the latest draft conciliation agreement in the above matter.

Please contact us by phone after you have examined such.

Sincerely yours,

151

Andrew A. Athy, Jr.
Attorney

Enclosure

AAAthy:pkg:5/10/77
cc? Andy
pjf
file

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 121 (76) and 156 (76)
ROBERT E. BADHAM)

CONCILIATION AGREEMENT

77040011297
This matter having been initiated by separate complaints filed by Mr. Harry Jeffreys and Mr. John H. Schmitz, an investigation having been conducted, and the Commission having made the determinations required by 2 U.S.C. §437(b)(a)(5) relative to alleged violations of 2 U.S.C. §434(b) and §441b(a);

Now, therefore, the respective parties herein, the Federal Election Commission and the respondent Robert E. Badham, having duly entered into conciliation pursuant to §437g(a)(5), do hereby agree as follows:

I. That the Federal Election Commission has jurisdiction over the respondent and the subject matter of this proceeding.

II. That respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. That the pertinent facts in this matter are as follows:

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

A. That the respondent announced his candidacy for Congress on September 4, 1975.

B. That the Badham Congressional Committee is the principal campaign committee for Robert E. Badham's candidacy for Congress in 1976.

C. The Badham Fund is a political fund created by the respondent for his successive campaigns for re-election to the state assembly. Following the 1974 elections the name of the then current campaign fund "Elect Badham '74" was changed to "The Badham Fund." the receipts contained in this account consist primarily of transfers from Elect Badham '74 Committee which had received direct contributions from corporate treasury funds and individuals as well as transfers from previous checking, savings, or C.D. accounts established by or since January 1971. The receipt of monies from corporations is permissible under California law.

D. The Badham Fund, which made total expenditures of \$34,608.72 during 1975, paid \$10,000 on August 3, 1975 and a second \$10,000 on August 13, 1975 for a survey from Opinion Research.

E. That an investigation by Federal Election Commission personnel of the cash flow to and from the

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

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Badham Fund indicates that at the time of the payments to Opinion Research, 17.1% of the monies in the Fund consisted of corporate donations. Using this precentage, \$3,389 of the payment to Opinion Research consisted of corporate funds.

F. That the Opinion Research survey encompassed the California 74th Assembly District and the 40th Congressional and examined respondent's prospects for election to Congress in 1976 and State Senate or County Supervisor in 1978 with an emphasis on respondent's chances in the Congressional race.

G. The report on the findings of this survey were submitted to respondent on September 2, 1975 two days before he announced his candidacy.

H. That no part of the payment was reported pursuant to 2 U.S.C. §434(b).

I. That the payment was fully reported pursuant to California Law on reports filed with the California Secretary of State and with the Orange County Registrar of Voters on January 19, 1976.

IV. Wherefore, respondent agrees as follows:

A. (1) That as reflected in §100.7(b)(2) of the regulations promulgated by the Commission on April 13, 1977 the Commission has construed as an expenditure

FEDERAL ELECTION COMMISSION
OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

77040014292

within the meaning of 2 U.S.C. §431(f) any payments made for the purpose of determining whether an individual should become a candidate if that individual subsequently become a candidate.

(2) According to this construction the payment by respondent for a survey prior to announcing his candidacy on was an expenditure within the meaning of 2 U.S.C. §431(f) and thus no part of that expenditure could, under 18 U.S.C. §610, (as amended 2 U.S.C. §441b(a)) permissably consist of contributions from corporations.

B. That during the entire course of the investigation undertaken by the Commission pursuant to complaints filed with the Commission relative to the payment in question by two of the respondent's 1976 congressional primary campaign opponents, respondent has cooperated fully with the Commission, and has repeatedly offered to file whatever amended reports the Commission feels appropriate.

C. Respondent will file within thirty days an amended report of receipts and expenditures with an entry indicating the \$20,000 expenditure at issue herein for the period during which the expenditure

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was made and to file an amended report for any subsequent period required on account of this expenditure.

D. Respondent will return to the Badham Fund \$3,389, said sum representing the amount of corporate monies used to pay Opinion Research.

GENERAL CONDITIONS:

A. The Commission on request of anyone filing a complaint under 2 U.S.C. §437g(a)(1) concerning the matters at issue herein or on its own motion may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

B. It is mutually agreed that this agreement shall become effective as to the date that all parties hereto have executed same and the Commission has approved the entire agreement.

C. It is agreed that Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

77040014291
OFFICE OF THE ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

DATE

For the Federal Election
Commission
William C. Oldaker
General Counsel

Respondent

77040014295

RECEIVED
GENERAL COUNSEL
OFFICE OF GENERAL COUNSEL



FEDERAL ELECTION COMMISSION

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

March 29, 1977

Mr. Darryl R. Wold
4630 Campus Drive
Newport Beach, California 92660

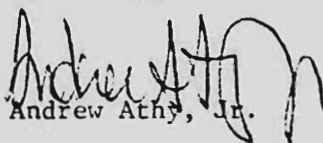
Re: MURs 121(76) and 156(76)

Dear Mr. Wold:

As per our conversation of March 28th, I am forwarding the enclosed draft conciliation agreement in the above matter.

As mentioned, after you have reviewed this agreement, we will discuss same with you on April 7, 1977.

Sincerely,


Andrew Athy, Jr.

Enclosure



LAW OFFICES
CUMMINS, McCLAIN AND WOLD
A LAW CORPORATION

WILLIAM McCLAIN
DARRYL R. WOLD

FEDERAL ELECTION
COMMISSION

77 FEB 7 AM 10:06

SUITE 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 751-7400

February 2, 1977

770406

Andrew Athy, Esq.
Federal Elections Commission
1325 K Street NW
Washington, D.C. 20463

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Athy:

I am back in my office after an absence due to illness, and would like to resolve these matters pending against Congressman Robert E. Badham as soon as possible. In our last telephone conversation, you indicated you were waiting to receive approval of a written proposed conciliation agreement.

Rather than try to discuss that proposed agreement in detail by telephone, I would appreciate it if you would send me a written copy of it as soon as it is ready. That will give me a chance to consider the substance of it before discussing it with you again by telephone.

I am assuming that the 30-day conciliation period of which we were notified by letter from John G. Murphy, Jr., General Counsel of the Commission, dated December 6, 1976, is being extended during the course of our discussions, and will continue to run until further written notice to me.

Sincerely,

CUMMINS, McCLAIN & WOLD

Darryl R. Wold
Darryl R. Wold

LAW OFFICES

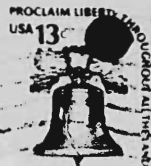
CUMMINS, McCLAIN AND WOLD

A LAW CORPORATION

SUITE 200

4800 CAMPUS DRIVE

NEWPORT BEACH, CALIFORNIA 92660



77 FEB 1971 3:43

Andrew Athy, Esq.
Federal Elections Commission
1325 K Street NW
Washington, D.C. 20463



FEDERAL ELECTION COMMISSION

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

DEC 08 1976

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert E. Badham
600 Michael Place
Newport Beach, California 92663

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Badham:

Please find attached hereto a copy of a letter mailed to your counsel with respect to the above-numbered matters. The letter is a notification that the Commission has found reasonable cause to believe that you have committed a violation of 2 U.S.C. §§434(b) and 441b(a).

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure



RECEIVED
OFFICE OF GENERAL COUNSEL

77040011277

PS Form 3811, Mar. 1976

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

● **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one)
- ☐ Show to whom and date delivered.....
 - ☒ Show to whom, date, & address of delivery.....
 - ☐ **RESTRICTED DELIVERY.**
Show to whom and date delivered.....
 - ☐ **RESTRICTED DELIVERY.**
Show to whom, date, and address of delivery.....

2. **ARTICLE ADDRESSED TO:**

Mr. Gadhani

3. **ARTICLE DESCRIPTION:**

REGISTERED NO. CERTIFIED NO. INSURED NO.

438422

(Add to obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☐ Addressee ☒ Authorized agent

4. DATE OF DELIVERY

2-10

POSTMARK

5. **ADDRESS** (Complete only if requested)

6. **UNABLE TO DELIVER BECAUSE:**

CLERK'S INITIALS

77040011301



FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DEC 06 1976

Darryl R. Wold, Esq.
Suite 200
4630 Campus Drive
Newport Beach, California 92660

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Wold:

The Federal Election Commission has determined that there is reasonable cause to believe that Mr. Robert E. Badham has committed a violation of 2 U.S.C. §§434(b) and 441b(a) of the Federal Election Campaign Act of 1971, as amended, by failing to report as an expenditure a \$20,000 payment to Opinion Research Associates, Inc., for a political survey and for making such payment with funds partially composed of corporate contributions.

Pursuant to 2 U.S.C. §437g(a)(5)(A), the Commission has a duty to correct such violations for a period of 30 days by informal methods of conference, conciliation and persuasion and to enter into a conciliation agreement. If we are unable to reach agreement during that period, the Commission may, upon a finding of probable cause to believe that a violation has occurred, institute a civil suit. 2 U.S.C. §437g(a)(5)(B).

Please contact us regarding this matter.

Sincerely yours,

15/

John G. Murphy, Jr.
General Counsel

cc: Mr. Robert E. Badham
600 Michael Place
Newport Beach, California 92663



RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

77040014301

PS Form 3825, Rev. 1076

6c.

● **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).

☐ Show to whom and date delivered..... 15¢

☒ Show to whom, date, & address of delivery.. 35¢

☐ **RESTRICTED DELIVERY.**
Show to whom and date delivered..... 65¢

☐ **RESTRICTED DELIVERY.**
Show to whom, date, and address of delivery 85¢

2. **ARTICLE ADDRESSED TO:**

Waryl Wold

3. **ARTICLE DESCRIPTION:**

REGISTERED NO. CERTIFIED NO. INSURED NO.

938423

(Always obtain signature of addressee or agent)

I have received the article described above.

SIGNATURE ☒ Addressee ☒ Authorized agent

Sharon Lawrence

4. DATE OF DELIVERY POSTMARK

12-9-76

5. ADDRESS (Complete only if requested)

Suite 200
4630 Gamma Drive
San Antonio, Texas 78240

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Robert E. Badham)

MUR 121 (76)
MUR 156 (76)

CERTIFICATION

I, Marjorie W. Emmons, Secretary to the Federal Election Commission, do hereby certify that on November 23, 1976, the Commission determined by a vote of 5-0 that there was reasonable cause to believe that a violation of 2 U.S.C. §§434(b) and 441b(a) had occurred in the above-captioned matter. Commissioner Tiernan was not present at the time of the vote.

Marjorie W. Emmons
Secretary to the Commission

77040014305

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 121 (76)
Robert E. Badham) MUR 156 (76)

GENERAL COUNSEL'S REPORT

I. SUMMARY OF ALLEGATIONS

77040014301
The two complaints allege that a \$20,000 payment from a State political fund (the Badham Fund) containing corporate money was in fact an expenditure on behalf of respondent's candidacy for Congress. Both complaints further allege that the \$20,000 expense for the poll was excessive and that in fact the payment also covered a fee for William Butcher and Arnold Forde as consultants to the congressional campaign.

In addition, one complainant alleges that respondent's campaign began as early as five months before he announced or began reporting.

II. EVIDENCE

A. Evidence from Prior Proceedings

The above complaints were received separately. MUR 121 (76) was received from a Mr. Harry Jeffrey on April 6, 1976 and MUR 156 (76) was received from a Mr. John G. Schmitz on May 28, 1976. Both individuals opposed Badham in the primary election.

On June 29, 1976, a second complaint was received from Mr. Schmitz raising the same issues but also enclosing a copy of an action filed in the Supreme Court of California which sought to delay the Secretary of State's certification of Badham as the Republican nominee. This second complaint also asked the Commission to file a suit to declare void the Republican primary in the 40th Congressional District of California. In support of his complaint, Schmitz submitted newspaper articles which discuss the close relationship of Butcher and Forde with Opinion Research Associates, Inc., and suggest that the services of Butcher and Forde were highly valuable in Badham's congressional district.

The respondent was forwarded a copy of both complaints. His July 6, 1976 response to the Schmitz complaints also deals with the issues set forth in the Jeffrey complaint.

The response states that \$20,000 was expended from the "Badham Fund" to pay for the poll conducted by Opinion Research Associates, Inc. It concedes that the Badham Fund contained corporate money (permissible under California law). The response also indicated that Forde and Butcher were not only consultants and analysts for the poll but they also planned and conducted Badham's congressional campaign. Although

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respondent indicated that he decided to run for Congress on the basis of the poll results, he contends that he did not become a candidate until after the results of the poll were received. In this connection, Badham's Federal reports indicate no contributions or expenditures until after the date of the poll. The response contends that the \$20,000 fee was exclusively for the poll and encloses a letter from the president of Opinion Research, dated August 14, 1975, confirming an oral agreement to this effect (there was allegedly no written contract). Respondent claims that the services provided by Butcher and Forde for the Federal campaign were obtained by means of an agreement separate and distinct from the contract for the poll and that the agreement provided for compensation based on commissions received from vendors to the campaign and a \$10,000 bonus if respondent won the primary. No copy of this agreement was furnished.

Complainant Schmitz submitted copies of the State reports regarding the Badham Fund. These reports filed pursuant to California law indicate that expenditures of \$34,608.72, including \$20,000 for the poll, were made from this fund during 1975. Other than a \$10,000 obligation listed after the primary election, Badham's Congressional report shows no expenditures to Butcher and Forde. The April 1976 report shows

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that \$750 was paid to Opinion Research Associates, Inc., in March 1976 for another survey and an additional payment of \$1,200 on February 4, 1976 for opinion lists. The reports also show that \$24,600 was raised within one month of Badham's announced candidacy.

B. Results of Field Investigation and Additional Submissions from Respondent

A team of Federal Election Commission investigators conducted an investigation of this matter during the period from October 1, 1976 through October 8, 1976. In the course of the investigation, six persons were interviewed and the records of four committees related to Badham's State office and the committee related to his campaign for Federal office were examined.

The investigation was unable to conclusively prove or disprove the allegation that respondent was actively seeking the Republican nomination for Congress before he actually announced his candidacy. Respondent conceded that he considered seeking Federal office prior to his announcement on September 3, 1975, but denied complainant's allegation that respondent told complainant as early as April 18, 1975 of his intention to run for Congress in 1976. On June 30, 1975, respondent sent a letter to his constituents and supporters indicating his interest in entering the congressional race but showing reluctance to run against the Republican incumbent. (The incumbent was indicted in May 1975 for accepting bribes and was convicted in January 1976).

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In his affidavit submitted to the Commission on September 27, 1976, Badham indicated that by late 1975 he had become more inclined to run for Congress because of the urging of his supporters. He told the investigators that despite this encouragement, he did not decide to seek Federal office until after receiving the Opinion Research survey report on September 2, 1975.

A significant portion of the survey taken by Opinion Research Associates, Inc., appears to concentrate on Badham's chances in the congressional race. The survey analysis concluded that "Assemblyman Badham would appear to have an excellent opportunity to obtain the Republican nomination for Congress in the 40th Congressional District," although "a vigorous campaign" was indicated. According to William Butcher, the questions were intentionally slanted toward the Federal office because neither he nor Forde had any recent experience with a Federal campaign in that district. On the other hand, in an affidavit submitted to the Commission on September 27, 1976, Badham indicated that the State Senate and county supervisor seats he was considering, unlike the congressional seat, would not be open until 1978.

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In the course of his interview by the investigators, Butcher stated that he made his own analysis based on the survey data and did not ordinarily read the Opinion Research analyses. Accordingly, Butcher and Forde presented an oral analysis to Badham on September 1, 1975, during which time they advised him not to enter the congressional race because it was a "high-risk" venture. The facts indicate, however, that Badham entered the race the following day.

The investigators' examination of Badham's State committee records and reports did not reveal any unusual expenditures for the year 1975. There was, however, an increase in expenditures for constituent entertainment in the months of July, August and September 1975, which appear to be related to meetings held between Badham and his supporters.

The investigation was inconclusive with respect to whether the \$20,000 which respondent or his committee paid to Opinion Research Associates, Inc., for the survey was in fact used to pay Forde and Butcher to manage respondent's congressional campaign.

Various explanations have been offered for what appears to be an unusually expensive survey. Donald Weddle, a partner in Opinion Research Associates, Inc., explained to the

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investigators that the survey conducted for Badham was broader-ranging than the standard political survey because it was designed to study all of Badham's political options. Donald McGrew, Weddle's partner, told the investigators that the cost to Opinion Research for the survey was approximately \$6,000 and that Butcher and Forde received \$14,000 for their work on the survey. McGrew added that Butcher and Forde's fees are generally "exorbitant." In an affidavit submitted to the Commission on September 28, 1976, McGrew stated that the entire amount of \$20,000 received from respondent was in payment for services performed by Opinion Research. Moreover, McGrew stated that the Badham survey was conducted at a time of year when Opinion Research is not ordinarily prepared to conduct such full-scale surveys.

Respondent's affidavit states that no part of the \$20,000 paid to Opinion Research was an advance payment for campaign services to be performed at a later date. Respondent did consider the price charged for the survey to be very high, but attributed that to Butcher and Forde's reputation as the most competent political consulting team in the area.

William Butcher, by affidavit, stated that he and Arnold Forde were paid approximately \$12,000 by Opinion Research for their work on the Badham survey. He further stated that no part of that payment was for any campaign services provided for Badham by Butcher and Forde. According to the affidavit, Badham contracted with Butcher and Forde sometime after

September 2, 1975 to provide services for the congressional campaign. Virtually all of their campaign work for Badham was performed between March 1976 and June 1976.

According to Forde's interview with the investigators, Badham had inquired about the possibility of Butcher and Forde managing a campaign for him during the period in which they were involved with the survey. They had only sporadic contact with Badham after the survey analysis was presented and were not actually approached to manage the campaign until February 1976.

In March 1976, Butcher and Forde requested that Opinion Research conduct a survey for the purpose of planning Badham's campaign. Badham was charged \$750 for that survey. McGrew's affidavit attributes the disparity in the costs of the two surveys to the more limited scope of the later survey and the fact that it did not require computer time.

Notwithstanding the above explanations, the Commission is missing critical data necessary to fully explain the \$20,000 fee charged for the first survey. There is no written agreement for the survey and therefore, no breakdown of the various costs involved. The investigators were not provided with receipts indicating expenditures for the survey. Further, there is no data available with respect to the costs of comparable surveys conducted by Opinion Research. Finally,

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there is no written agreement between Badham and Butcher and Forde for campaign services, and therefore, no documentary evidence to support the statements that Butcher and Forde did not begin managing Badham's campaign until some time after the presentation of the survey report.

In this connection, the investigation indicated that in August of 1975, Opinion Research had been paid \$20,000 in two separate checks drawn on the Badham Fund account and signed by Mr. Badham's wife. It is unclear what portion, if any, of the money was paid to Messrs. Butcher and Forde, since the investigation did not review receipts of payment to these two individuals.

Examination of reports filed by the Badham Committee following the investigation revealed that the committee paid Butcher and Forde \$2,000 as a campaign management fee on September 17, 1976. The same report (October 10) and the Ten Day Report indicate that the \$2,000 was payment on a \$10,000 fee owed to Butcher and Forde.

Respondent has conceded in his affidavit that the Badham Fund from which Opinion Research was paid contained corporate money. Most contributions to that fund had been received prior to the general election of November 5, 1974. In his affidavit, respondent contends that all contributions to the fund were made in connection with his State Assembly campaigns. The

\$20,000 payment to Opinion Research was reported in the Badham Fund statement for the period from July 1, 1975 through December 31, 1975, which was filed with the Orange County Registrar of Voters on January 19, 1976.

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The investigators determined that the receipts contained in the Badham Fund consisted primarily of transfers from the Elect Badham '74 Committee. The Elect Badham '74 Committee received funds from previous checking or savings accounts, although direct contributions were the primary source of its receipts. The investigators' analysis indicates that at least 17.1% (or \$1,710) of the first \$10,000 payment made to Opinion Research on August 3, 1975 and 16.79% (or \$1,679) of the second \$10,000 payment on August 13, 1975 was corporate money. Thus, the minimum total corporate money contained in the \$20,000 payment was \$3,389. These corporate contributions were primarily received by the Elect Badham '74 Committee in late 1973.

III. ANALYSIS

The underlying issue in these MURs is whether the \$20,000 payment from the Badham Fund to Opinion Research Associates, Inc., qualifies as an expenditure within the meaning of 2 U.S.C. §431(f). If it does, it should have been reported by respondent pursuant to 2 U.S.C. §434. Moreover, assuming there was a reportable expenditure, it appears to involve corporate monies and thus, there would be an apparent violation of 2 U.S.C. §441b.

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The threshold question is the purpose of the \$20,000 payment to Opinion Research Associates, Inc. Complainants alleged that the payment included an advance payment for William Butcher and Arnold Forde as consultants for respondent's congressional campaign. Although the evidence suggests that the payment may be excessive, there is no conclusive factual proof that the payment was used for any purpose other than the poll.

Even assuming, however, that the \$20,000 payment did in fact cover only the cost of the survey, the evidence seems to indicate that the survey is an expenditure within the meaning of 2 U.S.C. §431(f). At the time that respondent contracted for the survey, he had seriously contemplated a congressional campaign, as evidenced by his letter to constituents of June 30, 1975 in which he expressed his interest in seeking Federal office. Respondent contends that the Federal office was merely one of four that he was considering. Yet, only two of those offices, State Assembly and Congress, were available in 1976 according to respondent's affidavit. Since respondent's prospects for re-election to his State Assembly seat were admittedly excellent, it appears that his only logical concern was the congressional race. In fact, the survey's decided focus on the congressional nomination reflects that concern. Further, respondent announced his congressional

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candidacy within one day after receiving the Opinion Research survey analysis and recommendations and admits that the survey results were highly influential in his decision.

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The timing, scope, effect and continued utility of the survey suggest that it influenced respondent's nomination for election to Federal office. At the very least, the survey gathered information essential to the development of respondent's campaign strategy. The survey may therefore be viewed as a vehicle for the commencement of respondent's campaign. Accordingly, the \$20,000 payment to Opinion Research Associates, Inc., constitutes an "expenditure" within the meaning of 2 U.S.C. §431(f).

The evidence and the law rebut respondent's argument based on subjective intent, i.e., that there is no violation because he did not consider himself to be a candidate at the time he contracted for the survey. The expenditure for a survey commissioned with a view toward congressional candidacy, when considered in conjunction with the subsequent declaration of such candidacy, triggers candidate status and gives rise to the reporting requirement under §434 of the Act.

Commission policy supports these conclusions. Proposed regulation §100.7(b)(2), although not applicable in this case, clearly provides that the costs of the survey would be an expenditure once respondent announced his candidacy. ^{1/}

1/ See also, OC 1975-28 and OC 1975-101. OC 1975-28 indicates that expenditures incurred in the course of conducting

It is uncontroverted that the Badham Fund, the source of the \$20,000 payment, contained corporate funds. According to the investigators' analysis of respondent's various State campaign committee accounts, at least 17 per cent of the \$20,000 payment consisted of corporate funds. ^{2/} The expenditure of corporate funds for the survey appears to contravene 2 U.S.C. §441b.

1/ (Cont'd.) election research may create candidate status; thus, an individual may be a candidate under the Act whether or not a public declaration of candidacy is made. In OC 1975-101 it was noted that if an individual contemplated use of a prior poll in an election campaign, the payment connected with the poll is an expenditure, reportable under §434.

2/ According to the field investigation report, "[t]he determination of the percentage of corporate funds in the Badham Fund was made by identifying the earliest receipt of corporate funds. That amount was then separated from the balance on hand at that time. All transactions from that date to the date of the Opinion Research payments were then allocated proportionately to the 'corporate' and 'other' funds in the account. Those receipts specifically identifiable as corporate sources were added to the 'corporate' portion and all other receipts were added to the 'other' portion. Expenditures were allocated to both amounts based on the appropriate ratio at the time of payment."

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Respondent contends that there can be no violation of §441b because the corporate contributions were not in connection with an election for Federal office. Section 441b, however, also proscribes a candidate's knowing acceptance or receipt of corporate contributions and, by implication, expenditure of such contributions. In this situation, it is the ultimate destination of the money, not the original intent of the contributor, which gives rise to the violation. See, United States v. Auto. Workers, 352 U.S. 567, 585 (1957) and United States v. Chestnut, 394 F. Supp. 581, 586-587 (S.D. N.Y., 1975), aff'd, 533 F. 2d 40 (2d Cir., 1976), both of which indicate that 18 U.S.C. §610 was amended to include "expenditures" to ensure that indirect payments did not escape the reach of the law.

Respondent further argues that the costs of the survey should be allocated among each of the four political offices considered, in which case the share of individual contributions in the Badham Fund at the time of the payment would be sufficient to cover the portion of the survey allocated to Federal office. Assuming that the survey can be viewed as directed to four offices, an assumption which we believe is highly questionable, it cannot be so easily apportioned because respondent's decision to become a candidate for Federal office cannot be said to result any less from the answers to State or local office related questions than from the answers to congressional

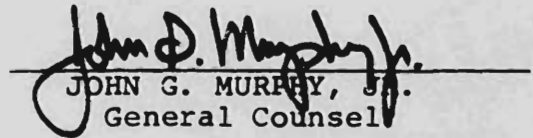
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office-related questions. Moreover, it has been held that once prohibited and permissible funds are commingled, the prohibited funds may be presumed to be a part of each expenditure from the commingled funds. United States v. Boyle, 482 F. 2d 755, 761 (D.C. Cir.), cert. denied, 414 U.S. 1976 (1973). Therefore, the entire cost of the survey is chargeable to respondent's Congressional campaign and constitutes a violation of §441b.

IV. RECOMMENDATION

Find reasonable cause to believe that a violation of 2 U.S.C. §§434(b) and 441b(a) has occurred. Send attached letters. We expect to report to the Commission shortly on a proposed conciliation agreement for this matter.


JOHN G. MURPHY, JR.
General Counsel

DATE: November 18, 1976

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FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert E. Badham
600 Michael Place
Newport Beach, California 92663

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Badham:

Please find attached hereto a copy of a letter mailed to your counsel with respect to the above-numbered matters. The letter is a notification that the Commission has found reasonable cause to believe that you have committed a violation of 2 U.S.C. §§434(b) and 441b(a).

Sincerely yours,

John G. Murphy, Jr.
General Counsel

Enclosure

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OFFICE OF GENERAL COUNSEL





FEDERAL ELECTION COMMISSION

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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Darryl R. Wold, Esq.
Suite 200
4630 Campus Drive
Newport Beach, California 92660

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Wold:

The Federal Election Commission has determined that there is reasonable cause to believe that Mr. Robert E. Badham has committed a violation of 2 U.S.C. §§434(b) and 441b(a) of the Federal Election Campaign Act of 1971, as amended, by failing to report as an expenditure a \$20,000 payment to Opinion Research Associates, Inc., for a political survey and for making such payment with funds partially composed of corporate contributions.

Pursuant to 2 U.S.C. §437g(a)(5)(A), the Commission has a duty to correct such violations for a period of 30 days by informal methods of conference, conciliation and persuasion and to enter into a conciliation agreement. If we are unable to reach agreement during that period, the Commission may, upon a finding of probable cause to believe that a violation has occurred, institute a civil suit. 2 U.S.C. §437g(a)(5)(B).

Please contact us regarding this matter.

Sincerely yours,

John G. Murphy, Jr.
General Counsel

cc: Mr. Robert E. Badham
600 Michael Place
Newport Beach, California 92663



MEMORANDUM TO: David Spiegel
FROM: Andy Athy
RE: MUR 121 & 156

By copy of this memorandum it is requested that Reports Examining review the reports of John Schmits and Harry Jeffreys.

I have reviewed their files but feel an examination by that department is necessary.

AAthy:pjg:10/15/76

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MEMORANDUM TO: File

FROM: Andrew Athy, Jr.

RE: Jan Baren Phone Conversation

Received call this day from Jan Baren of the Republican Congressional Committee. He had been called by Daryl Wold Attorney for Badham and was reviewing for his benefit our Compliance procedures.

I cautioned him that we could not discuss the details of any case but I reviewed the procedures as outlined in the regulations.

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MEMORANDUM TO: File

FROM: Andrew Athy

RE: MUR 121

When Mr. Badham was notified that a complaint was filed against him a copy of the complaint was not attached. Badham then requested such and was apparently sent a copy of MUR 156 which is quite similar but was by a different complainant. Thus Badham has not received the Jeffreys (MUR 121) complaint.

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cc #855



FEDERAL ELECTION COMMISSION

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

121-156

October 27, 1976

MEMORANDUM

TO: OFFICE OF GENERAL COUNSEL

THROUGH: Michael Hershman
Fred Rayano

FROM: Craig Crooks

SUBJECT: Review and Analysis of Reports Filed by the Complainants
of MURs 121 and 156

1. John G. Schmitz

Reports Reviewed:

John G. Schmitz - Candidate Reports
Friends of John Schmitz - Principal Campaign Committee

Findings:

The reports filed by Mr. Schmitz indicate only that the candidate claims not to have personally received contributions nor expended money to advance his own campaign. The reports of his committee, Friends of John Schmitz, for the period October 1, 1975 - June 30, 1976, reveal that the Committee had \$43,982.83 in receipts and had expended the same amount as of June 30, 1976.

Mr. Schmitz had filed the January 31, 1976 report as a candidate for the U.S. Senate. He had terminated his Senate campaign by March 31, 1976, and in April, 1976 began another campaign for his party's nomination to the U.S. House of Representatives. This campaign was terminated sometime in June, 1976. The report for the period March 1 - March 31, 1976, is the termination report of Mr. Schmitz's Senate campaign and the report for the period April 1 - June 30, 1976 is the termination report for his House campaign.

The peculiar aspect of these reports is that out of \$43,982.83, only \$466.38 was spent in the period April 1 - June 30, 1976



for the candidate's entire House campaign. Admittedly, there would be residual publicity from the Senate campaign, but the expenditure of \$466.38 for an entire campaign is too minimal an amount.

Recommendations:

I suggest Mr. Schmitz be queried as to whether or not he and/or his committee only spent such a small amount for his House campaign.

2. Harry P. Jeffrey

Reports Reviewed:

Harry P. Jeffrey - Candidate Reports
Jeffrey '76 Committee - Principal Campaign Committee

Findings:

The candidate's reports state that the candidate did not make any personal expenditure or receive any contributions to further his campaign. However, the Committee reports for the period October 1, 1975 - September 30, 1976 contain certain apparent discrepancies.

The October 10, 1976 report shows a zero balance as of the end of September, 1976, with no debts or obligations owed to or by the Committee. An analysis of those reports has shown that the Committee has not repaid some \$25,000 in loans from the Mission Bank of Laguna Beach, California. The bank made the following loans to the Committee:

<u>Date</u>	<u>Amount</u>
1/09/76	\$ 13,000.00
5/12/76	7,000.00
6/02/76	<u>5,000.00</u>
TOTAL	\$ 25,000.00

One amount or another is reported on some of the reports. The July 10th report shows a debt of \$21,000.00 (the amount at the time should have been shown as \$26,000.00), but the October 10th report indicates the Committee has no debt or obligation. The amount that should still be indicated as of September 30, 1976, is \$25,000.00.

An analysis of the reports also reveals that as of September 30, 1976, the Committee had expended \$106,098.21 and received \$102,543.73 (including the loans mentioned above). The difference of \$3,554.48 means that the Committee spent and probably received \$3,554.48 which is not accounted for in the reports.

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Further, the Committee and candidate received large sums of money in excess of the \$1,000 contribution limitation from members of the candidate's family. The amounts and contributions are as follows:

<u>Date</u>	<u>Amount</u>	<u>Name of Contributor</u>
9/26/75	\$ 5,000.00	Lois Elaine Koller Jeffrey
3/01/76	<u>1,000.00</u>	(Candidate's wife)
TOTAL	\$ 6,000.00	
3/01/76	1,000.00	Susan V. Jeffrey
4/12/76	<u>2,000.00</u>	(Candidate's mother)
TOTAL	\$ 3,000.00	
3/15/76	\$ 3,000.00	Harry P. Jeffrey, Sr.
5/01/76	<u>10,000.00</u>	(Candidate's father)
TOTAL	\$13,000.00	

Recommendation:

I suggest that the candidate and/or committee be notified of these discrepancies and be asked to provide an explanation.

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

October 20, 1976

MEMORANDUM

TO: OFFICE OF THE GENERAL COUNSEL

THROUGH: Michael Hershman *MH*
Fred Rayano *FR*

FROM: Craig Crooks *CC*

SUBJECT: Further Information Related to Campaign Expenditures:
MURs 121 and 156

1. The Field Investigation Report for MURs 121 and 156, dated October 18, 1976, states that the investigators were unable to determine if any "... other expenditures made from the Badham Fund account were used to influence Badham's candidacy for Congress." However, upon the investigators' return from the field, further analysis and examination of information obtained in the field has provided some information on this question.

2. According to California election laws, campaign finance reports must be filed with the State every six months. Although money paid to firms and persons is listed, the exact date of any expenditure is not required. Consequently, expenditures shown in the report occurred within a six-month period of time.

The investigators evaluated and analyzed the two State reports for the Badham Fund for the periods July 1 - December 31, 1975, and January 1 - June 30, 1976. This analysis suggested that there may have been expenditures other than the \$20,000 to Opinion Research which could be related to Badham's Congressional campaign.

3. For the period July 1 - December 31, 1975, the following expenditures were reported:

<u>Amount</u>	<u>Purpose</u>
\$ 888.00	Entertainment and Campaign Promotion (The above were BankAmericard charges for Badham and \$46.74 of which was identified as campaign supplies.)



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\$ 155.00	Cleaning for campaign function
150.00	Catering for campaign function
Total: <u>\$1,193.00</u>	(There was also a listing of \$291.00 part of which was used to pay for luncheon invitations and a bartender.)

Because the specific dates on which these expenses were incurred were not listed, it was not possible to determine whether these amounts came prior to the survey in August, 1975, or after Badham's public announcement in early September, 1975.

4. For the period January 1 - June 30, 1976, the following expenses were noted which may be related to the operation of a temporary headquarters established in April and May of 1976 in Costa Mesa. The headquarters were used to assist Badham in the primary election.

<u>Amount</u>	<u>Purpose</u>
\$ 261.49	Entertainment and Cocktail Party Supplies
14.83	Shelving
114.13	Office supplies
14.84	Flowers for a function
100.00	Clerical work
92.22	Photography
Total: <u>\$ 597.51</u>	(All of the above were expenditures made in Costa Mesa.)

5. The investigators did not question Badham, his staff, attorney, or anyone else about these expenditures. As we were under some time limitations we devoted most of our time to answering the primary allegations raised in this case, but collected information related to secondary allegations or questions that could be analyzed in Washington, D.C.



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WASHINGTON, D.C. 20463

October 18, 1976

MEMORANDUM

TO: Bill Oldaker

FROM: Michael Hershman *MH*

SUBJECT: MUR 121/156

Attached is the Field Investigative Report on Mur 121/156. The workpapers are available for your inspection. In addition to the Report, attached is a letter to the Treasurer of the Committee indicating some minor problems which were discovered in the course of the investigation. I would appreciate your views on sending a letter of this nature.

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FIELD INVESTIGATION REPORT
Federal Election Commission
Office of Disclosure and Compliance
Investigation Section

In the Matter of

BADHAM v. JEFFREY

)

MUR 121

)

BADHAM v. SCHMITZ

)

MUR 156

I. Background

This is a report on information obtained during this investigation undertaken at the direction of the Federal Election Commission. The investigation was authorized on the basis of the General Counsel's Report of September 23, 1976, which outlines the allegations of the complainants and the questions which an investigation should strive to answer.

The fieldwork covered the period October 1 - October 8, 1976, and was conducted in the area of Newport Beach, California. During this time, six persons were formally interviewed and two other persons provided peripheral information and assistance. The respondent, Robert E. Badham, also signed a written statement. The records and reports of four committees related to Badham's state office and the committee related to his campaign for Federal office were reviewed. This entailed the examination of sixteen (16) bank accounts. The actual investigation took place at four widely separated locations.

The respondent, Arnold Forde, William Butcher, and Opinion Research of California, Inc. (Donald McGrew and Donald Weddle) were represented in

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this matter by respondent's attorney, Darryl R. Wold. Mr. Wold was present during interviews held with the respondent and Arnold Forde. It was later discovered that Mr. Wold had been associated with the respondent for a number of years, was part of the steering committee for respondent's Congressional campaign, and was listed as a signatory on the bank account of the Badham Congressional Committee and the state account of the Badham Committee. The Treasurer of both these Committees is Robert Krone.

II. Allegations and Findings

Allegation: Respondent was actively seeking the Republican nomination for the U.S. House of Representatives before he actually announced his candidacy.

Findings: The investigators were unable to discover any information which would conclusively prove or disprove this allegation. According to complainant Schmitz, as early as April 18, 1975, Badham told him he was going to run in the 1976 primary election. However, Badham has denied this. In his statement he declares that he had considered running for Congress prior to his announcement of September 4, 1975, but during that time had also considered running for certain state and county offices. Badham related to the investigators that he had been urged by several persons; principally, friend and long-time supporter Willard S. Voit, to enter the Congressional race. However, he did not make up his mind until after the results of the survey (conducted by Opinion Research, Arnold Forde and William Butcher) were presented to him around the first of September, 1975. (The written analysis is dated September 2, 1975.) In fact, on June 30, 1975, Badham

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had 786 letters sent to various constituents, supporters, et al. This letter stated that Badham had given serious consideration to entering the Congressional race, but did not know whether this would be possible, as he did not wish to run against the Republican incumbent.

(Investigator's Comment: Badham is referring to the indictment of the Republican incumbent from the 40th Congressional District, Andrew Hinshaw, who was charged with accepting bribes. The indictment occurred in May, 1975, and Hinshaw was convicted in January, 1976.)

The letter continued to say that if it appeared that the Republicans would need a new candidate in the primary, Badham would be inclined "to seek that office." Badham then asked the recipients of these letters to respond with their "advice, comments and . . . an indication of support." These letters were produced, addressed and mailed by the firm David Industries. The total bill was \$1,647.60, which was paid out of the Badham Fund account.

An examination and comparison of the receipts and expenditures for the period January 1 - June 30 of the years 1971, 1972, 1973, 1974 and 1975 did not reveal any unusual or outstanding expenditures for the year 1975. There was an increase in expenditures for constituent entertainment in the months of July, August and September, 1975, which appear to be related to meetings held between Badham and his supporters. During this period, Badham also had various meetings with Butcher, Forde and McGrew to discuss the planning and results of the survey. These meetings were borne out by statements made to the investigators by Arnold Forde, William Butcher and Donald McGrew.

Allegation: Opinion Research of California, Inc., was paid \$20,000 by Badham or his committee to conduct a survey of the 40th Congressional

District. This money was primarily used to pay Arnold Forde and his partner, William Butcher, to manage Badham's Congressional campaign.

Findings: Due to the limited scope of the investigation as outlined in the General Counsel's Report, the investigators were unable to prove or disprove this allegation with any great degree of certainty. According to the statement of Badham and statements made to the investigators by Forde, Butcher and McGrew, a \$20,000 payment was made to Opinion Research of California, Inc., to conduct a survey of the 74th Assembly District and the 40th Congressional District.

(Investigator's Comment: These two Districts cover roughly the same area, although the 74th Assembly District is slightly smaller than the 40th Congressional District.)

The purpose of the survey was to determine for Badham what his political choices of the future could be. A significant portion of the survey appears to emphasize Badham's chances for a Federal office. According to William Butcher, the questions were intentionally slanted toward a Federal election because neither he nor Forde had any recent experience with a Federal campaign in that District. They did not feel the need to have an in-depth survey concerning the state and county offices because of the many years of experience they had in state and county campaigns in that District.

According to McGrew, he first met with Badham around July 20, 1975, to discuss a survey. Present at the meeting were Badham, Forde, Butcher, McGrew and two others (McGrew could not recall who they were) at an Orange County country club. Previously, Forde had stated that they must have met with Badham at the Santa Anna Country Club where "Voit holds court,"

indicating that Voit probably was in attendance at that meeting: (Forde claims to be a good friend of Voit.) Badham himself claims that Voit was one of the persons encouraging him to run for Congress. One other meeting was held (date unknown) at which McGrew was present. Butcher could recall meeting with Badham only twice before the survey was undertaken, although Forde felt that there may have been other meetings.

(Investigator's Comment: McGrew told the investigators that he felt there was some reluctance on the part of Badham even to be associated with Butcher and Forde for two reasons: (1) Butcher and Forde had primarily managed the campaigns for Democratic candidates in the past and a Republican using them could be resented by some Republican supporters; and (2) at least Forde's name had been associated with persons involved in the recent scandal involving the Orange County supervisors.)

The consensus of all persons interviewed was that the purpose of the survey was to determine what choices Badham would have in his political future. They all admitted that a Federal campaign was one of four options to be considered in the survey and resulting analysis; the others were state senator, state assemblyman, and county supervisor.

The agreement was reached among Butcher, Forde, Badham and McGrew that Opinion Research would conduct the survey and use Forde and Butcher as consultants. Forde and Butcher designed the questions and analyzed the data developed from the survey and presented their findings orally to Badham. This analysis is not the printed analysis accompanying the compiled data; the printed analysis was done by Opinion Research and is part of their standard package. Butcher declared that he did not usually read the analyses prepared by Opinion Research but made his own analysis based

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OFFICE OF NATIONAL COUNCIL

on the data produced from the survey. Badham claimed not to have any knowledge as to the fee Forde and Butcher were to receive from Opinion Research. According to Donald D. Weddle, partner of McGrew, Opinion Research's cost for producing the survey was approximately \$6,000, with the balance being Forde's and Butcher's fee.

According to Weddle, 300 registered Republicans were interviewed in their homes. The actual interview consisted of eight typed pages. The number of people, aside from Butcher, Forde, Weddle and McGrew, used on the survey were 25 interviewers, 6 field supervisors, 6 coder-editors, one key punch operator, one computer specialist, one field director, and one chief coder. Weddle estimated that the actual time needed to complete the survey was ten to fifteen days.

Another survey was conducted in March of 1976. This survey, according to Weddle, was a telephone survey consisting of several issue-related questions. Consequently, the cost of this survey was considerably less.

Butcher explained that their fees were high because Badham was paying for their previous track records of winning, and their experience in the particular District in which he would run. Butcher inferred that Badham needed them because he had not had any experience running for a political office since he was first elected to the Assembly in 1962.

(Investigator's Comment: Orange County has been a stronghold for the Republican Party for years and Badham had had little Republican opposition in the primaries or from the Democrats in the General Elections during his campaigns for the Assembly. Butcher meant that Badham would really need to campaign to win a new office.)

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Orange County Council

Also, McGrew commented that the fees of Butcher and Forde were always exorbitant regardless of the candidate.

Butcher, Forde and Badham all claim that the \$20,000 payment was strictly for the survey and no commitments were made for Butcher and Forde to run a Congressional or any other campaign for Badham. According to Butcher and Forde, they advised Badham after the survey was completed that he had a sure re-election to his Assembly seat and a good chance for the state senate seat which would be open in two years. Also, they tried to discourage Badham from seeking the county supervisor's seat which was up for election that year and the U.S. Congressional seat; in the former Badham would be opposing one of Butcher's and Forde's clients, and in the latter, he would probably meet strong opposition in the person of John Schmitz, who Butcher thought would declare for that race. According to Butcher, Badham could not afford to enter a high-risk race. Butcher and Forde felt Badham had a secure position as an assemblyman, was making a good salary, and had nothing to fall back on financially should he lose.

According to Forde, Badham had inquired about the possibility of Butcher and Forde managing a campaign during the period in which Butcher and Forde were involved with the survey. They told Badham that they would be available and their fee would be dependent upon the type of campaign, competition and their duties. However, Butcher and Forde had only sporadic contact with Badham after the analysis was presented and were not approached actually to run the campaign for Badham until sometime in February, 1976. Badham agreed to pay them a \$10,000 contingency fee should he

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EX-115 COPY
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

win the primary and also agreed to their collecting a rebate from firms used by Butcher and Forde during the campaign. This rebate could have resulted in a minimum commission of \$11,400, aside from the \$10,000 contingency fee. After the primary election, Butcher and Forde were no longer needed. Thus, the aggregate fee for running the campaign was around \$21,400.

The money to date used to pay Butcher and Forde for their campaign work has come from the Badham Congressional Committee. An examination of this Committee's records indicates that no corporate funds have been deposited in their account.

Allegation: The \$20,000 used to pay Opinion Research for the survey conducted in August, 1975 contained corporate money.

Findings: Badham has admitted that the account from which Opinion Research was paid did indeed contain corporate money. This account of The Badham Fund was established to serve as a maintenance (office) account for Badham's assembly seat. The receipts contained in this account primarily consisted of transfers from the Elect Badham '74 Committee. The accounts of the Elect Badham '74 Committee had received funds, in turn, from previous checking, savings or C.D. accounts established by or since January, 1971, but the primary source of receipts for this Committee's accounts was direct contributions. All of these accounts received corporate contributions as permitted under California election laws. As of January, 1971, all funds were traced through the various accounts to determine the amount of money transferred from one account to another. However, there was not sufficient information available to determine the

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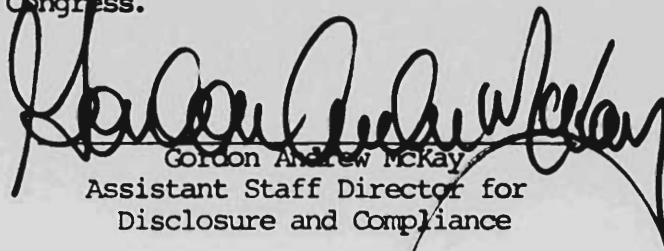
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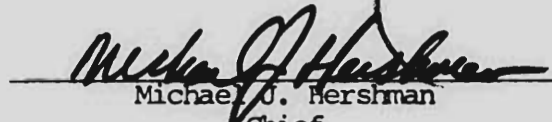
amount of corporate funds until August 29, 1973. From that point on, the investigators were able to trace the percentage of corporate funds available at the time the \$20,000 was paid to Opinion Research. The investigators' figures indicate that at least 17.1% or \$1,710 of the first \$10,000 payment made on August 3, 1975 and 16.79% of \$1,679 of the second \$10,000 payment of August 13, 1975 was corporate money. Thus, the minimum total corporate money contained in the \$20,000 payment was \$3,389. These corporate contributions were primarily received by the Elect Badham '74 Committee in late 1973. The determination of the corporate amount was made by identifying the earliest receipt of corporate funds. This amount was then separated from the balance on hand at that time. All transactions from that date to the date of Opinion Research payments were then allocated proportionately to the "corporate" and "other" funds in the account. Those receipts specifically identifiable as corporate sources were added to the "corporate" portion and all other receipts were added to the "other" portion. Expenditures were allocated to both amounts based on the appropriate ratio at the time of payment.

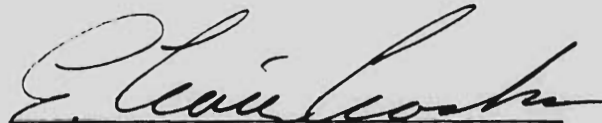
Other Information Obtained: According to statements made by Badham, Butcher, Forde, McGrew and Weddle, there was no written agreement between Butcher, Forde and Badham for either the survey or the campaign management. Nor was there a written agreement between Butcher, Forde and Opinion Research for their consultant work. McGrew related that by obtaining full or a large portion of a payment in advance, they found that a written contract was not necessary. McGrew, Weddle, Butcher and Forde all

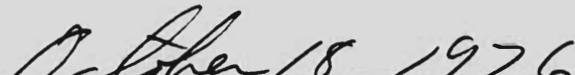
claimed that they did a large volume of work with or for each other. At times, Butcher and Forde paid Opinion Research for a particular job; at other times, Opinion Research paid Butcher and Forde. McGrew commented that Butcher and Forde had not yet been paid for their portion of the \$20,000 payment as McGrew had gotten their permission to borrow it for a time.

The investigators were unable to determine if any of the other expenditures made from the Badham Fund account were used to influence Badham's candidacy for Congress.


Gordon Andrew McKay
Assistant Staff Director for
Disclosure and Compliance


Michael J. Hershman
Chief
Investigation Section


Craig Crooks
Senior Investigator


Date

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DIVISION OF SENIOR COUNSEL



FEDERAL ELECTION COMMISSION

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

October 13, 1976

Robert W. Krone, Treasurer
Badham Congressional Committee
2237 Donnie Road
Newport Beach, California 92660

Dear Mr. Krone:

During the recent investigation conducted by members of my staff, the records of the Badham Congressional Committee were reviewed. Although this review was not a complete audit, deficiencies were discovered which you may want to correct in your records and reports. This information is being provided to you solely for informational purposes and in no way implies an opinion as to the condition of your records and/or reports.

The items discovered were:

1. The contributor cards of your Committee failed to disclose contributions from California Dental PAC and Pacific Light PAC. These items were properly reflected in the appropriate FEC report.
2. The contributor cards of your Committee and appropriate FEC report failed to disclose as contribution-in-kind the \$200.00 value of the donated rent for the month of May, 1976.

If you have any questions or would like a further explanation of these items feel free to contact Mr. Craig Crooks or myself. We can be reached by telephone at (202) 382-6023. Thank you for your cooperation in this matter.

Sincerely,

Michael J. Hershman
Chief, Investigation Section

cc: Mr. Darryl Wold



77040014340

29 SEP 1976

Mr. Robert E. Badham
2237 Donnie Road
Newport Beach, CA 92660

Re: MUR 222 (76)

Dear Mr. Badham:

I am forwarding the enclosed complaint pursuant to §437g(a)(2) of the Federal Election Campaign Act. As shown by the attached copy of my letter to the complainant, the Commission believes that the information provided in the complaint does not give reason to believe that a violation of the Federal Election Campaign Act has occurred and has closed its file in this matter.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

Enclosure

AAthy:pjg:9/14/76
CC: MUR file
Athy

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SEP 28 1976

MEMORANDUM TO: GORDON ANDREW MCKAY
FROM: WILLIAM C. OLDAKER *Bill*
RE: MURs 121, 156

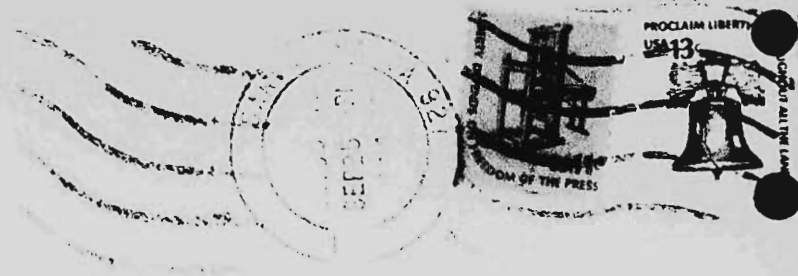
In the above-numbered MURs, we have been informed by your office that the field investigation will require three of your staff members seven (7) days to to complete.

Respondent's attorney has now indicated that he will voluntarily supply the records we are seeking. In view of this and upon review of the record in these matters, it is my opinion that the field investigation should require, at most, no more than 2 staff members five (5) days to complete. Please advise me of your views.

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LAW OFFICES
CUMMINS, McCLAIN, AND WOLD
A LAW CORPORATION
SUITE 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660



The Honorable Vernon Thomson, Chairman,
and Members
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

CC #610

LAW OFFICES
CUMMINS, McCLAIN AND WOLD
A LAW CORPORATION

WILLIAM McCLAIN
DARRYL R. WOLD

76 SEP 28 P2:26

SUITE 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 751-7400

September 24, 1976

The Honorable Vernon Thomson, Chairman,
and Members
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Chairman and Members:

Enclosed are the additional affidavits in these matters,
referred to in my letter of September 22, 1976, trans-
mitting to the Commission our argument in opposition
to the Commission taking any action against Respondent.

Respectfully submitted,

CUMMINS, McCLAIN & WOLD

Darryl R. Wold
DARRYL R. WOLD

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DRW/ms

Enclosures: Affidavit of William Butcher
Affidavit of Arnold Forde
Affidavit of Donald McGrew

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1 Ref: MUR 121 (76)
2 MUR 136 (76)

3 AFFIDAVIT OF DONALD L. MCGREW

4 My name is Donald L. McGrew. I am now and at all times refer-
5 ed to in this Affidavit have been president of Opinion Research of
6 California, 1232 Belmont Avenue, Long Beach, California.

7 In late July or early August, 1975, Opinion Research entered
8 into an oral agreement with Assemblyman Robert E. Badham ("Badham"
9 herein) whereby Opinion Research would provide certain services to
10 Badham, to be performed by Opinion Research and by two of its con-
11 sultants, William Butcher and Arnold Forde ("Butcher and Forde"
12 herein). The terms of that agreement are summarized in a letter
13 from me to Badham dated August 14, 1975, a true and correct copy
14 of which is attached hereto as Exhibit C. To the best of my know-
15 ledge, and as nearly as I can determine from an examination of the
16 records of Opinion Research, this was the only writing between
17 Opinion Research and Badham on the subject.

18 As compensation for these services, Badham agreed to pay Opin-
19 ion Research the amount of \$20,000.00, and did pay that amount in
20 August, 1975.

21 The entire amount of this \$20,000.00 was in payment for the
22 services indicated in my letter referred to, dated August 14, 1975,
23 which were to be completed no later than early September, 1975. No
24 portion of that \$20,000.00 paid for any services other than those
25 indicated in my letter of August 14, 1975.

26 Opinion Research staff took the survey, compiled the results,
27 and provided an extensive computerized printout consisting of 49
28 tables of exhaustive cross-tabulations of the results, covering

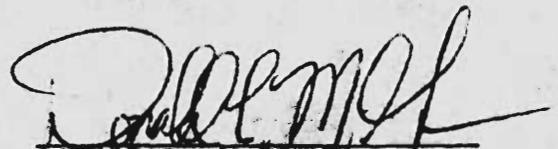
1 197 pages. The survey was taken by means of in-home interviews,
2 involved a time-consuming interview schedule, and was taken for
3 Badham alone in August 1975 at a time at which Opinion Research
4 does not ordinarily have interviewers geared up and in the field
5 for this type of survey.

6 A portion of the \$20,000.00 was paid to Butcher and Forde for
7 the work they were to do, including planning the approach of the
8 survey, analysing the survey results and other data, and formulat-
9 ing a recommendation.

10 In March, 1976 Opinion Research was asked by Butcher and Forde,
11 who I was informed and believed were then acting as campaign con-
12 sultants for Badham, to do survey research for Badham for campaign
13 planning purposes. Because this survey utilized a sample of only
14 300 interviews, asked only one three-part question, was taken by
15 telephone rather than by in-home interviews, the telephone bank had
16 already been established, and no computer time was involved, the
17 price charged Badham was \$750.00. The price was not affected by the
18 amount paid for the work previously done for Badham in August, 1975.

19 The facts set forth herein are personally known to me and I
20 have first-hand knowledge of them. If called as a witness I could
21 and would competently testify thereto under oath.

22 Dated: September 24, 1976

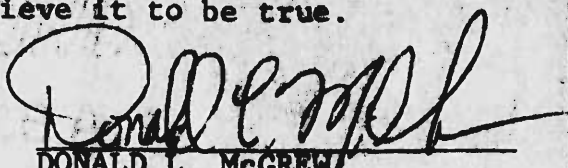
23 
24 DONALD L. MCGREW

25 VERIFICATION

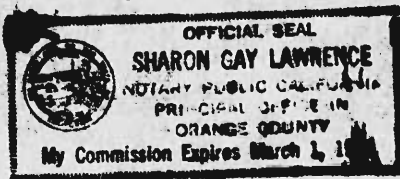
26 STATE OF CALIFORNIA
27 COUNTY OF ORANGE

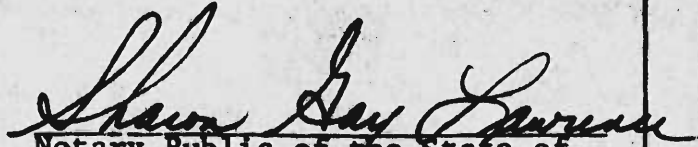
28 I, Donald L. McGrew, being sworn, say:

1 I have read the foregoing statement and know the contents
2 thereof, and I swear the same is true of my own knowledge except
3 as to those matters which are therein stated upon my information and
4 belief, and as to those matters I believe it to be true.

5
6
7 
DONALD L. MCGREW

8 Sworn and subscribed to before me at Newport Beach, California,
9 this 24th day of September, 1976.



29 
Notary Public of the State of
California, having its principal
office in the County of Orange.

OPINION RESEARCH OF CALIFORNIA

PUBLIC OPINION AND BUSINESS SURVEYS

CORPORATE OFFICES—1232 BELMONT AVENUE—LONG BEACH, CALIFORNIA—434-5715

August 14, 1975

Mr. Robert Badham
1649 W. Cliff Drive
Newport Beach, California 92660

Dear Bob:

This letter is to confirm the oral agreement which we have entered into to provide you with information and advice concerning the direction of your political career.

For the agreed to sum of (\$20,000) Twenty Thousand Dollars, Opinion Research of California will conduct a public opinion survey, analyse the results of that survey, correlate those results with relevant empirical evidence and conventional wisdom in order to arrive at a recommendation as to whether or not you should seek re-election to the Assembly in 1976.

Included in this agreement Opinion Research of California will provide you with the exclusive services of Arnold Ford and William Butcher as consultants in the design and conduct of the survey research and analysis of all information in order to arrive at a fully documented recommendation as stated above.

The report and recommendation will be available for presentation prior to Sept, 1, 1975. The time and place for such a report conference shall be selected by mutual agreement prior to that time.

If this letter satisfactorily sets forth our agreement a reply is not necessary inasmuch as one-half of the agreed to fee has been paid in advance. If however, you wish to modify or supplement this brief summary please reply as soon as possible.

Warmest regards,



Donald L. McGrew
President

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

Exhibit C

1 Ref: MUR 121 (76)
2 MUR 156 (76)

3 AFFIDAVIT OF WILLIAM BUTCHER

4 My name is William Butcher.

5 My associate, Arnold Forde, and I were paid approximately
6 \$12,000 from Opinion Research, to do the analysis and formulate
7 the recommendation which Opinion Research had contracted for with
8 Assemblyman Robert E. Badham. (Arnold Forde and I are sometimes
9 referred to herein as "we", and Assemblyman Badham is referred to
10 herein as "Badham.") Our work as we understood it and performed
11 it was to plan the approach of the survey, and based on the results
12 and on other data, analyze Badham's status as an incumbent public
13 official as of the time of the survey vis-a-vis various issues and
14 other possible contenders for public office in the area containing
15 all or most of the 74th assembly district, the 36th senate district,
16 the 40th congressional district, and the 5th supervisorial district.
17 In doing this, we drew on our experience with vote patterns and sur-
18 vey analyses from other campaigns in that area, including those we
19 had run for county supervisor. New survey data was utilized to pro-
20 vide up-dated issue material, and data on individuals, for which we
21 did not have any indepth survey research, especially regarding
22 Assemblyman Badham. The purpose of the analysis was to provide a
23 recommendation to Assemblyman Badham as to the best opportunities
24 he had to win electoral office in the future. Our recommendation
25 was that he run for re-election to the state assembly. We presented
26 Badham with our written analysis and this recommendation in a lengthy
27 oral report at a meeting with Badham in Sacramento on September 2,
28 1975.

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1 Some time after our report to Badham on September 2, 1975,
2 Badham contracted with us to provide certain campaign consulting
3 services to him for his campaign for Congress. We agreed to prepare
4 a written campaign plan, to create and produce all campaign
5 materials, to establish a phone bank to contact Republican voters,
6 and to consult generally on fund-raising activities. Our fee was to
7 consist of commissions of about 15% on commissionable work, plus an
8 additional fee of \$10,000.00 if Badham won the primary. This
9 agreement for our fee was reached in contemplation of the campaign
10 spending approximately \$85,000 for commissionable work. Our total
11 fee for campaign services was thus about \$25,000.

12 Our agreements for consulting work with political candidates
13 customarily include this commission arrangement. Additional fees
14 over and above commissions depend on various factors, including the
15 amount of commissionable work in the campaign budget. In addition
16 to the Badham campaign, we consulted during the 1976 California
17 primary for similar services provided for Badham with five other
18 campaigns, and on a less intensive basis with three others.

19 No part of the \$12,000.00 payment received pursuant to the
20 agreement with Opinion Research and the services performed in August,
21 1975 paid for any campaign services we provided to Badham.

22 To the best of my recollection, between September, 1975 and
23 the close of filing in March, 1976 for the California primary, we
24 met with Badham two or three times, and wrote one state legislative
25 newsletter for him. Following the close of filing in March, 1976,
26 we immediately began our analysis of his campaign, and wrote the
27 campaign plan. Virtually all of our campaign work for Badham was

28 //

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1 performed between that time and the primary election in June, 1976.

2 The facts set forth herein are personally known to me and I
3 have first-hand knowledge of them. If called as a witness I could
4 and would competently testify thereto under oath.

5 Dated: September 23, 1976

6
7
8 
9 WILLIAM BUTCHER

10 VERIFICATION

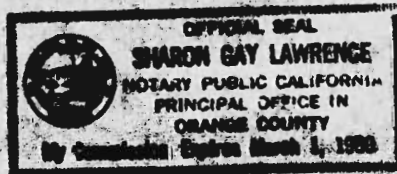
11 STATE OF CALIFORNIA
12 COUNTY OF ORANGE

13 I, William Butcher, being sworn, say:

14 I have read the foregoing statement and know the contents
15 thereof, and I swear the same is true of my own knowledge except as
16 to those matters which are therein stated upon my information and
17 belief, and as to those matters I believe it to be true.

18
19 
20 WILLIAM BUTCHER

21 Sworn and subscribed to before me at Newport Beach, California
22 this 23rd day of September, 1976.




Notary Public of the State
of California, having its
principal office in the
County of Orange.

FEDERAL ELECTION COMMISSION
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OFFICE OF GENERAL COUNSEL

1 Ref: MUR 121 (76)
2 MUR 156 (76)

3 AFFIDAVIT OF ARNOLD FORDE

4 My name is Arnold Forde. I am referred to in the Affidavit of
5 William Butcher in the above-referenced matters.

6 I have read the Affidavit of William Butcher, and do not know
7 any facts to be contrary to those stated therein.

8 No part of the \$12,000.00 payment received pursuant to the agree-
9 ment with Opinion Research and the services performed in August, 1975
10 paid for any campaign services we provided to Badham.

11 Dated: September 23, 1976

12 *Arnold Forde*
13 ARNOLD FORDE

14 VERIFICATION

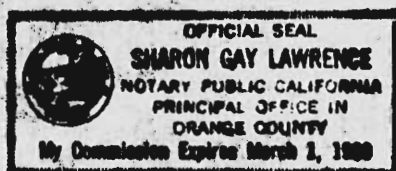
15 STATE OF CALIFORNIA
16 COUNTY OF ORANGE

17 I, Arnold Forde, being sworn, say:

18 I have read the foregoing statement and know the content thereof,
19 and I swear the same is true of my own knowledge except as to those
20 matters which are therein stated upon my information and belief, and
21 as to those matters I believe it to be true.

22 *Arnold Forde*
23 ARNOLD FORDE

24 Sworn and subscribed to before me at Newport Beach, California
25 this 23rd day of September, 1976.



Sharon Gay Lawrence
Notary Public of the State of
California, having its principal
office in the County of Orange.

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OFFICIAL FILE COPY
OFFICE OF GENERAL COUNSEL

7704001435

1 Ref: MUR 121 (76)
2 MUR 156 (76)

76 SEP 27 A10: 59

3
4 AFFIDAVIT OF ROBERT E. BADHAM

5 My name is Robert E. Badham. I am the respondent in the above-
6 referenced proceedings before the Federal Election Commission. I am
7 an incumbent California state assemblyman, representing the 74th
8 Assembly District, and am also the Republican nominee in the 40th
9 Congressional District.

10 My most recent re-election to the state assembly was on Novem-
11 ber 5, 1974. At that time, and for several years prior, I and my
12 campaign committees maintained a continuous fund, under various
13 names, of contributions received for my state legislative campaign.
14 All transactions in these funds have been duly reported and filed
15 as required by California law. Shortly after the 1974 general elec-
16 tion, I changed the then-current name of the fund, "Elect Badham 74",
17 to "The Badham Fund," and all subsequent receipts and expenditures
18 pertaining to my state legislative campaign were reported under
19 that name.

20 The most recent contribution to the Badham fund was received
21 during December, 1974, in the amount of \$500.00. Most if not all
22 other contributions to the Badham fund were received prior to the
23 1974 general election. All of these contributions, including the
24 most recent in December, 1974, were received by me, and to the best
25 of my knowledge, were made, in connection with my re-election
26 campaigns to the state assembly, and for no other purpose.

27 By mid-1975, it had become generally apparent that the incum-
28 bent congressman from my area, Andrew Hinshaw, was in serious legal

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1 difficulty and would likely be indicted by the Orange County Grand
2 Jury and convicted of various alleged offenses before the next
3 general election. (This in fact did happen.) In that light, several
4 close supporters asked me to make a decision as to whether or not
5 I would be a candidate for congress in 1976.

6 I decided at that point, after 12 years in the state assembly,
7 it was time to make a decision regarding my political career in
8 general, and began to consider the various options open in the for-
9 seeable future: not running again for any office and returning to
10 private business, re-election in 1976 to the state assembly, running
11 in 1976 for congress, or running in 1978 for what will likely be an
12 open state senate seat or an open county supervisorial seat. My
13 assembly district is entirely contained within these other districts,
14 so I felt I had the potential to be a viable candidate for any of
15 these offices. I was also incident ally concerned with who would be
16 the strongest candidate as my successor in the state assembly,
17 should I not run for re-election. At that time, however, I was not
18 decided in my own mind as to what direction to go, and until the
19 time I actually made a decision, very carefully avoided making any
20 statement or act that could be construed as an act of campaigning
21 for any particular office. I had for some years told my supporters
22 that if I decided at any time to retire from office or to seek some
23 other office, I would announce that decision at an early date to
24 give everyone involved ample opportunity to make their own decisions
25 regarding a successor. Consequently, by late summer, I felt obligat-
26 ed to make a decision soon, but also felt the need for professional
27 assistance in assessing my relative chances of re-election to the
28 assembly or election to the other offices I was considering. Many

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1 factors had to be weighed, including my own name identification, my
2 identification with issues, identification of potentially strong
3 candidates for the assembly or for the other offices, possible name
4 confusion with a county supervisor under indictment at that time by
5 the name of Robert Battin, my name outside of my own assembly dis-
6 trict but within the area encompassed by the other districts, and
7 changing vote patterns on environmental and other volatile issues.

8 Consequently, in August, 1975, I contracted with Opinion
9 Research of California to provide me with certain services as out-
10 lined in a letter to me signed by Donald L. McGrew, President of
11 Opinion Research, dated August 14, 1976, for the agreed-upon price
12 of \$20,000. The \$20,000 was paid out of the Badham Fund by checks in
13 the amount of \$10,000 each, dated August 3, and August 13, 1975, made
14 payable to Opinion Research of California. No part of this \$20,000
15 paid for any services beyond those stated in the letter from McGrew.
16 No part of this \$20,000 was an advance payment for campaign services
17 to be performed at a later date.

18 I contracted with Opinion Research, and paid what I considered
19 was a very high price, because of the availability through Opinion
20 Research of the services of William Butcher and Arnold Forde, who,
21 to the best of my knowledge, were the most competent political
22 consultants with actual experience in the geographic area with
23 which I was concerned who could be found. I felt supported in my
24 own belief by what I knew to be their general reputation in Orange
25 County as the most competent political consultants available. Be-
26 cause a decision as to my career rested on this analysis, I was will-
27 ing to pay whatever price was necessary for the best advice I could
28 get.

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1 I set September 3, 1975, as the deadline for the analysis and
2 my decision, because I felt I would have to make an announcement on
3 September 4 at two previously-scheduled "legislative report meetings"
4 in my assembly district on that day, similar to meetings I had held
5 before.

6 Butcher and Ford gave me the results of the survey and their
7 analysis and recommendation at a lengthy meeting in my Sacramento
8 office on September 2, 1975. Their recommendation to me was to run
9 for re-election to the assembly in 1976, as I had a strong base for
10 re-election and a run in 1978 at a state senate or county supervisor-
11 ial seat, but that a race for congress in 1976 would be extremely
12 close and impossible to predict as to the outcome. (In retrospect,
13 I have to believe that the research and analysis done was very
14 accurate, because I won the nomination by an extremely close margin
15 of approximately 1,000 votes ahead of my nearest competitor.)

16 To the best of my belief, the fact of this survey was not known
17 to any of my supporters, but they continued to put increasing pressure
18 on me, with promises of support, through August, so that by late
19 August I had become more inclined to run for congress. I held off
20 on a final decision, however, and gave no indication of intention at
21 all, until after the report on September 2, 1975, when I finally
22 made the decision to run for congress in the belief that I could win
23 in a close race. Until that time I had not made any firm decision
24 nor given the indication of one to family, friends, supporters, or
25 the like, nor become a candidate in any sense of the word.

26 On the evening of September 3, 1975, I announced my decision
27 to run for congress at a cocktail party of friends at a private home.
28 The next day I made the first public announcement at the legislative

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1 report meetings. Because I felt supporters would use these occasions
2 to solicit funds, in advance of the luncheon I requested my former
3 state legislative campaign treasurer to immediately file the necessary
4 reports required under the Federal Election Act.

5 Some time after my announcement to be a candidate, I reached a
6 new agreement with Buther and Ford to consult on my campaign and to
7 provide certain services, for compensation agreed on to consist of a
8 combination of commissions and a \$10,000 contingency payment.

9 At the time the \$20,000 payment was made to Opinion Research,
10 I believed it was a perfectly legal expenditure for the purposes for
11 which it was intended, and did not believe at any time subsequent
12 that it had to be reported under the Federal Election Act. At the
13 time the payment was made and the services performed I was not a
14 candidate for a federal office under state law, nor, I believed, was
15 I a candidate for any office under the definition in the Federal
16 Election Act.

17 I did not have the intent to conceal any part of this trans-
18 action from public scrutiny, for I knew that any transaction in the
19 Badham fund would be publicly reported under California law. The
20 \$20,000 payment was, in fact, reported in the campaign statement for
21 the Badham fund for the period July 1, 1975 to December 31, 1975,
22 filed with the Orange County Registrar of Voters on January 19, 1976.

23 At the time the \$20,000 payment was made to Opinion Research
24 I am informed and believe that a portion of the most recent contribu-
25 tions to the Badham fund and its predecessors were corporate contri-
26 butions and a portion were from individuals. The records of the
27 Badham fund and its predecessors do not show the exact dates of
28 receipt of specific contributions, but a rough chronology of the

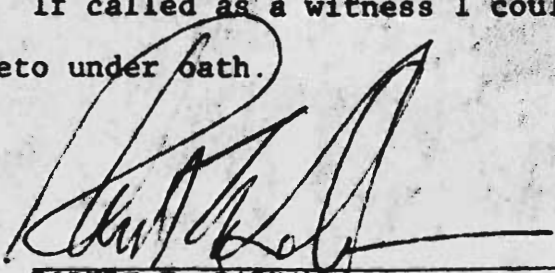
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1 receipt of contributions can be compiled by reference to campaign
2 reports filed under state law for each required reporting period.

3 I have reconstructed the most recent receipts as of the time of
4 the \$20,000 payment sufficient to cover the amount of the payment,
5 and designated the source as to corporate or individual to the best
6 of my information and belief. A copy of that compilation is attached
7 to this Affidavit as Exhibit A.

8 The facts set forth herein are personally known to me and I
9 have first-hand knowledge of them. If called as a witness I could
10 and would competently testify thereto under oath.

11 Dated: September 22, 1976.

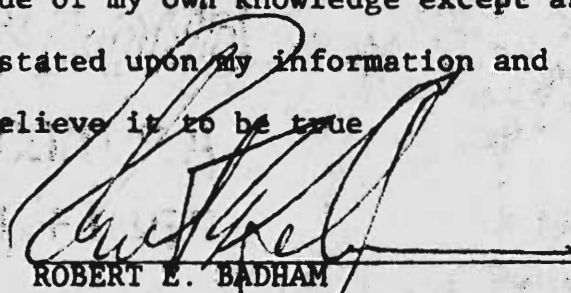
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ROBERT E. BADHAM

VERIFICATION

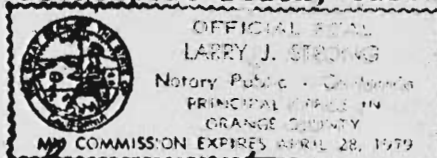
STATE OF CALIFORNIA
COUNTY OF ORANGE

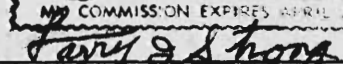
I, Robert E. Badham, being sworn, say:

I have read the foregoing statement and know the contents
thereof, and I swear the same is true of my own knowledge except as
to those matters which are therein stated upon my information and
belief, and as to those matters I believe it to be true.


ROBERT E. BADHAM

Sworn and subscribed to before me at Newport Beach, California
this 22nd day of September, 1976.




Notary Public of the State of
California, having its principal
office in the County of Orange.

THE BADHAM FUND
SCHEDULE OF CONTRIBUTIONS BY TYPE

<u>REPORTING PERIOD</u>	<u>CORPORATE CONTRIBUTIONS</u>	<u>NON-CORPORATE CONTRIBUTIONS</u>	<u>TOTAL CONTRIBUTIONS</u>	<u>CUMULATIVE TOTAL CONTRIBUTIONS</u>
1/7/75 - 6/30/75	\$	\$ 643*	\$ 643	\$ 643
12/8/74 - 1/6/75	500		500	1,143
10/26/74 - 12/7/74	2,400	2,825	5,225	6,368
10/8/74 - 10/26/74	1,000	4,800	5,800	12,168
7/5/74 - 10/8/74	<u>1,799</u>	<u>10,250</u>	<u>12,049</u>	24,217
Totals	\$5,699	\$18,518	\$24,217	
%	23.5%	76.5%	100%	

*Bank interest and interest on Treasury Bill

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THE BADHAM FUND
SCHEDULE OF CORPORATE CONTRIBUTIONS RECEIVED

<u>Reporting Period</u>	<u>Name</u>	<u>City</u>	<u>Amount</u>
<u>12/8/74 - 1/6/75</u>	The May Dept. Stores Co.	St. Louis, Mo.	\$500
<u>10/26/74 - 12/7/74</u>	Inland Empire Service Corp.	Santa Ana	200
	San Diego Gas & Electric	San Diego	50
	Shell Oil Co. - Good Government Fund	Sacramento	350
	Bank of America	San Francisco	500
	Malt Beverage Industry Welfare	San Francisco	250
	Boise Cascade	Portland, Ore.	150
	Quarter Horse Racing, Inc.	Los Alamitos	200
	Avco Financial Services	Newport Beach	200
	J. C. Penney	Newport Beach	500
<u>10/8/74 - 10/26/74</u>	Committee to Support Candidates and Ballot Measures (Standard Oil)	San Francisco	350
	Pacific Lighting	Los Angeles	50
	San Diego Gas & Electric	San Diego	100
	Trucking Activities	Burlingame	500
<u>7/5/74 - 10/8/74</u>	Pacific Lighting	Los Angeles	200
	Union Oil of California	Los Angeles	500
	Public Finance Co.	St. Louis, Mo.	100
	Hollywood Park	Los Angeles	200
	Rayell Co.	Tustin	499
	Household Finance	San Diego	300

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1976
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FROM . .

Law Offices

CUMMINS, McCLAIN AND WOLD

A LAW CORPORATION

4630 CAMPUS DRIVE, SUITE 200 NEWPORT BEACH, CALIFORNIA 92660

TO . .

The Honorable Vernon Thomson, Chairman,
and Members
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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Office of General Counsel

LAW OFFICES
CUMMINS, McCLAIN AND WOLD
A LAW CORPORATION

WILLIAM McCLAIN
DARRYL R. WOLD

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SUITE 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 751-7400

September 22, 1976

762508

John G. Murphy, Jr., General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Murphy:

By letter dated August 26, 1976, in the above-referenced matters, you requested, among other things, copies of the surveys, the reports of the results of the surveys, and copies of any other work performed by Opinion Research in connection with the \$20,000.00 payment to Opinion Research from the respondent, Robert E. Badham.

It is my opinion that the information contained in those documents is of a highly confidential nature, some parts of which might be potentially damaging to the respondent if publicly revealed. Before I recommend that this information be voluntarily provided to the Commission, I request that you inform me as to any rules or regulations the Commission had adopted, or that it would agree to follow in this case, regarding:

- (1) Maintaining absolute confidentiality of the contents of any documents provided to the Commission, except as review of the contents by Commission staff and members is necessary for these proceedings;
- (2) Keeping the contents out of any permanent record of the proceedings of the Commission

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Page 2

and out of the permanent files of
the Commission; and

- (3) Returning to Respondent all documentary evidence which he submits and requests the return of, at the completion of the proceedings by the Commission in this matter.

I will appreciate having your response in writing, and will promptly thereafter inform you as to whether or not I will recommend voluntary compliance with your request for these documents.

Sincerely,

CUMMINS, McCLAIN & WOLD

Darryl R. Wold
Darryl R. Wold

DRW:sl

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OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

LAW OFFICES

CUMMINS, McCLAIN AND WOLD

A LAW CORPORATION

SUITE 200

4630 CAMPUS DRIVE

NEWPORT BEACH, CALIFORNIA 92660

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John G. Murphy, Jr., General Counsel
Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

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LAW OFFICES
CUMMINS, McCLAIN AND WOLD
A LAW CORPORATION

WILLIAM McCLAIN
DARRYL R. WOLD

76 SEP 27 A10:59 200
4630 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(714) 751-7400

September 22, 1976

The Honorable Vernon Thomson, Chairman,
and Members of the Federal Election Commission
1325 K Street N.W.
Washington, D.C. 20463

Re: MUR 121 (76)
MUR 156 (76)

762501

Dear Mr. Chairman and Members:

As the attorney for Robert E. Badham, respondent in each of the above-referenced matters, in response to the notification dated August 26, 1976 from John G. Murphy, Jr., General Counsel to the Commission, I submit herewith the following items:

Argument in Opposition to Action by the Commission

Affidavit of Robert E. Badham

The affidavits of William Butcher, Arnold Forde, and Donald L. McGrew will be sent under separate cover on September 24, 1976, when those individuals will be available to sign them.

Certain information requested in Mr. Murphy's letter, relating to copies of surveys and analyses, is withheld pending a response from Mr. Murphy to my request, dated September 22, 1976, regarding the Commission's rules of procedure pertaining to confidentiality and return of any documentary evidence submitted.

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I specifically reserve the right to submit any additional information and argument as may appear appropriate at any later date.

By this letter, I formally request a hearing by the Commission regarding the above-referenced matters, on adequate notice, with the right to appear and to call witnesses as necessary. I believe that a hearing is necessary to afford adequate opportunity for respondent to demonstrate why no action should be taken by the Commission in this matter, because of the general nature of the allegations, and the prejudice that would result to the respondent to a finding by the Commission of reasonable cause to believe that a violation occurred. I believe that respondent is entitled to such a hearing by right under 2 USC 437g(a)(4), as that section read prior to the Federal Election Campaign Act Amendments of 1976, and under which the Commission must proceed for a violation alleged to have occurred and regarding which the complaint to the Commission was filed prior to the Amendments of 1976. I also believe that respondent is entitled to such a hearing under 2 USC 437g(a)(4), as amended by the Federal Election Campaign Act Amendments of 1976, as the only reasonable opportunity to demonstrate that no action should be taken by the Commission.

I will await the Commission's reply regarding my request for a hearing.

Respectfully submitted,

CUMMINS, McCLAIN & WOLD

Darryl R. Wold

DARRYL R. WOLD

DRW/ms
Enclosures

Office of General Counsel

1 Ref: MUR 121 (76)
2 MUR 156 (76)

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3 ARGUMENT IN OPPOSITION TO ACTION BY COMMISSION

4 It is respectfully submitted that no action should be taken
5 by the Commission against respondent Robert E. Badham ("Badham"
6 herein) for the legal and factual reasons set forth herein.

7 Unless otherwise indicated, all references herein to sections
8 of the United States Code and to "the Act" are to the Federal
9 Election Act of 1971, as amended and as in effect between August 1
10 and 30, 1975, the period of time in which all acts alleged to con-
11 stitute violations of the Act occurred.

12 STATEMENT OF FACTS

13 Respondent Badham is an incumbent California state assemblyman
14 and was most recently re-elected to that office on November 5, 1974.

15 The "Badham Fund" referred to herein had its origins in the
16 various state legislative campaign funds created by Badham for his
17 successive campaigns for re-election to the state assembly. Follow-
18 ing the 1974 elections, the name of the then current campaign fund,
19 "Elect Badham 74" was changed to "The Badham Fund," and all sub-
20 sequent receipts and expenditures pertaining to Badham's state
21 legislative campaigns have been reported under the name of The Badham
22 Fund. All campaign reports required by California law were filed
23 for the Badham Fund and its predecessors, showing in recent years
24 of the name of each contributor, the amount contributed, and the
25 amount, payee and purpose of each expenditure. These reports are
26 a public record in California.

27 Both corporate and individual contributions were accepted by
28 the Badham Fund and its predecessors, and both were legal under

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1 California law. The most recent contribution to the Badham Fund was
2 received during December, 1974, in the amount of \$500.00. Most if
3 not all other contributions to the Badham Fund were received prior
4 to the November 5, 1974 general election.

5 In August, 1975, two checks were drawn on the Badham Fund in
6 the amount of \$10,000.00 each, dated August 3 and August 15, and
7 paid to Opinion Research of California. This \$20,000.00 was in pay-
8 ment of certain services to be performed by Opinion Research in the
9 nature of survey research, analysis, and recommendations to Badham
10 regarding his chances for election in 1976 or 1978 to various
11 offices, including his state assembly office, the state senate, the
12 board of supervisors, or congress. The services to be performed
13 were orally agreed on between Opinion Research and Badham, and were
14 confirmed in a letter dated August 14, 1975 from Opinion Research
15 to Badham. The work was all completed in August, 1975, except for
16 the presentation of the final report and recommendation, which was
17 made to Badham on September 2, 1975.

18 The recommendation based on the survey and analysis was for
19 Badham to run for re-election to the state assembly in 1976, but
20 at that time respondent decided instead to run for congress.

21 On the evening of September 3, 1975 respondent stated his
22 intention to run for congress to a group of friends at a private
23 cocktail party. This was the first statement, public or private,
24 by Badham that he would be a candidate for congress in 1976. On
25 September 4, 1975 Badham publically announced his intention to run
26 for congress to two previously-scheduled "legislative report meet-
27 ings" held in the San Diego and Orange County portions of his
28 assembly district. Prior to September 3, 1975 Badham had taken no

7 7 0 4 0 0 1 4 3 6 3
1 overt action to run for congress, and had neither received contri-
2 butions nor made expenditures, nor authorized anyone else to do so,
3 for a campaign for congress.

4 On about April 6, 1976 the Federal Election Commission receiv-
5 ed a complaint from Harry Jeffrey, an opponent of Badham's in the
6 congressional primary campaign, questioning the legality of the
7 \$20,000 payment to Opinion Research on the grounds it was allegedly
8 a payment for management services for Badham's congressional
9 campaign, and as such was required to be reported by Badham under
10 the act but had not been, and was illegal because it contained
11 corporate moneys.

12 Respondent was first notified by the Commission of the filing
13 of this complaint by letter dated June 4, 1976 referring to the
14 complaint as MUR 121 (76). The Commission failed to enclose a copy
15 of the complaint with the letter, and following a request from
16 Badham for a copy, sent a copy of the Jeffrey complaint under cover
17 letter dated July 30, 1976. (It should be noted that in the mean-
18 time, the Commission also sent to respondent notice of and copies
19 of two separate complaints filed with the Commission on or about
20 May 28, 1976 and June 29, 1976, by another primary election opponent
21 of Badham's, John G. Schmitz. Both Schmitz complaints complained
22 of the same \$20,000 payment as did the Jeffrey complaint.)

23 1. THERE HAS BEEN NO VIOLATION OF SECTION 434 REPORTING RE-
24 QUIREMENTS, BECAUSE THERE IS NO REQUIREMENT IN SECTION 434 THAT THE
25 \$20,000 PAYMENT BE REPORTED.

26 Badham was not required to report the \$20,000.00 as a contri-
27 bution or expenditure because at the time it was paid Badham was
28 not a candidate as defined in Section 434(b), and the purpose for

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1 which the payment was made did not bring it within the definition
2 of contribution or of expenditure in Section 431(e) or (f) respect-
3 fully. There is of course no requirement under Section 434 that
4 contributions or expenditures not within the definitions of Section
5 431, or expenditures made by a person not a candidate under Section
6 431, be reported, simply because the individual involved later
7 becomes a candidate for Federal office and subject to the reporting
8 requirements of Section 434.

9 A. At any time relative to the \$20,000.00 payment, Badham was
10 not a "candidate" for Federal office, and therefore was not within
11 the reporting requirements of Section 434.

12 Section 431

13 "(b) 'Candidate' means an individual who
14 seeks nomination for election, or election,
15 to Federal office, whether or not such
16 individual is elected, and, for purposes
17 of this paragraph, an individual shall be
18 deemed to seek nomination for election,
19 or election, if he has —

20 (2) Received contributions or
21 made expenditures, or has given
22 his consent for anyother person
23 to receive contributions or
24 make expenditures, with a view
25 to bringing about his nomination
26 for election, or election, to
27 such office;"

28 It is evident that Badham did not meet this definitation of
"candidate" at the time the payment was made and the services per-
formed. Badham did not even decided to run for congress, and took
no overt action to that end, until after the payment was made and
the services to be performed were completed. (Badham Affidavit,
page 4 line 19.) In this light, it cannot be said that Badham was
"seeking" Federal office and therefore a candidate within the

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1 definition of the Act, at the time the payment was made and the
2 services performed.

3 Badham cannot be "deemed" to have been a candidate by Section
4 431(b) (2) by virtue of the payment, for the payment itself was
5 not made "with a view to bringing about" Badham's nomination to
6 congress. Under any plain reading of this paragraph (2), the
7 language requires some sort of intent to accomplish the particular
8 objective of nomination for election to Federal office, through the
9 means of the payment in question. This intent behind the payment
10 simply did not exist at the time the payment was made or these
11 services were performed. The services of research, analysis, and
12 recommendation were intended to assess and weigh Badham's relative
13 chances of election to several different offices, but no portion of
14 the payment was for any service which furthered, or which was in-
15 tended to further, Badham's chances for election to any particular
16 office, including Federal. Had a payment been made by Badham in
17 August, 1975, for a service to be performed later in a congress-
18 ional campaign (eg., for management services) that undoubtedly would
19 be the kind of expenditure defined in Section 431(b)(2), that is,
20 one made with a view to bring about Badham's nomination. But the
21 expenditure in question did not pay for any later campaign purpose,
22 it did not have the requisite intent behind it, and it is not with-
23 in the definition of Section 431(b) (2).

24 (B) The \$20,000.00 payment itself was not an "expenditure"
25 or "contribution" made for the purpose of influencing a nomination
26 for election to Federal office, and therefore was not within the
27 reporting requirements of Section 434.

28 //

1 "(f) 'Expenditure' —
2 (1) Means a payment
3 made for the
4 purpose of —
5 (A) Influencing the
6 nomination for
7 election . . .
8 of any person
9 to Federal office
10 "

11 This definition of expenditure required the payment in question
12 to have been made with the specific purpose — the intention of
13 obtaining the objective or end — of influencing — of having an
14 effect on — Badham's nomination to Federal office.

15 It is evident that the payment in question does not fall within
16 the scope of the plain reading of this definition. It cannot be
17 said that the payment was made with the requisite intent or purpose
18 of influencing Badham's nomination to Federal office, because the
19 payment was made and the benefit of the services received before
20 Badham made the decision to run for Federal office. It cannot be
21 said payment was designed to, or had the effect of, influencing the
22 nomination of any person, in any plain reading of this language,
23 because the services performed were not designed to, and did not
24 in fact, have any public impact in terms of furthering or diminish-
25 ing any person's nomination for election to office, whether measur-
26 ed in terms of popularity, exposure, support, or any other factor.

27 The entire amount of the payment was for the purpose of an
28 analysis of Badham's relative chances for election to various
 offices, including congressional, and not for the purpose of achiev-
 ing any particular office. The survey and analysis were designed
 to measure the status of individuals and issues in the minds of the
 voters at a particular point in time, not to plan a campaign for

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1 an office. No part of the payment paid for any aspect of Badham's
2 later campaign for congress.

3 C. Since the definitions of the Act do not on their face
4 include the payment in question within their scope, they cannot be
5 stretched to apply to this payment because that would make the Act
6 unconstitutionally vague and would violate due process because of
7 the lack of fair notice of the requirements of the Act.

8 It is clear that the definitions of the Act do not on their
9 face — do not by a plain reading — include within their scope a
10 payment like the one in question here: A payment made for services
11 to be performed at a time when the person involved was not a candi-
12 date under any definition of the word; a payment made for services
13 which in fact had no relation to a later campaign.

14 It is questionable just how far regulations or decisions inter-
15 preting the Act can stretch these definitions, but assuming that
16 certain pre-candidacy expenditures could be brought into the scope
17 of the Act by appropriate procedures of the Commission adopting
18 regulations or issuing opinions, or otherwise giving fair notice
19 of how the Act will be interpreted, there were, as nearly as can
20 be ascertained by diligent research, no such regulations, opinions,
21 or other indications available at the time the payment in question
22 was made.

23 2. THERE HAS BEEN NO VIOLATION OF 2 USC 441b, OR OF FORMER
24 18 USC 610.

25 The argument at this point does not reach the question of
26 whether the Commission must proceed under the Act as the Act existed
27 at the time of the \$20,000.00 payment. The argument at this point
28 demonstrates that the \$20,000.00 payment in question was not in

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1 violation of 18 USC 610, in force at the time of the payment in
2 August, 1975, or of 2 USC 441b., incorporating the relevant language
3 of former 18 USC 610 into the Act by Public Law 94-283, May 11, 1976.
4 The relevant language of 18 USC 610 and 2 USC 441b is the same, but
5 for present purposes, 18 USC 610 will be quoted.

6 A. Badham has not accepted or received any contribution or
7 expenditure, made by any national bank or corporation, in connection
8 with any election to any Federal office.

9 18 USC §610

10 "It is unlawful for any national bank,
11 or any corporation organized by auth-
12 ority of any law of Congress, to make
13 a contribution or expenditure in
14 connection with any elections to any
political office . . . or for any
candidate, political committee, or other
person to accept or receive any contri-
bution prohibited by this section"

15 All of the contributions to the Badham Fund, whether individual
16 or corporate, were made, and were accepted and received, in connec-
17 tion with Badham's state legislative campaigns in 1974 and previous
18 years. The most recent contribution to the Badham Fund was made and
19 received in December, 1974, most if not all others were actually
20 received prior to Badham's re-election to the state assembly in
21 November, 1974 and none at all were received in 1975. It was not
22 until September, 1975 that Badham decided to become a candidate for
23 Federal office, and took the first overt steps toward that end. It
24 cannot be said that, at the time they were made, any contributions
25 to the Badham Fund were made "in connection with" any election to
26 Federal office.

27 B. At the time the \$20,000.00 payment was made, only a portion
28 of the most recent contributions to the Badham Fund were corporate, and

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1 the portion attributable to individual contributions was suffic-
2 ient to cover any portion of the \$20,000.00 payment which could
3 reasonably be attributed to a survey and analysis of Badham's
4 chances for Federal office.

5 Even if a payment for the purpose of assessing an individual's
6 chances for Federal office would be considered to be within the
7 scope of expenditures which cannot be made with corporate contribu-
8 tions, it is evident that only part of the \$20,000.00 payment in
9 question can be attributed to this purpose. Several different
10 offices were considered, only one of which was a Federal office.
11 (Badham Affidavit, page 2, line 6; Butcher Affidavit, page 1, line
12 12.)

13 The survey and analysis to be performed for the \$20,000.00
14 payment were for the purpose of enabling Badham to decide which of
15 several offices that he might run for — the state assembly, the
16 state senate, county supervisor, or congress — and, incidentally,
17 to measure the relative strength of his likely successors in the
18 assembly should he not run for re-election. (Badham Affidavit,
19 page 2, line 6.) Since Badham commissioned the survey and analysis
20 for the purpose of deciding between four different offices, the
21 most that should be attributed to any one office, including congress-
22 ional, is less than one-fourth of the total amount of the \$20,000.00
23 payment. The share of individual contributions in the Badham Fund
24 at the time the payment was made was clearly sufficient to cover
25 this portion.

26 3. THERE WAS NO INTENT TO EVADE THE LAW, AND THERE WAS NO
27 EVASION IN FACT OF THE PURPOSES OF THE ACT.

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2 It is clearly evident that Badham neither had the intent to,
3 nor knowingly did, violate either the Act or 18 USC 610. At the time
4 the payment was made, Badham was not a candidate for Federal office,
5 and the payment itself was not made for any purposes of a campaign
6 for Federal office. Badham had no reason himself to believe the
7 payment came within the purview of the Act. At the time the payment
8 was made the Act was, as it still is, silent on the subject of
9 pre-candidacy expenditures, there were no rules or regulations
10 promulgated by the Commission dealing with the subject, and as near-
11 ly as can be determined by diligent research, there were no Advisory
12 Opinions issued on the subject. An individual acting in good faith
13 according to a plain reading of the language of the Act cannot be
14 found to have intentionally or knowingly violated the provisions of
15 the Act.

16 It is clearly evident that the purposes of the Act were not
17 avoided. The \$20,000.00 payment and the source of all contributions
18 to the Badham Fund out of which the payment was made were all made
19 a matter of public record in reports filed in the office of the
20 California Secretary of State and in the Orange County Registrar of
21 Voters under the requirements of the California Political Reform
22 Act of 1974, and its predecessor, the Waxman-Dynally Campaign Dis-
23 closure Act. The source of each contribution to the Badham Fund
24 was reported on reports already on file at the time the payment was
25 made, and the payment itself was reported on the Badham Fund report
26 filed January 19, 1976 for the period July 1, 1975 through December
27 31, 1975. Indeed, it is apparent from the complaint filed with the
28 Commission that the complainants themselves obtained the information

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1 on which they based their complaints from these very public reports.
2 In this light, it cannot be said that even the purposes of the Act,
3 to provide full public disclosure of contributions to and expendi-
4 tures by a candidate, or, in this case, a potential candidate, have
5 not been accomplished.

6 4. THE COMMISSION MUST PROCEED AGAINST BADHAM UNDER THE
7 FEDERAL ELECTION CAMPAIGN ACT OF 1971, AS IT READ PRIOR TO THE
8 FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1976. UNDER THAT PRIOR
9 LAW, THE COMMISSION HAS NO JURISDICTION TO UNDERTAKE FURTHER INVES-
10 TIGATION OR CONSIDERATION OF POSSIBLE VIOLATIONS OF FORMER 18 USC
11 610, AND THE COMMISSION IS PRECLUDED BY FAILURE TO ACT EXPEDITIOUSLY
12 FROM TAKING ANY FURTHER ACTION IN REGARD TO THE \$20,000.00 EXPENDI-
13 TURE.

14 Both of the relevant actions which gave the Commission
15 jurisdiction to act in this matter occurred under the Act as it read
16 prior to the Amendments of May, 1976. The payment in question was
17 made in August, 1975, and the first complaint (the "Jeffrey com-
18 plaint"), under which the Commission must act, was filed on or about
19 April 2, 1976.

20 The Amendments of 1976 (Public Law 94-283) provide in Section
21 101(g)(4) that "The provisions of this Act shall not affect any
22 proceeding pending before the Federal Election Commission on the
23 date of the enactment of this Act." The proceedings against Badham
24 based on the allegations of the Jeffrey complaint cannot be affected
25 by the amendments, therefore, and those proceedings must proceed
26 pursuant to the law prior to the Amendments of 1976.

27 The two Schmitz complaints, filed subsequent to the
28 Amendments of 1976, allege the same facts and violations as does the

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1 earlier Jeffrey complaint. These later complaints cannot enable the
2 Commission to proceed against Badham under the Act as amended by
3 the Amendments of 1976, because it would a violation of due process
4 for the Commission to undertake a second investigation of the matter
5 already pending before the Commission, and put Badham in jeopardy
6 a second time, under a different set of laws, for the same actions.

7 The Federal Election Act of 1971, prior to the Amendments of
8 1976, provided in 2 USC 437g(a)(6) that "The Commission shall refer
9 apparent violations to the appropriate law enforcement authorities
10 to the extent that violations of provisions of chapter 29 of Title
11 18, United States Code, are involved" Title 18 of the Code
12 at that time included, in Section 610, the prohibition against cor-
13 porate contributions that is now found in 2 USC 441b. The "apparent
14 violations" referred to in section 437g(a)(6) are those of which the
15 Commission has given notice under section 437g(a)(2). The Commiss-
16 ion gave notice to Badham of a finding of reason to believe and
17 apparent violation by letter dated August 26, 1976. Thus, the only
18 further action the Commission may take with regard to the alleged
19 violations of former 18 USC 610 (now 2 USC 441b) is to refer the
20 matter to the appropriate law enforcement agency.

21 The Federal Election Act of 1971, prior to the Amendments of
22 1976, provided in 2 USC 437g(a) that

23 "(2) The Commission upon receiving any
24 complaint . . . shall —

25 (B) Make an investigation of
such apparent violation.

26 (3) Any investigation under paragraph (2)
(B) shall be conducted expeditiously

27 (4) The Commission shall, at the request
28 of any person who receives notice of an
apparent violation under paragraph (2),

1 conduct a hearing with respect to such
2 apparent violation."

3 Under the Act as it read prior to the Amendments of 1976, the
4 Commission was required to act expeditiously at the initial stage
5 following the filing of a complaint, and further, was required to
6 give the candidate complained against a hearing upon request. In
7 this case, however, the Commission has failed to conduct its inves-
8 tigation expeditiously, for it failed to notify Badham that the
9 Jeffrey complaint, filed on or about April 6, 1976, had been filed,
10 until June 4, 1976, and failed to send Badham a copy of the complaint
11 until July 30, 1976, and failed to take any action on the complaint
12 until sometime close to August 26, 1976. The Commission further
13 failed to conduct a hearing at which Badham had an opportunity to
14 present his argument against a finding of an apparent violation,
15 despite a request from Badham's attorneys to conduct such a hearing.
16 Both the failure to act expeditiously and the denial of Badham's
17 rights to a hearing have unfairly prejudice Badham, and these pro-
18 cedural irregularities require the proceedings to be dismissed.

19 5. THE PROVISIONS OF 2 U.S.C. 438(c) CONSTITUTE A DENIAL OF
20 EQUAL PROTECTION OF THE LAW TO A NON-INCUMBENT CANDIDATE AND FAIL TO
21 MAINTAIN THE REQUIRED SEPARATION OF POWERS BETWEEN THE LEGISLATIVE
22 AND EXECUTIVE BRANCHES OF GOVERNMENT, AND RENDER THE PROCEDURES OF
23 THE COMMISSION FOR ENFORCEMENT OF THE ACT, AND ANY RULE OR REGULA-
24 TION PROMULGATED FOR SUCH PROCEDURES, UNCONSTITUTIONAL.

25 The requirement of 2 USC 438(c) that the Commission submit
26 to Congress for approval the rules or regulations promulgated to
27 govern the Commission's enforcement procedures gives the incumbent
28 in Congress a voice in the enforcement of the law that non-incumbents

1 do not have. That constitutes a clear denial of equal protection
2 of the law to non-incumbents, such as Badham.

3 This grant to Congress of veto power over the rules or regula-
4 tions is also a violation of the separation of powers required by
5 Article II, §2, clause 2 of the Constitution, because it imper-
6 missibly involves the legislative branch of government in the
7 enforcement function of a law. Any enforcement actions by the
8 Commission, including the findings made against Badham, whether
9 taken under rules or regulations already submitted to Congress or
10 not, are presumably taken in contemplation of rules or regulations
11 subject to Congressional veto, and are inevitably tainted by this
12 veto power.

13 It is submitted, therefore, that the Commission, for so long
14 as its rules and procedures are subject to Congressional veto,
15 cannot constitutionally proceed to enforce the Act by taking any
16 further action gainst Badham.

17 Dated: September 22, 1976

CUMMINS, McCLAIN & WOLD

18
19
20 By:


DARRYL E. WOLD
Attorneys for Respondent
Robert E. Badham

24 SEP 1976

Mr. Darryl Wold
4636 Campus Drive
Newport Beach, California

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Wold:

By letter dated August 26, 1976, you were notified that the Commission found reason to believe that violations of 2 U.S.C. §§434 and 441b had occurred. In addition, you were requested to submit certain information and material relative to this matter. Because the factual issues set forth in my August 26, 1976 letter remain, the Commission is planning to commence a field investigation into matters alleged. The Commission plans to review your records, interview Mr. Badham, Mr. Forde and Mr. Butcher, Mr. McGrew of Opinion Research, officials of your campaign committee and other persons who can offer information pertinent to this matter. The investigation will be conducted by the investigatory unit of the Commission, which will be contacting you shortly.

If you have any questions please contact the attorney assigned to this case, Mr. Andrew Athy, Jr. (telephone no. 202/382-6646).

Please be advised that the Commission still welcomes the submission of any factual or legal materials which you believe are relevant to the Commission's analysis of this matter.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

UNITED STATES COMMISSION
ON THE VIOLATIONS OF
THE FEDERAL CAMPAIGN LAWS
OFFICE OF THE GENERAL COUNSEL

Athy:amh:9/20/76:MUR File

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September 24, 1976

MEMORANDUM TO: The File

FROM: David R. Spiegel *DRS*

RE: MUR 121 & 156 (76)

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Following is a record of my telephone conversation with Darryl Wold, who is the attorney for the respondent, Robert E. Badham, in the two above numbered MURS. I called Mr. Wold at 2:45 p.m. on September 24, 1976. I indicated to Mr. Wold that the Federal Election Commission had authorized a field investigation to the above-numbered MURS. I told him that our investigative section would be contacting him shortly but that in the interim, prior to the time that a field investigation was actually implemented, we wanted him to send to our offices for examination and review the various campaign records set forth in the outline investigation (I read him examples of these). I indicated that I would need the records immediately.

Mr. Wold advised that he was in the process of sending out affidavits from Mr. Badham, from Mr. Butcher and Mr. Forde and from the President of Opinion Research. He indicated that none of the documents we are seeking were attached to these affidavits, and that he would be unwilling to supply these records until we discussed with him what we would be seeking in conciliation proceedings. He expressed some doubt as to whether he would supply the documents to the investigators, unless we gave him some sort of written outline of the rules governing the investigation. I indicated that our investigations are governed by §437g and by the normal rules of procedure applicable to administrative agencies.

FEDERAL ELECTION COMMISSION
GENERAL FILE COPY
OFFICE OF GENERAL COUNSEL

22 SEP 1976

Darryl R. Wold, Esq.
Suite 200
4630 Campus Drive
Newport Beach, CA 92660

Re: MUR 121 (76)
MUR 156 (76)

Dear Mr. Wold:

Your letter of September 10, 1976 to the Commission has been referred to me.

In that letter you request an extension of time in which to provide the additional information requested by my letter of August 26, 1976. The information was due within ten days after your receipt of our letter.

As already indicated to you in your conversation with David Spiegel of my office, I am unable to grant your request. The Commission is in the process of conducting an investigation in this matter and is under a statutory directive to proceed expeditiously. (See 2 U.S.C. §437g(a)(3)(A).) Furthermore, you have had ample notice of the underlying facts in this matter. However, we will evaluate any materials received from you prior to the close of our investigation.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.
General Counsel

OFFICE OF GENERAL COUNSEL
OFFICIAL FILE COPY

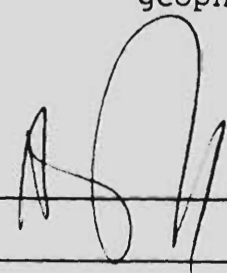
Athy:pjg:9/22/76
MUR file 121 or 156

FEDERAL ELECTION COMMISSION

Letter to Comm Sept 14, 1976
Reply to Paul July 26, 1976

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

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

Signed 

date