



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

THIS IS THE BEGINNING OF MUR # 3690

DATE FILMED 8/27/93 CAMERA NO. 4

CAMERAMAN E.E.S.

93040953304

La Rocco
CONGRESS
★★★★

P.O. Box 1553, Boise, Idaho 83701
(208) 385-9443

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

Nov 2 1 09 PM '92

October 29, 1992

MUR 3690

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

This letter constitutes a complaint against Gilbert for Congress which has violated 2 U.S.C., Section 441h by misrepresenting itself as associated with Congressman Larry La Rocco's reelection campaign in the First District of Idaho. We ask that the Commission undertake an immediate investigation of this matter to determine the individual or individuals responsible for these violations and that the Commission take immediate action to enjoin any further violations.

The Facts

On Wednesday, October 28, 1992 it came to the attention of the La Rocco for Congress campaign that a postcard (attached) purporting to have been sent by Congressman La Rocco was mailed to residents of the First District Congressional District of Idaho. This postcard is a fabrication and forgery, and was clearly designed to damage Congressman La Rocco in his campaign for reelection.

The Law

Section 441h of Title 2 of the U.S. Code was designed to prohibit "dirty tricks" in connection with federal campaigns. This statute provides that:

No person who is a candidate for Federal office or an employee or agent of such a candidate shall --

(1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof as a matter which is damaging to such other candidate or political party or employee or agent thereof; or

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Federal Election Commission
October 29, 1992
Page 2

(2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to paragraph (1).

That someone has fraudulently misrepresented their status as acting for the La Rocco for Congress campaign in an effort to damage the Congressman and his campaign is clear from this fabricated postcard. The Commission must investigate thoroughly the source of this postcard and its distribution and take any and all steps to stop further fraud on the voters of the First Congressional District of Idaho.

While a request for investigation of criminal violations is being filed at the same time as this complaint, if the Commission uncovers any information that would lead to the conclusion that this fraud was knowing and willful, we ask that the Commission refer all information and evidence to the Justice Department for further action.

Sincerely,



Martin L. Peterson
Campaign Manager
La Rocco for Congress

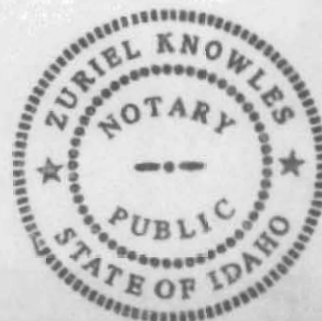
Attachment

Subscribed and sworn to before me
this 29th day of October, 1992.


Notary Public

My Commission expires:

July 19, 1997





*Greetings from
WASHINGTON, D.C.!*

93040953 Dear Supporter,

Having a great time here on Capitol Hill! Everything is so expensive! The tab for Congress came to nearly \$3 billion this year! I really don't know what I'd do without your money... But you know how it is - there's never enough money. That's why I didn't think you'd mind if I voted to borrow more... \$400 BILLION MORE - \$2000 FOR EVERY FAMILY.

I hope you're getting my mail. I'd hate to think the \$141,000 of your tax money I've spent telling you what a good job I'm doing is going to waste. If you haven't received your FOUR letters, please call. After all, I have \$590,000 of your tax dollars to pay salaries for 18 full-time personal staffers who are just waiting to take your call!

And... when I'm not spending your tax money, I'm spending the hundreds of thousands I get from all my special interest, Political Action Committee (PAC) Pals. They seem to like what I do for them and their money sure makes getting re-elected easier!

Anyway... thanks again for sending me here to Washington. I'll be sure to think of you when I'm having lunch with my favorite lobbyist. If there is anything else I can do for you, please call. I'm sure there's someone here who can get back to you.

Remember to vote for me on election day,
Congressman Larry LaRocco



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1992

Martin L. Peterson
Campaign Manager
La Rocco for Congress
P.O. Box 1553
Boise, ID 83701

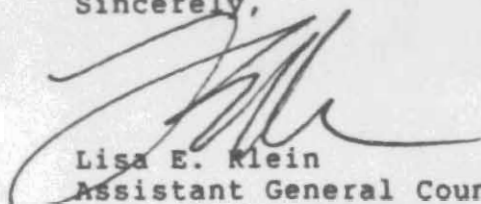
RE: MUR 3690

Dear Mr. Peterson:

This letter acknowledges receipt on November 2, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Rachel Gilbert for Congress, and Richard Buxton, as treasurer, and the National Republican Congressional Committee, and Donna Singleton, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3690. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,


Lisa E. Klein
Assistant General Counsel

Enclosure
Procedures

93040953308



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

November 6, 1992

Richard Buxton, Treasurer
Rachel Gilbert for Congress
1487 North Cole Road
Boise, ID 83704

RE: MUR 3690

Dear Mr. Buxton:

The Federal Election Commission received a complaint which indicates that Rachel Gilbert for Congress ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3690. Please refer to this number in all future correspondence.

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

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

9304095309

Richard Buxton, Treasurer
Rachel Gilbert for Congress
Page 2

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

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

cc: Rachel S. Gilbert

93040953310



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 6, 1992

Donna Singleton, Treasurer
National Republican Congressional Committee
320 1st Street, SE
Washington, DC 20003

RE: MUR 3690

Dear Ms. Singleton:

The Federal Election Commission received a complaint which indicates that the National Republican Congressional Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3690. Please refer to this number in all future correspondence.

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

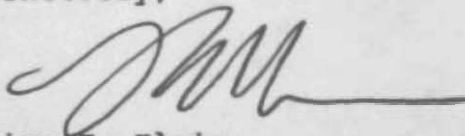
This matter will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and § 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed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

93040953311

Donna Singleton, Treasurer
National Republican Congressional Committee
Page 2

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

Sincerely,



Lisa E. Klein
Assistant General Counsel

Enclosures

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

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1487 N. COLE RD. • BOISE, ID 83704 • (208) 376-6441

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FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

Nov 20 9 31 AM '92

November 19, 1992

Federal Election Commission
Washington, D.C. 20463

Attn: Lawrence L. Calvert Jr.

Re: MUR 3690

Dear Mr. Calvert:

This letter constitutes one response to the complaint filed by LaRocco for Congress over a voter mail piece sent by the Rachel Gilbert campaign.

Another response will be forwarded to you by the National Republican Congressional Committee.

The main point of LaRocco's weak complaint centers around Section 441h of Title 2 of the U.S. Code which clearly states that to violate this statute one must "fraudulently misrepresent himself".

Unlike LaRocco, who sent you only a "photocopy" of the mail piece essentially blacking out the two disclaimers on the front, I am submitting an original postcard which clearly shows: (1). The return address as the National Republican Congressional Committee (2). The bulk mail permit clearly carried another disclaimer from the National Republican Congressional Committee as to who obviously paid for the postage.

The third disclaimer which is located on the back of the mailer reads: "Paid for by the National Republican Congressional Committee. Authorized by Gilbert for Congress."

The fact that three disclaimers appear on the postcard and the fact that the copy is obviously satirical clearly shows no fraud and no misrepresentation occurred. Therefore we urge the Commission to find no reason to believe that the complaint is in violation of the U.S. Code.

The truth about the copy was confirmed by Congressman LaRocco at his press conference where he said he would not "quibble with the figures" contained in the postcard. (See attached news clipping from the Idaho Statesman dated October 30, 1992). The truth and forgery cannot occur at the time, therefore we again urge the Commission to throw out the LaRocco complaint.

Paid for by Gilbert for Congress - 1487 N. Cole Rd. - Boise, Id. 83704

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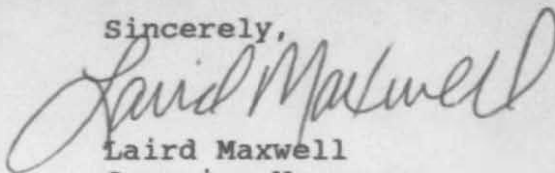
LaRocco complains "the Commission must investigate thoroughly the source of the postcard". Even with the blacked out photocopy you received from LaRocco, the source is clear. The actual postcard which I have enclosed amplifies the source two additional times.

Obviously, LaRocco has presented no facts to substantiate his complaint. You can only assume that by submitting a blacked out photocopy of the front of the postcard instead of an original that his case was feeble. Also, LaRocco announced this complaint at a news conference to gain publicity along with the outrageous claim that this was a criminal violation when it is clear that his complaint cannot even be supported by facts.

LaRocco has played politics with the FEC and at taxpayer's expense. We understand the Commission frequently deals with frivolous complaints and we have easily demonstrated that this matter has no merit and that no action should be taken against the committee.

If you need additional information, please call me at (208) 376-6441. Thank you for your attention to this matter.

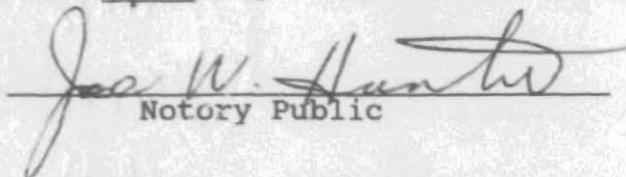
Sincerely,



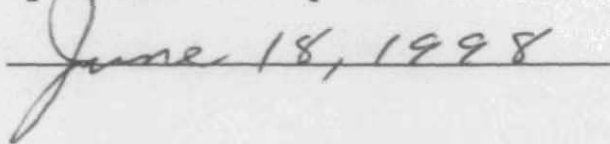
Laird Maxwell
Campaign Manager
Gilbert for Congress

enclosures

Subscribed and sworn to before me
this 19th day of November, 1992


Notary Public

My Commission expires:


June 18, 1998

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The Idaho Statesman

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Delays in aid
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CAMPAIGN '92

Gilbert ad riles LaRocco

1st District congressman says opponent broke several laws with 'postcard from LaRocco.'

by Popkey
The Idaho Statesman

Rep. Larry LaRocco charged Thursday that opponent Rachel Gilbert has broken federal campaign, counterfeiting and forgery laws by sending a postcard to Idahoans in his name.

LaRocco's campaign manager, Martin Peterson, wrote to U.S. Attorney Maurice Ellsworth and the Federal Election Commission, asking them to investigate the "dirty tricks."

"This is a purposeful attempt to mislead," LaRocco said. "I take it very seriously when somebody uses my name in a

fraudulent way, which I regard as forgery."

But Gilbert said it was "a wonderful spoof, great satire" and LaRocco was taking it too seriously. "He should quit whining and come out and fight like a man," she said.

Gilbert said she wasn't worried about the LaRocco charges. "I've been challenged by far bigger experts than he is. The guy just can't stand the heat."

Republican Gilbert's campaign manager, Laird Maxwell, said the card had been mailed throughout the 1st District.

The postcard was authorized by Gilbert and paid for by the National Republican Congressional Committee. A disclaimer, run upside down in tiny type, appears on the back.

On the front, a white limousine is pictured outside the Cap-

itol, with, "Greetings from Washington, D.C.!"

"Dear Supporter," begins the card, "Having a great time here on Capitol Hill! Everything is so expensive! The tab for Congress came to nearly \$3 billion this year! I really don't know what I'd do without your money."

In closing, the card says, "Remember to vote for me on election day," and signed in large type, "Congressman Larry LaRocco."

LaRocco didn't quibble with the figures, but said, "I don't have a limousine. A picture is worth a thousand words."

He said the upside down disclaimer is inadequate. "You have to stand on your head to read this disclaimer, which is in microscopic print."

LaRocco said the card violates
See LaRocco/Back page



Here's the front of the postcard. On the back is a satirical "letter from Larry LaRocco" that touts his spending ways with notation upside down in small type that Rachel Gilbert authorized the postcard. / Back page

Dear Supporter,

Having a great time here on Capitol Hill! Everything is so expensive! The tab for Congress came to nearly \$3 billion this year! I really don't know what I'd do without your money... But you know how it is - there's never enough money. That's why I didn't think you'd mind if I voted to borrow more... \$400 BILLION MORE - \$2000 FOR EVERY FAMILY.

I hope you're getting my mail. I'd hate to think the \$141,000 of your tax money I've spent telling you what a good job I'm doing is going to waste. If you haven't received your FOUR letters, please call. After all, I have \$590,000 of your tax dollars to pay salaries for 18 full-time personal staffers who are just waiting to take your call!

And... when I'm not spending your tax money, I'm spending the hundreds of thousands I get from all my special interest, Political Action Committee (PAC) Pals. They seem to like what I do for them and their money sure makes getting re-elected easier!

Anyway... thanks again for sending me here to Washington. I'll be sure to think of you when I'm having lunch with my favorite lobbyist. If there is anything else I can do for you, please call. I'm sure there's someone here who can get back to you.

Remember to vote for me on election day,
Congressman Larry LaRocco

Printed by the National Republican Congressional Committee. Authorized by Gilbert for Congress.

THE REST OF THE STORY

LaRocco says Gilbert violated law with postcard/ From 1A

federal law prohibiting candidates or their agents from misrepresenting themselves "as speaking or writing or otherwise acting for or on behalf of any other candidate."

He also alleges violation of counterfeiting and forgery statutes and possible violation of mail fraud laws.

Larry Purpuro, director of communications for the GOP's Congressional Committee, said

no deception was intended.

"Any reasonable person would say, 'It's obviously a joke,'" Purpuro said. "I don't know how you can suggest an attempt to deceive when the source and a disclaimer appears three times."

In addition to the disclaimer, the committee's return address and postal permit appear on the card's front.

Asked why the disclaimer was

upside down, Purpuro said, "I presume that's a printer's error."

Assistant U.S. Attorney Marc Haws said the matter would be referred to the FEC.

FEC spokesman Fred Eiland said he could not comment directly because a complaint had been filed. "There is a requirement for a disclaimer to be prominently displayed. It's a matter that's going to have to be assessed by the commission."

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National Republican Congressional Committee

Guy Vander Jagt, M.C.
Chairman

Spencer Abraham
Co-Chairman

Tom Cole
Executive Director

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RECEIVED
FEDERAL ELECTION COMMISSION

November 24, 1992

Ms. Lisa E. Klein
Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 3690

Dear Ms. Klein:

In response to the Complaint filed in the abovementioned matter by the Campaign Manager of the La Rocco for Congress Committee, the National Republican Congressional Committee (NRCC) states the following:

1. The Complaint concerns a postcard produced and mailed by the NRCC on behalf of the election of Rachel Gilbert to the United States House of Representatives from the 1st district of Idaho. See actual postcard attached.

2. The expenditures for the production and mailings of the postcard which is the subject of this Complaint were political party coordinated expenditures authorized pursuant to the provisions of 2 U.S.C. 110.7(b).

3. The postcard is identified as a communication of the National Republican Congressional Committee in three conspicuous locations on the postcard. The locations are the return address, the mailing indicia and the disclaimer as required by 11 C.F.R. 110.11.

4. The disclaimer also carries the authorization of the Gilbert for Congress Committee, the opponent of Congressman La Rocco.

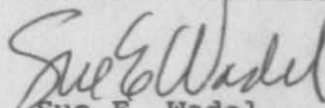
5. The text of the postcard is clearly satirical and is not intended as evidenced by the three obvious statements of sponsorship to be construed as done on behalf of or authorized by the incumbent Congressman.

6. The postcard points out in a humorous manner a number of facts regarding important national issues such as the deficit or the benefits accorded Members of Congress. These facts are not contested as untrue in the Complaint.

THEREFORE, the NRCC respectfully requests that the Federal Election Commission find no reason to believe a violation of 2 U.S.C 441h has occurred. The postcard contains the required NRCC/Gilbert disclaimers. The NRCC return address is prominently and clearly displayed in the return address position on the front of the card as well as in the postal permit. The text and style of the message indicates that the purpose of the communication is clearly to take a humorous approach to presenting the record of the incumbent and Congress. The postcard does not constitute any attempt to fraudulently misrepresent any authorization by the incumbent.

Respectfully submitted,

COUNSEL FOR RESPONDENT


Sue E. Wadel

93040953318

National Republican Congress
20 First Street, S.E.
Washington, D.C. 20003

House of Representatives
Chamber



Greetings from
WASHINGTON, D.C.!

93040953

Dear Supporter,

Having a great time here on Capitol Hill! Everything is so expensive! The tab for Congress came to nearly \$3 billion this year! I really don't know what I'd do without your money... But you know how it is - there's never enough money. That's why I didn't think you'd mind if I voted to borrow more... \$400 BILLION MORE - \$2000 FOR EVERY FAMILY.

I hope you're getting my mail. I'd hate to think the \$141,000 of your tax money I've spent telling you what a good job I'm doing is going to waste. If you haven't received your FOUR letters, please call. After all, I have \$590,000 of your tax dollars to pay salaries for 18 full-time personal staffers who are just waiting to take your call!

And... when I'm not spending your tax money, I'm spending the hundreds of thousands I get from all my special interest, Political Action Committee (PAC) Pals. They seem to like what I do for them and their money sure makes getting re-elected easier!

Anyway... thanks again for sending me here to Washington. I'll be sure to think of you when I'm having lunch with my favorite lobbyist. If there is anything else I can do for you, please call. I'm sure there's someone here who can get back to you.

Remember to vote for me on election day,
Congressman Larry LaRocco

Paid for by the National Republican Congressional Committee. Authorized by Gilbert for Congress

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 3690

NAME OF COUNSEL: Sue E. Wadel

ADDRESS: 320 First Street, S.E.
Washington, D.C. 20003

TELEPHONE: (202) 479-7025

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

11/24/92
Date

Donna M. Singleton
Signature

Donna Singleton, Treasurer
National Republican Congressional Committee

RESPONDENT'S NAME: _____

ADDRESS: 320 First Street, S.E.

Washington, D.C. 20463

BUSINESS ADDRESS: 202-479-7025
TELEPHONE: ~~HOME~~ (XXX) _____

BUSINESS (_____) _____

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FEDERAL ELECTION COMMISSION
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 4, 1993

Richard Buxton, Treasurer
Rachel Gilbert for Congress
1487 North Cole Road
Boise, Idaho 83704

RE: MUR 3690
Termination Request

Dear Mr. Buxton:

This is in response to the termination report you recently submitted to the Commission's Reports Analysis Division. As you were notified by letter dated November 6, 1992, this Office received a complaint alleging Rachel Gilbert for Congress, and you, as treasurer, may have violated the Act. This Office also received your response to the complaint. Because MUR 3690 is presently before the Commission, the request to terminate has been denied. You should therefore continue to file all the required reports with the Commission. You will be notified when the Commission has taken action in MUR 3690.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

A handwritten signature in dark ink, reading "Xavier K. McDonnell", is written over the typed name.

Xavier K. McDonnell
Attorney

93040953322

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR 3690
DATE COMPLAINT RECEIVED
BY OGC: November 2, 1992
DATE OF NOTIFICATION TO
RESPONDENTS: November 6, 1992
STAFF MEMBER: Andrea Tuck Yung Low

COMPLAINANTS: La Rocco for Congress
Martin L. Peterson, Campaign Manager

RESPONDENTS: National Republican Congressional Committee
and Donna Singleton, as treasurer
Rachel Gilbert for Congress
and Richard Buxton, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(a)
2 U.S.C. § 441h

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

Martin L. Peterson, Campaign Manager for La Rocco for Congress, filed the complaint in MUR 3690 alleging violations of 2 U.S.C. § 441h by Rachel Gilbert for Congress ("Gilbert campaign") and Richard Buxton, as treasurer, and the National Republican Congressional Committee ("NRCC").

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II. FACTUAL SUMMARY

A. MUR 3690

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The mailing at issue here is a post card which on its face contains a photograph of a long, white limousine outside the Capitol with, "Greetings from Washington, D.C.!" Attachment 1 at 3. The upper left hand corner of the face of the post card contains the name and address of the NRCC, and the upper right hand corner indicates that the postage was paid for by the NRCC, a non-profit organization. The reverse side of the post card is addressed, "Dear Supporter," and the signature line in large, bold print reads, "Congressman Larry LaRocco." In the bottom left hand corner, upside down and in much smaller print, is the disclaimer: "Paid for by the National Republican Congressional Committee. Authorized by Gilbert for Congress."

In the text of the post card, Congressman La Rocco purportedly informs his constituents of what he has been doing in Washington. The post card states that the tab for Congress came to \$3 billion this year, which is why La Rocco didn't think constituents would mind if he voted to borrow \$400 billion more. The post card tells constituents of the \$141,000 he spent on constituent mail and the \$590,000 he spent on staff salaries. The text continues to say that when he's not spending tax money, he is

spending the hundreds of thousands he gets from special interest political action committees. The text concludes with, "Remember to vote for me on election day, Congressman Larry LaRocco."

The complainants allege that the post cards were mailed throughout the 1st district of Idaho and came to their attention on October 28, 1992.

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III. LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits fraudulent misrepresentation of campaign authority. The Act specifically provides that:

No person who is a candidate for Federal office or an employee or agent of such a candidate shall--

1. fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or
2. willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

2 U.S.C. § 441h.

The Act also provides that whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate, or solicits contributions through a direct mailing,

such communication must include a disclaimer clearly stating the name of the person who paid for the communication and indicating whether the communication was authorized by any candidate or candidate's authorized committee. 2 U.S.C. § 441d(a). If the ad is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2). See also 11 C.F.R. § 110.11(a)(ii).

The complainants in MUR 3690 allege that the Gilbert campaign violated 2 U.S.C. § 441h by misrepresenting itself as associated with Congressman Larry La Rocco's re-election campaign. They describe the post card as "a fabrication and forgery."

The NRCC states that the production and postage for the postcards were coordinated party expenditures which it paid for, that the postcards are identified as a communication of the NRCC in three conspicuous locations: the return address, the postage stamp, and the disclaimer at the bottom of the text. Attachment 5 at 1 and Attachment 6 at 1. The NRCC acknowledges that it was

acting on behalf of the Gilbert and Mourdock campaigns in making the expenditures at issue and that it had obtained the campaigns' authority.

The NRCC also claims that the post card is "clearly satirical" and that, as evidenced by the three obvious statements of sponsorship, it is not intended to be construed as done on behalf of the incumbent Congressman. The NRCC states further that the "facts" set forth within the postcard are "not contested" as untrue within the complaint. Attachment 5 at 1-2 and Attachment 6 at 1-2. The NRCC therefore requests that the Commission find no reason to believe that it violated Section 441h. The Gilbert

campaigns have submitted substantially similar responses.

See Attachments 3 and 4.

In MUR 3690 the respondents represent themselves as their opponents, the complainants. Although complainants may consider it underhanded and tawdry for the post cards to imply that the incumbents are admitting damaging facts about themselves to their constituents, respondents' representations do not necessarily rise to a violation of the Act here.

A violation of Section 441h requires fraudulent misrepresentation. Key elements of fraud are the maker's intent that the representation be relied on by the person and in a manner reasonably contemplated, the person's ignorance of the falsity of the representation, and the person's rightful or justified reliance. More significantly, a fraudulent misrepresentation requires intent to deceive. Black's Law Dictionary 596 (5th ed., 1979).

The Section 441d statement identifies who paid for and authorized the communication. This statement names the opposing

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party's congressional campaign committee and the opposing party candidate as the makers of the representation. It appears that their intent is to expose themselves as the source of the political message, not to pretend they are their opponents. Therefore, there is no deceit or fraud of the type required to violate Section 441h.²

Commission regulations require the Section 441d disclaimer to "appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication." 11 C.F.R § 110.11(a)(1).

The disclaimer in MUR 3690 is somewhat less "conspicuous." It is in extremely small print and upside down, which makes it difficult to read along with the text. The current regulations do not specify how large disclaimers need to be nor where they must appear within the communication.³ Given the latitude accorded by the regulations and the fact that the disclaimers are still clear and

2. This Office also notes that in addition to the disclaimers, the post cards display the NRCC post mark and the NRCC return address on their face. While the post mark and return address do not serve as adequate disclaimers for Section 441d purposes, see FEC v. NCPAC, No. 85-2898 (D.D.C., April 29, 1987) (unpublished opinion), they dispel any theory of fraudulent misrepresentation by the NRCC because they notify the readers of the true identity of the senders.

3. By contrast, Amendment 366 to the Congressional Campaign Spending Limit and Election Reform Act of 1993, S. 3, 103rd Cong. 1st Sess. (1993) (leadership substitute), would require that any printed disclaimer be: of sufficient type size to be clearly readable, contained in a printed box set apart from the other contents of the communication, and consist of a reasonable degree of color contrast between the background and the printed statement.

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readable, it does not appear that the disclaimers presented here are inadequate.

Thus, this Office concludes that the Commission should find no reason to believe that respondents violated 2 U.S.C. § 441h.

V. RECOMMENDATIONS

1. Find no reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, and Gilbert for Congress and Richard Buxton, as treasurer, violated 2 U.S.C. § 441h in MUR 3690.

2.

3. Approve the appropriate letters.

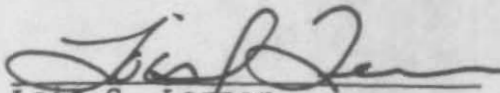
4. Close the files.

Lawrence M. Noble
General Counsel

Date

6/30/93

BY:


Lois G. Lerner
Associate General Counsel

Attachments

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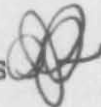


FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS 
COMMISSION SECRETARY

DATE: JULY 7, 1993

SUBJECT: MURs 3690 and 3700 - FIRST GENERAL COUNSEL'S
REPORT DATED JUNE 30, 1993.

The above-captioned document was circulated to the
Commission on Thursday, July 1, 1993 at 4:00 p.m.

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

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Potter	_____
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda
for Tuesday, July 20, 1993.

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

9304095331

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3690
National Republican Congressional)
Committee and Donna Singleton, as)
treasurer;)
Rachel Gilbert for Congress and)
Richard Buxton, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the
Federal Election Commission executive session on July 20,
1993, do hereby certify that the Commission decided by a
vote of 6-0 to take the following actions with respect
to MUR 3690

1. Find no reason to believe that the
National Republican Congressional
Committee and Donna Singleton, as
treasurer, and Gilbert for Congress
and Richard Buxton, as treasurer,
violated 2 U.S.C. § 441h in MUR 3690.

2.

(continued)

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3. Approve the appropriate letters as recommended in the General Counsel's report dated July 30, 1993.
4. Close the files in MUR 3690

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

Attest:

7-29-93
Date

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

93040953333

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3690
National Republican Congressional)
Committee and Donna Singleton, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 20, 1993, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3690:

1. Find reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 441d, but take no further action with respect to this violation.
2. Direct the Office of General Counsel to send a Factual and Legal Analysis and a letter of admonishment to the Respondents regarding this violation.
3. Close the file in MUR 3690 with respect to this violation.

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

Attest:

7-23-93
Date *MWE*

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

93040953334

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3690
National Republican Congressional)
Committee and Donna Singleton, as)
treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 20, 1993, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 3690:

1. Find reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 441d, but take no further action with respect to this violation.
2. Direct the Office of General Counsel to send a Factual and Legal Analysis and a letter of admonishment to the Respondents regarding this violation.
3. Close the file in MUR 3690 with respect to this violation.

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

Attest:

7-23-93
Date MWE

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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93 AUG -6 AM 9:58

August 6, 1993

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner *(signature)*
Associate General Counsel

SUBJECT: MUR 3690

On July 20, 1993, at the recommendation of the Office of General Counsel, the Commission decided there was no reason to believe that Gilbert for Congress and Richard Buxton, as treasurer, and the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 441h. On its own initiative, the Commission determined there was reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 441d(a), but decided to take no further action. Pursuant to the Commission's direction, attached is a Factual and Legal Analysis for this violation.

RECOMMENDATION

1. Approve the attached Factual and Legal Analysis.

Staff Assigned: Andrea Low

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 3690

RESPONDENTS: National Republican Congressional Committee
and Donna Singleton, as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("Commission"). See 2 U.S.C. §437g(a)(1). It involves a post card bearing a political advertisement with a disclaimer in the bottom left hand corner that is upside down and in very small print.

II. ANALYSIS

The mailing at issue here is a post card which on its face contains a photograph of a long, white limousine outside the Capitol with, "Greetings from Washington, D.C.!" The upper left hand corner of the face of the post card contains the name and address of the NRCC, and the upper right hand corner indicates that the postage was paid for by the NRCC, a non-profit organization. The reverse side of the post card is addressed, "Dear Supporter," and the signature line in large, bold print reads, "Congressman Larry LaRocco." In the bottom left hand corner, upside down and in much smaller print, is the disclaimer: "Paid for by the National Republican Congressional Committee. Authorized by Gilbert for Congress."

In the text of the post card, Congressman La Rocco purportedly informs his constituents of what he has been doing in

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Washington. The post card states that the tab for Congress came to \$3 billion this year, which is why La Rocco didn't think constituents would mind if he voted to borrow \$400 billion more. The post card tells constituents of the \$141,000 he spent on constituent mail and the \$590,000 he spent on staff salaries. The text continues to say that when he's not spending tax money, he is spending the hundreds of thousands he gets from special interest political action committees. The text concludes with, "Remember to vote for me on election day, Congressman Larry LaRocco."

The complainants allege that the post cards were mailed throughout the 1st district of Idaho and came to their attention on October 28, 1992.

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits fraudulent misrepresentation of campaign authority. The Act specifically provides that:

No person who is a candidate for Federal office or an employee or agent of such a candidate shall--

1. fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or

2. willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

2 U.S.C. § 441h.

The complainants in MUR 3690 allege that the Gilbert campaign violated 2 U.S.C. § 441h by misrepresenting itself as associated with Congressman Larry La Rocco's re-election campaign. They describe the post card as "a fabrication and forgery."

The NRCC states that the production and postage for the

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postcards were coordinated party expenditures which it paid for, that the postcards are identified as a communication of the NRCC in three conspicuous locations: the return address, the postage stamp, and the disclaimer at the bottom of the text. The NRCC acknowledges that it was acting on behalf of the Gilbert campaign in making the expenditures at issue and that it had obtained the campaign's authority.

The NRCC also claims that the post card is "clearly satirical" and that, as evidenced by the three obvious statements of sponsorship, it is not intended to be construed as done on behalf of the incumbent Congressman. The NRCC states further that the "facts" set forth within the postcard are "not contested" as untrue within the complaint. The NRCC therefore requests that the Commission find no reason to believe that it violated Section 441h. The Gilbert campaign has submitted a substantially similar response.

In MUR 3690, the respondents represent themselves as their opponents, the complainants. Although complainants may consider it underhanded and tawdry for the post cards to imply that the incumbents are admitting damaging facts about themselves to their constituents, respondents' representations do not necessarily rise to a violation of the Act here.

A violation of Section 441h requires fraudulent misrepresentation. Key elements of fraud are the maker's intent that the representation be relied on by the person and in a manner reasonably contemplated, the person's ignorance of the falsity of the representation, and the person's rightful or justified

reliance. More significantly, a fraudulent misrepresentation requires intent to deceive. Black's Law Dictionary 596 (5th ed., 1979).

The disclaimer identifies who paid for and authorized the communication. This statement names the opposing party's congressional campaign committee and the opposing party candidate as the makers of the representation. It appears that their intent is to expose themselves as the source of the political message, not to pretend they are their opponents. Therefore, there is no deceit or fraud of the type required to violate Section 441h.¹ Accordingly, there is no reason to believe that Respondents violated 2 U.S.C. § 441h.

However, although complainants do not allege a violation of other statutory provisions, the disclaimer is not legally sufficient in all respects. The Act also provides that whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate, or solicits contributions through a direct mailing, such communication must include a disclaimer clearly stating the name of the person who paid for the communication and indicating whether the communication was authorized by any candidate or candidate's authorized committee.

1. This Office also notes that in addition to the disclaimers, the post cards display the NRCC post mark and the NRCC return address on their face. While the post mark and return address do not serve as adequate disclaimers for Section 441d purposes, see FEC v. NCPAC, No. 85-2898 (D.D.C., April 29, 1987) (unpublished opinion), they dispell any theory of fraudulent misrepresentation by the NRCC because they notify the readers of the true identity of the senders.

2 U.S.C. § 441d(a). If the ad is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that it is paid for by such other persons and authorized by such candidate, authorized political committee, or agents. § 110.11(a)(1)(ii). A disclaimer meeting the requirements "shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication." 11 C.F.R. § 110.11(a)(1).

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The disclaimer in MUR 3690 does not meet the "clear and conspicuous" regulatory requirement. It is in extremely small print and upside down, which makes it difficult to read along with the text. Accordingly, because the disclaimer on this post card is not easily readable, there is reason to believe that the National Republican Congressional Committee and Donna Singleton, as treasurer, violated 2 U.S.C. § 441d(a). However, consistent with the proper ordering of the Commission's priorities and resources, see Heckler v. Chaney, 470 U.S. 821 (1985), the Commission decided to take no further action and close the file in this matter.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Gilbert for Congress and Richard) MUR 3690
Buxton, as treasurer;)
National Republican Congressional)
Committee and Donna Singleton,)
as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 11, 1993, the Commission decided by a vote of 4-2 to approve the Factual and Legal Analysis, as recommended in the General Counsel's Memorandum dated August 6, 1993.

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

Attest:

8-11-93

Date

for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., Aug. 06, 1993 9:58 a.m.
Circulated to the Commission: Fri., Aug. 06, 1993 12:00 p.m.
Deadline for vote: Wed., Aug. 11, 1993 4:00 p.m.

bjr



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 20, 1993

Richard Buxton, Treasurer
Rachel Gilbert for Congress
1487 North Cole Road
Boise, ID 83704

RE: MUR 3690

Dear Mr. Buxton:

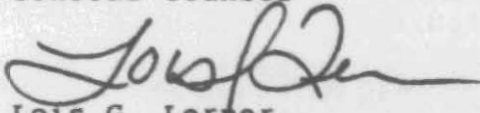
On November 6, 1992, the Federal Election Commission notified Rachel Gilbert for Congress ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 20, 1993, the Commission found, on the basis of the information in the complaint, that there is no reason to believe the Committee violated 2 U.S.C. § 441h. Accordingly, the Commission closed its file in this matter.

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

Sincerely,

Lawrence M. Noble
General Counsel

BY: 
Lois G. Lerner
Associate General Counsel

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

AUGUST 20, 1993

Donna M. Singleton, Treasurer
National Republican Congressional Committee
320 First Street, S.E.
Washington, DC 20003

RE: MUR 3690

Dear Ms. Singleton:

On July 20, 1993, the Federal Election Commission found reason to believe that the National Republican Congressional Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act.") However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the placement of the very small, upside-down disclaimer on the post cards is a violation of section 441d(a). You should take steps to ensure that this activity does not occur in the future.

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

If you have any questions, please contact Andrea Low, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

A handwritten signature in dark ink, appearing to read "Scott E. Thomas", is written over a horizontal line.

Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 20, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Martin L. Peterson
Campaign Manager
La Rocco for Congress
P.O. Box 1553
Boise, ID 83701

RE: MUR 3690

Dear Mr. Peterson:

This is in reference to the complaint you filed with the Federal Election Commission on November 2, 1992, concerning a possible violation of 2 U.S.C. § 441h.

Based on that complaint, on July 20, 1993, the Commission found that there was reason to believe the National Republican Congressional Committee (the "NRCC") and Donna Singleton, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against the NRCC, and closed the file in this matter on July 20, 1993. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Andrea Tuck Yung Low

Andrea Tuck Yung Low
Attorney

Enclosure
General Counsel's Report

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3690

DATE FILMED 8/27/93 CAMERA NO. 4
CAMERAMAN E.E.S.

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