FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4166

DATE FILMED 3-6-96 CAMERA NO. 3

CAMERAMAN JMH

9604372175 6

AR-93-48

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

wjt2563
A91-23

December 20, 1993

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT ON JIM BATES FOR CONGRESS (THE COMMITTEE)

Attached for your review and analysis is the subject Final Audit Report.

Also attached are Exhibits A through G which contain matters which, based on the Commission approved Materiality Thresholds, are referable to your office.

Please note that Exhibits A and B, which address excessive and prohbited contributions, state that the Committee had sufficient cash on hand at the end of each reporting period, except one, to make the necessary refunds. The reporting period in which the Committee did not have sufficient cash on hand, 5/17/90 through 6/30/90, was the reporting period during which the primary election was held (6/5/90).

All documents received in the Committee's response and the related audit workpapers are available for review in the audit Division. Should you have any questions please call Wanda Thomas at 219-3720.

Attachments:
Final Report on Jim Bates for Congress
Exhibit A - Excessive Contributions
Exhibit B - Apparent Prohibited Contributions
Exhibit C - Disclosure and Source of Loans Received
Exhibit D - Required 48 Hour Notices
Exhibit E - Itemization of Expenditures
Exhibit F - Recordkeeping for Disbursements
Exhibit G - Checks Paid on Insufficient Funds

9604372157

B. Key Personnel

During the period covered by the audit, the Treasurer was Timothy Fields. The current Treasurer is Sandra Kennedy.

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of debts and obligations; and such other audit procedures as deemed necessary under the circumstances, except that our review of disbursements was limited because the Committee failed to maintain cancelled checks for 1989.

II. Audit Findings and Recommendations

A. Misstatement of Financial Activity

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in part, that each report shall disclose the amount of cash on hand at the beginning of each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff reconciled the Committee's reported activity to its bank activity for the period January 1, 1989 through December 31, 1990. The reconciliation revealed the following misstatements relative to calendar year 1990.

1. Beginning Balance

The Committee reported a beginning cash balance at January 1, 1990 of $38,957 which was overstated by $665 as a result of two 1989 disbursements, totaling $840, which the Committee did not consider in arriving at the begining cash balance. The remaining $175 difference was unexplained. The correct beginning balance was $38,292.

2. Receipts

The total amount of receipts was understated by a net amount of $15,365. The misstatement resulted from the Committee's failure to report receipts totaling $10,113 and miscellaneous reporting problems totaling $5,252. The correct total for receipts was $632,008.

3. Disbursements

The total amount of disbursements was understated by a net amount of $47,464. The misstatement resulted from the Committee's failure to report disbursements totaling $50,098 and miscellaneous reporting problems totaling -$2,634. The correct total for disbursements was $674,483.

96043217 8

4. Ending Balance

The reported ending cash balance at December 31, 1990 was overstated by $32,764, resulting from the misstatements detailed above. The correct ending balance was -$4,184.*/

Committee officials stated that they would file the appropriate amendments to correct the misstatements. Copies of schedules detailing the explained differences were provided to the Committee at the exit conference.

The interim audit report recommended that the Committee file a comprehensive amendment for calendar year 1990 to correct the irregularities described above.

On June 14, 1993, the Committee filed an amended report which materially corrected the misstatement.

Recommendation #1

The Audit staff recommends no further action with regard to this matter.

B. Other Matters

Other matters noted during the audit have been referred to the Commissions's Office of General Counsel.

9604372179

*/ The ending balance as reflected on the bank statement was $388. Checks outstanding as of December 31, 1990, as calculated by the Audit staff, totaled $4,571, resulting in the negative cash balance.

9604372170

Excessive Contributions

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes the following payments, services or other things of value: A gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.*/

Section 100.7(a)(1)(A) of Title 11 of the Code of Federal Regulations states that a loan which exceeds the contribution limitations of 2 U.S.C. 441a shall be unlawful whether or not it is repaid.

Under 11 C.F.R. §110.1(b)(2), "with respect to any election" means - in the case of a contribution designated in writing by the contributor for a particular election, the election so designated. In the the case of a contribution not designated in writing by the contributor, the next election for that Federal office after the contribution is made.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

---

*/ Regulation citations are to those in effect during audit period (1/1/89-12/31/90) unless otherwise noted.

Section 110.1(b)(3)(i) of Title 11 of the Code of Federal Regulations states that a contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election.

Section 110.1(i)(2) of Title 11 of the Code of Federal Regulations states that minor children (children under 18 years of age) may make contributions to any candidate or political committee which in the aggregate do not exceed the limitations on contributions of this section, if the decision to contribute is made knowingly and voluntarily by the minor child; the funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contributions are deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

Our review indicated that excessive contributions, totaling $19,710, were received from twenty-eight individuals and one unregistered political committee. Of the $19,710 in excessive contributions, $12,185 was received after the date of the 1988 general election, with the remainder, $7,525, received after the date of the 1990 primary election. The Committee considered the $12,185, 1988 general election contributions and the $7,525, 1990 primary election contributions; however, the contributions were not designated in writing by the contributors for either of these elections as required. In addition, the Committee did not provide documentation to demonstrate that the Committee had net debts outstanding for either election at the time the contributions were received nor was there evidence provided that the Committee had

9604372171

solicited for any debt retirement with respect to either the 1988 general election or the 1990 primary election.

One of the apparent excessive contributions received from an individual was drawn on a revocable trust account in the amount of $2,000. The named trustee of the account signed the check, the amount of which the Committee split equally between the trustee and the beneficiary of the trust. However, there was no documentation indicating the ownership of the funds contained in the account nor was there documentation containing the signature of the beneficiary of the trust stating that the contributor knew of the contribution and the contribution was made voluntarily. See Attachment 1.

The Committee did not establish a separate account for making refunds; however a review of the Committee's disclosure reports indicated that the cash on hand balance at the end of each reporting period, except one, was sufficient to make the necessary refunds.*/

At the exit conference, the Committee did not comment or provide any explanation regarding the excessive contributions.

The interim audit report recommended that the Committee:

a) Provide evidence that the contributions in question should not be considered excessive; or

b) Refund the excessive portion and provide evidence of such refunds (front and back of the canceled checks) to the Audit staff.

c) Provide any evidence which demonstrates its efforts to comply with 11 C.F.R. §103.3(b)(4).

d) Disclose the excessive contributions as debts owed by the Committee on Schedule D (Debts and Obligations) if funds are not available to make refunds.

e) Provide documentation relative to the contribution drawn on the revocable trust account which demonstrates that:

1. the beneficiary had knowledge of the contribution;

2. the contribution was made voluntarily; and

3. the beneficiary had sufficient control over the funds in the account to make a contribution to the Committee.

---

*/ The reporting period for which the cash on hand was not sufficient to make the necessary refunds was 5/17/90 through 6/30/90. The primary election was held on 6/5/90.

9504372172

In a June 4, 1993 response to the interim audit report the Candidate provided a listing of contributions which he contends should be attributed to other individuals. The response states that documentation for the listed contributions has been requested. Similarly, in a separate response dated June 4, 1993 the Committee responded that

> "We have worked diligently this past week to get written responses from contributors to send you in response to your audit requests. We have written, called and FAXED request (sic). To date we do not have those responses...but will continue to follow up with these various supporters."

On June 25, July 20, and December 15, 1993, the Candidate provided letters from 7 contributors which contain reattributions of excessive contributions totaling $3,085 to the contributors' spouses.

The Committee's June 4, 1993 response also included a statement from the individual whose $1,000 contribution was drawn on a revocable trust account. The individual stated that, he had knowledge of the contribution, it was made voluntarily and he had sufficient control over the funds in the account to make the contribution.

In addition, the June 1, 1993 response included a statement from the Candidate regarding a $5,000 check drawn on an individual's personal account which was reported as a loan from the Candidate. (See Exhibit C below, Disclosure and Source of Loans Received.) The response stated that the $5,000 check was a personal loan to the Candidate which has since been personally repaid. Evidence of a repayment such as a copy of a negotiated check was not provided. The Audit staff considers the loan to be an excessive contribution from the individual and has included it in the total amount of unresolved excessive contributions.

Based on the information provided, excessive contributions totaling $21,460 remain unresolved. See Attachment 2.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

9604321763

[redacted]

PAUL E. HALL TRUSTEE FOR
PAUL E. HALL 1987 REV. UTD TRUST
CHARLES E. MYERS, II

[redacted]

5-25 1990

Pay to the order of JIM BATES FOR CONGRESS $ 2,000 00

TWO THOUSAND AND 00/100 Dollars

Bank of America

PO Box 1976
San Diego CA 92111 CONTRIBUTIONS
For HALL & MYERS

[redacted]

96043721764

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
Adler, Nathan S.	09/25/89	$250.00	P90	P90	P90 - $1,000.00	
	04/12/90	$250.00	P90	P90	G90 - $1,000.00	$0.00
	05/24/90	$500.00	P90	P90		
(Adler, Caren)	07/12/90	$250.00 *	G90	G90		
	07/17/90	$1,000.00	G90	G90		
Bacnat, Rafaela	01/26/89	$990.00	G Debt 88	P90	P90 - $1,110.00	$110.00
	01/26/89	$10.00	P90	P90	G90 - $45.00	
	02/21/89	$50.00	P90	P90		
	06/09/89	$20.00	P90	P90		
	07/09/89	$10.00	P90	P90		
	09/25/89	$5.00	P90	P90		
	05/01/90	$25.00	P90	P90		
	08/24/90	$20.00	P Debt 90	G90		
	10/15/90	$25.00	G90	G90		
Bain, David L.	04/03/89	$1,700.00	G Debt 88	P90	P90 - $3,700.00	$2,700.00
	05/31/90	$2,000.00	P90	P90	G90 - $2,000.00	$1,000.00
	06/18/90	$2,000.00	G90	G90		
Bandak, Sami I.	05/18/89	$350.00	P90	P90	P90 - $2,100.00	$1,100.00
	11/30/89	$500.00	P90	P90		
	07/03/89	$125.00	P90	P90		
	01/19/90	$25.00	P90	P90		
	01/19/90	$75.00	G90	P90		
	03/13/90	$125.00	G90	P90		
	05/14/90	$400.00	G90	P90		
	05/30/90	$500.00	G90	P90		
Barkett, William J.	01/06/89	$100.00	G Debt 88	P90	P90 - $600.00	$0.00
	08/15/89	$500.00	G Debt 88	P90	G90 - $500.00	
	05/15/90	$1,000.00	P90	P90		

* This contribution was reattributed to the individual shown in the parentheses.

960432175

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
	05/15/89	($1,000.00)	P90	P90		
(Barkett, Lisa A.)	05/25/90	$1,000.00 *	P90	P90		
	10/25/90	$500.00	G90	G90		
Battaglia, Mark A.	01/26/89	$1,000.00	P90	P90	P90 = $6,500.00	$5,500.00
	01/08/90	$500.00	G90	P90		
	05/25/90	$5,000.00 **				
Battaglia, Markie M.	05/05/90	$500.00	P90	P90	P90 = $1,500.00	$500.00
	05/08/90	$1,000.00	G90	P90		
Cavadias, Stephen	09/05/89	$100.00	G Debt 88	P90	P90 = $199.00	
	03/30/90	$99.00	P90	P90	G90 = $1,500.00	$500.00
	06/19/90	$500.00	P90	G90		
	09/06/90	$401.00	P Debt 90	G90		
	09/06/90	$99.00	G90	G90		
	10/30/90	$500.00	G90	G90		
Cutchin, David L.	02/15/89	$200.00	G Debt 88	P90	P90 = $915.00	$0.00
(Cutchin, Mary)	06/19/89	$135.00 *	G Debt 88	P90	G90 = $1,800.00	$800.00
	06/19/89	$165.00	P90	P90		
	02/20/90	$300.00	P90	P90		
	04/24/90	$250.00	P90	P90		
	06/18/90	$200.00	P90	G90		
	08/28/90	$85.00	P Debt 90	G90		
	08/28/90	$415.00	G90	G90		
	09/12/90	$100.00	G90	G90		
	10/30/90	$1,000.00	G90	G90		
Davis, Shelia M.	07/16/90	$1,000.00	P90	G90	G90 = $2,000.00	$1,000.00
	07/16/90	$1,000.00	G90	G90		

* This contribution was reattributed to the individual shown in the parentheses.

** This amount was included based on the Committee's response to the interim audit report Finding II.D., Disclosure and Source of Loans Received.

96043216

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
Flowers, Stephen T.	10/30/90	$1,000.00	G90	G90	G90 = $1,750.00	$750.00
	10/30/90	$750.00	G90	G90		
Ghattas, Samir	06/26/89	$100.00	G Debt 88	P90	P90 = $1,500.00	$500.00
	09/15/89	$200.00	G Debt 88	P90	G90 = $450.00	
	12/11/89	$200.00	P90	P90		
	05/05/90	$250.00	P90	P90		
	05/20/90	$550.00	P90	P90		
	05/20/90	$200.00	G90	P90		
	07/24/90	$250.00	G90	G90		
	09/21/90	$100.00	G90	G90		
	10/30/90	$100.00	G90	G90		
Hall, Paul E.	05/29/90	$1,000.00	P90	P90	P90 = $1,000.00	$0.00
(Myers, Charles E.)	05/29/90	$1,000.00 *		P90	P90 = $1,000.00	
Harris, Susan J.	09/01/89	$200.00 *	G Debt 88	P90	P90 = $1,000.00	$0.00
(Harris, Michael B.)	03/13/90	$500.00	P90	P90	G90 = $100.00	
	05/30/90	$500.00	P90	P90		
	10/30/90	$100.00	G90	G90		
Hayes, Leone M.	02/06/89	$200.00	G Debt 88	P90	P90 = $950.00	$0.00
	07/03/89	$150.00	P90	P90	G90 = $1,000.00	$0.00
	01/19/90	$200.00	P90	P90		
	03/13/90	$150.00	P90	P90		
(Hayes, Lester)	03/13/90	$100.00 *	P90	P90		
	05/01/90	$250.00	P90	P90		
	07/16/90	$150.00	P Debt 90	G90		
	07/16/90	$350.00	G90	G90		
(Hayes, Lester)	08/30/90	$150.00 *	G90	G90		
	08/30/90	$100.00	G90	G90		
	10/30/90	$400.00	G90	G90		

* This contribution was reattributed to the individual shown in the parentheses.

7 5 7 1 2 4 8 4 0 9 6

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
Jackson, James E.	03/09/89	$25.00	G Debt 88	P90	P90 = $1,025.00	$25.00
	05/30/90	$1,000.00	P90	P90		
Kahn, Samuel J.	07/03/89	$125.00	P90	P90	P90 = $1,125.00	$125.00
	03/30/90	$250.00	P90	P90	G90 = $500.00	
	06/01/90	$625.00	P90	P90		
	06/01/90	$125.00	G90	P90		
	10/25/90	$500.00	G90	G90		
Koon, Richard A.	04/03/89	$1,000.00	G Debt 88	P90	P90 = $2,000.00	$1,000.00
	04/03/89	$1,000.00	G Debt 88	P90		
Khouri, Fosi A.	01/27/90	$300.00	P IK 90	P90	P90 = $1,000.00	$0.00
	03/13/90	$250.00	P90	P90	G90 = $1,000.00	
	05/23/90	$450.00	P90	P90		
(Khouri, Christine E.)	05/23/90	$500.00 *	P90	P90		
	10/16/90	$500.00	G90	G90		
	10/16/90	$500.00	G90	G90		
Liserbram, Sol	01/12/89	$500.00	P90	P90	P90 = $1,150.00	$150.00
	07/13/89	$150.00	P90	P90	G90 = $1,150.00	$150.00
	09/25/89	$350.00	P90	P90		
	09/25/89	$150.00	G90	P90		
	07/16/90	$850.00	G90	G90		
	07/16/90	$150.00	P Debt 90	G90		
	11/02/90	$150.00	G90	G90		
McCune, Jr., Richard S.	02/15/89	$50.00	G Debt 88	P90	P90 = $1,200.00	$200.00
	02/15/89	$50.00	P90	P90	G90 = $500.00	
	09/25/89	$300.00	P90	P90		
	10/27/89	$200.00	P90	P90		

* This contribution was reattributed to the individual shown in the parentheses.

9604372178

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
	01/19/90	$100.00	P90	P90		
	04/24/90	$250.00	P90	P90		
	05/29/90	$100.00	P90	P90		
	05/29/90	$150.00	G90	P90		
	11/02/90	$500.00	G90	G90		
Murillo, Rudolph P.	01/31/89	$250.00	P90	P90	P90 = $1,250.00	$250.00
	06/01/90	$750.00	P90	P90	G90 = $1,000.00	
	06/01/90	$250.00	G90	P90		
	08/21/90	$1,000.00	G90	G90		
PAE-PAC	04/16/90	$2,000.00	P90	P90	P90 = $2,000.00	$1,000.00
Pantich, Tom T.	06/26/89	$200.00	P90			
	07/03/89	$50.00	P90	P90	P90 = $700.00	$0.00
	07/03/89	$200.00	G90	P90	G90 = $800.00	
(Pantich, Helen J.)	09/25/89	$750.00 *	P90	P90		
	06/07/90	$250.00	G90	P90		
	06/18/90	$250.00	G90	G90		
	07/16/90	$250.00	G90	G90		
	10/29/90	$300.00	G90	G90		
Price, Robert	04/03/90	$500.00	P90	P90	P90 = $1,000.00	
	05/31/90	$500.00	P90	P90	G90 = $1,500.00	$500.00
	10/05/90	$500.00	G90	G90		
	11/30/90	$1,000.00	G90	G90		
Price, Sol	04/23/90	$500.00	P90	P90	P90 = $500.00	
	06/15/90	$500.00	P90	G90	G90 = $1,500.00	$500.00
	06/15/90	$500.00	G90	G90		
	09/12/90	$500.00	G90	G90		

* This contribution was reattributed to the individual shown in the parentheses.

9 5 0 4 3 2 1 7 9

Jim Bates For Congress
List of Excessive Contributions

Name of Contributor	Date of Deposit	Amount of Contribution	Election Designation Per Committee*	Election Designation Per Audit	Aggregate Amount Per Election Per Audit	Excessive Amount
Roberts, Glen E.	09/01/89	$1,000.00	P90	P90	P90 = $2,000.00	$1,000.00
	03/27/90	$1,000.00	G90	P90	G90 = $1,925.00	$925.00
	10/30/90	$1,925.00	G90	G90		
Seltzer, Norman T.	02/15/89	$100.00	P90	P90	P90 = $1,000.00	
	12/20/89	$900.00	P90	P90	G90 = $2,000.00	$1,000.00
	06/01/90	$1,000.00	G90	G90		
	10/05/90	$1,000.00	G90	G90		
Shamoon, Albert	06/26/89	$100.00	G Debt 88	P90	P90 = $1,175.00	$175.00
	09/05/89	$200.00	G Debt 88	P90	G90 = $200.00	
	12/11/89	$500.00	P90	P90		
	03/07/90	$125.00	G Debt 88	P90		
	05/20/90	$250.00	P90	P90		
	06/18/90	$200.00	P90	G90		
TOTAL EXCESSIVE CONTRIBUTIONS:						$21,460.00

*Legend:

G Debt 88 - General Election 1988 Debt
P90 - Primary Election 1990
G90 - General Election 1990
P Debt 90 - Primary Election 1990 Debt
P IK 90 - Primary Election 1990 In-Kind Contribution

960432170

96043721771

Apparent Prohibited Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any primary election or political convention or caucus held to select candidates for any political office or for any corporation, or any labor organization, to make a contribution in connection with any election at which a representative to Congress is to be voted for, or for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

During the review of Committee contributor records, the Audit staff identified 15 contributions totaling $4,475 from prohibited sources. Nine of the contributions totaling $3,600 were drawn on the accounts of corporations. The six remaining contributions totaling $875 were received from labor organizations. See Attachment 1.

The Committee did not establish a separate account for making refunds; however a review of the Committee's disclosure reports indicated that the cash on hand balance at the end of each reporting period, except one, was sufficient to make the necessary refunds.*/

At the exit conference, the Committee was provided with a schedule of the apparent prohibited contributions. The Assistant Treasurer questioned why several of the listed organizations were prohibited from making contributions. The Audit staff reiterated that the contributions were drawn on the accounts of prohibited sources.

The interim audit report recommended that the Committee:

a) Provide evidence that the contributions discussed above are not prohibited; or

---

*/ The reporting period for which the cash on hand balance was not sufficient to make the necessary refunds was 5/17/90 through 6/30/90. The primary election was held on 6/5/90.

b) Refund the contributions to the contributors and provide evidence that the contributions have been refunded including copies of the front and back of the negotiated refund checks.

c) Provide any evidence which demonstrates its efforts to comply with 11 C.F.R. §103.3(b)(4).

d) Disclose the contributions as debts owed by the Committee on the Debts and Obligations Schedule D if funds are not available to make refunds.

In response to the interim audit report the Candidate stated that 3 of the contributions were "simply mistakes in processing and are being reconciled," 5 of the contributions "appeared to be sole ownership or partnerships not corporations. They are also being reversed," and 3 contributions "were thought to be Political Action Committees and are also being corrected."

The Audit staff is unsure of what the Committee means by "being reconciled," "being reversed," or "being corrected" since no other documentation was provided. Furthermore, in the reports filed subsequent to the audit period, no refunds of contributions were reported.

Recommendation # 2

The Audit staff recommends that this matter be referred to the Office of General Counsel.

9604321772

Referral to OGC

Exhibit B
MW004358
Attachment 1
Page 1 of 2

Jim Bates for Congress
Schedule of Prohibited Contributions

	Name	Date of Incorp.	Check Date	Amount
1.	2111 Corporation 3900 Harney Street San Diego, CA 92110	11/01/82	9/28/90	$250.00
2.	Carlton A. Hargrave, Inc. DBA McDonalds 28100 Front Street Temecula, CA 92390	5/14/81	10/19/90	200.00
3.	Fiesta Catering 9360 Dowdy Drive San Diego, CA 92126	12/01/70	7/19/89	300.00
4.	Charcoal House Restaurant 9566 Murray Drive La Mesa, CA 92041	4/03/64	1/30/89	500.00
5.	Real Estate Services 810 Lehigh Avenue Chula Vista, CA 92013	1/04/56	5/19/90	100.00
6.	Jacquelin D. Trestrail, MD Medical Corporation 2400 East 4th Street National City, CA 92050	8/31/70	10/08/90	150.00
7.	Aguirre & Eckmann (A Professional Corporation) 1060 Eighth Avenue Suite 200 San Diego, CA 92101	3/05/84	10/22/90	1,000.00
8.	Insurance Unlimited of San Diego County 7750 El Camino Real Suite 2 E La Costa, CA 92009	1/27/58	4/18/90	100.00
9.	Bicyle Club, Inc. 7301 Eastern Avenue Bell Gardens, CA 92105	1/19/84	11/01/90	1,000.00
	Total Corporate Prohibited			$3,600.00

9504372177

		Check Date	Amount
10.	Local Union No. 569 I.B.E.W. Legislative Committee ID. #760723 21 W. Washington Street San Diego, CA 92103	5/25/90 6/03/90 10/17/90	$ 50.00 50.00 50.00
11.	Hotel Employees and Restaurant Employees Union of San Diego Local 30 2876 El Cajon Blvd. San Diego, CA 92104	9/07/90 8/03/90 10/10/90	500.00 125.00 100.00
	Total Union Prohibited		$ 875.00
	Total Prohibited Contributions		$4,475.00

960437217774

9604372175

Disclosure and Source of Loans Received

Sections 434(b)(2)(G) and (H) of Title 2 of the United States Code and Section 104.3(a)(3)(vii)(B) of Title 11 of the Code of Federal Regulations require an authorized committee of a candidate for Federal office to report all loans made by a candidate to his or her authorized committee and all other loans. section 434(b)(3)(e) requires the identification of each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan.

In addition, Section 434(b)(8) of Title 2 of the United States Code and Section 104.3(d) of Title 11 of the Code of Federal Regulations require that each report shall disclose the amount and nature of outstanding debts and obligations owed by the reporting committee on Schedule C (Loans)*/.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 431(8)(A)(i) of Title 2 of the United States Code defines the term "contribution" to include, any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 100.7(a)(1)(i)(A) and (B) of Title 11 of the Code of Federal Regulations states that, a loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR Part 110. A loan, to the extent it is repaid, is no longer a contribution.

Section 110.4(c)(3) of Title 11 of the Code of Federal Regulations states that a candidate or committee receiving an anonymous cash contribution in excess of $50 shall promptly dispose of the amount over $50. The amount over $50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

Section 110.10(a) of Title 11 of the Code of Federal Regulations states, in part, that a candidate for Federal office may make unlimited expenditures from personal funds.

Section 110.10(b) of Title 11 of the Code of Federal Regulations defines, in part, "personal funds" as any assets which under applicable state law at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either (1) legal and rightful title or (2) an equitable interest.

1. Reporting of Loans

During our review of loans received by the Committee it was noted that the Committee received loans totaling $35,800 that had not been itemized as required.

Of the $35,800 in loans received by the Committee, $30,300 was reportedly made by the Candidate. The Audit staff was unable to verify the original source of funds used by the Candidate to make these loans, i.e., whether or not the monies represented proceeds of loans made to the Candidate by other individuals.

Further, the Committee failed to itemize $30,300 on Schedule A (Itemized Receipts), $3,000 on Schedule A (Itemized Receipts) and Schedule C (Loans). In addition, the Committee failed to report continuously loans totaling $2,500 on Schedule C (Loans).

At the exit conference, the Treasurer was provided with a schedule of loans received by the Committee that were not disclosed as required.

During fieldwork, the Committee filed amended Schedules C (Loans) which materially corrected the itemization problems for that schedule noted above. In addition, the Committee provided a written statement from the Assistant Treasurer which notes that the loans from the Candidate to the Committee were from the Candidate's personal funds.

2. Source of Funds

As noted above, the Committee reportedly received 4 loans from the Candidate totaling $30,300. Three of the loans, totaling $20,300 were made via checks drawn on the Candidate's United States House of Representatives bank account. For the remainder of the reported loans, $10,000, the associated written instruments consisted of a $5,000 check drawn on an individual's account and a $5,000 cashier's check, both of which were made payable to the Candidate, Jim Bates. (See Attachments 1 & 2.) It should be noted that the memo line of the personal check was annotated "loan." It appears from our review of Committee records and Committee Schedules C (Loans) that these two checks were attributed to and reported as a $10,000 loan from the Candidate.

---

*/ Regulation citations are to those in effect during audit

9604372176

Although, the Assistant Treasurer provided a written statement indicating that all reported loans were made from the Candidate's personal funds, it is the opinion of the Audit staff that the Committee's written statement is not accurate.

At the exit conference the Assistant Treasurer stated that she was unaware of the personal check for five thousand dollars or the five thousand dollar cashier's check, payable to the Candidate.

During a review of the latest reports filed, the Committee has reported an outstanding loan balance of $2,800 repayable to the Candidate.

The interim audit report recommended that the Committee:

a) Provide all account statements and enclosures from the Candidate's United States House of Representatives bank account for the period April 1, 1990 through June 30, 1990 and a description of the source of each deposit made into the House of Representatives account;

b) Identify the purchaser of the cashier's check and provide a description of the source of funds used for its purchase;

c) Provide evidence which demonstrates that the $5,000 loan drawn on the individual's account was made from the Candidate's personal funds. Absent such a showing, the loan will be considered an excessive contribution from the individual and it is recommended that the Committee refund any amount in excess of the $1,000*/ contribution limitation and provide evidence of such refund (front and back of the negotiated refund check).

d) File amendments to correct the public record relative to the identity of the person(s) who made loans to the Committee.

In response to the interim audit report, the Committee provided a letter from the Operations Officer of San Diego National Bank which states that the cashier's check noted above was the proceeds of a loan issued to the candidate. Documentation which establishes that the loan was made in compliance with 11 CFR §100.7(b)(11) was not provided.

(Footnote * continued from previous page)
period (1/1/89-12/31/90) unless otherwise noted.

*/ This individual, Mark A. Battaglia, is included at Exhibit A, Attachment 1, page 2, as having made an excessive

9504372177

An amended report filed in response to the interim report discloses on Schedule C, the $5,000 loan from the bank but does not disclose the terms of the loan. The report indicates that the loan was outstanding at 12/31/90.

With respect to the $5,000 check from an individual, the Candidate stated in a separate response that it was a personal loan to the Candidate which has since been personally repaid. Evidence of a repayment such as a copy of a negotiated check was not provided. The Audit staff has included the loan in the total amount of excessive contributions described in section 1 above.

Regarding the $30,300 in loans from the Candidate, evidence which demonstrates that the loans were made using the Candidate's personal funds was not provided. The Candidate's response states merely that "All 4 loans were drawn on the Candidates's United States House of Representatives bank account. The Committee's written statement is accurate."

9604372178

In summary, the Committee must provide the following documents in order to establish that the loans from the Candidate to the Committee are permissible:

a) all account statements and enclosures from the Candidate's United States House of Representatives bank account for the period April 1, 1990 through June 30, 1990 and a description of the source of each deposit made into the House of Representatives account;

b) with respect to the $5,000 loan from San Diego National Bank, copies of the note and the loan agreement; a description of the collateral for such loan, if any; a copy of the security interest which perfects such collateral; and any other documents relative to the loan.

With repect to the $5,000 loan from the individual, the Committee should provide a copy of the negotiated check (front and back) used to repay the loan.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

(Footnote * continued from previous page)
contribution of $500 relative to the 1990 primary election.

Referral to OGC

Exhibit C
Attachment 1
Page 1 of 1

MARK A. BATTAGLIA
[redacted]

1584

5/25 90

PAY TO THE ORDER OF Jim Bates $ 5,000.00

Five thousand and 00/100 DOLLARS

[redacted]

FOR Loan [redacted] Mark A Battaglia

5-29-90

Unreported to candidate

96043721779

SAN DIEGO NATIONAL BANK
[redacted]

54697
90-3088/1222

May 25 90

* * * * * * * JIM BATES * $5,000.00*

SAN DIEGO NATIONAL BANK 5000 DOLS 00 CTS DOLLARS

CASHIER'S CHECK

Marcia L. Cavan

⑈054697⑈ ⑆122238682⑆ 01213438⑈90 966

Referral to OGC

MW004354
Exhibit C
Attachment 2
Page 1 of 1

Jim Bates For Congress
Schedule of Loans From The Candidate

Check Date	Amount of Loan	Lender	Account Drawn On
05/23/90	$ 6,000	Jim Bates	U.S. House of Representatives
05/26/90	$10,000	Jim Bates	U.S. House of Representatives
05/30/90	$ 4,300	Jim Bates	U.S. House of Representatives
05/25/90	$ 5,000	Mark Battaglia	California First Bank
05/25/90	$ 5,000	San Diego National Bank	San Diego National Bank

96043721730

9604321781

Required 48 Hour Notices

Section 104.5(f) of Title 11 of the Code of Federal Regulations requires that a candidate or any authorized committee who receives any contribution of $1,000 or more after the 20th day, but more than 48 hours, before 12:01 am of the day of the election notify the Clerk of the House within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought, the identification of the contributor and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

The date of the primary election in the state of California was June 5, 1990 and the date of the general election was November 6, 1990. Therefore, the Committee was required to notify the Clerk of the House of any contributions of $1,000 or more received from May 17, 1990 to June 2, 1990 and from October 18, 1990 to November 3, 1990, respectively, within 48 hours of receipt. The Committee failed to file the required 48 hour notices for 17 contributions received for the primary and general elections totaling $19,925. During the primary election period the Committee received 5 contributions totaling $5,000 which required 48 hour notification. Twelve contributions, totaling $14,925, were received for the general election which required 48 hour notification. See Attachment 1.

At the exit conference the Assistant Treasurer stated that she missinterpeted the regulation regarding the 48 hour notification.

The interim audit report recommended that the Committee provide any evidence which demonstrates that it has not violated 11 C.F.R. §104.5(f) or any other comments that the Committee believes are relevant.

In response to the interim audit report the Committee stated that a system was in place which appeared to work well in complying with the requirement.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

Referral to OGC

Exhibit D
MW004356
Attachment 1
Page 1 of 2

Jim Bates for Congress
Contributions Requiring 48 Hr. Notices

	Name	Deposit Date	Amount	Election
1.	Adella C. Bain	5/31/90	$1,000.00	Primary
2.	David L. Bain	5/31/90	1,000.00	Primary
3.	M.D. Payn	5/31/90	1,000.00	Primary
4.	Allison Price	5/31/90	1,000.00	Primary
5.	A.S.M.G. Good Government Fund	5/31/90	1,000.00	Primary
6.	Glen Roberts	10/30/90	925.00*/	General
7.	The Bicycle Club	11/03/90	1,000.00	General
8.	American Association of Physicians from India [FEC #C00199935]	11/03/90	2,000.00	General
9.	Electrical Construction PAC	11/03/90	1,000.00	General
10.	Fund for Effective Leadership	11/02/90	1,000.00	General
11.	I.B.E.W.-C.O.P.E.	11/02/90	1,000.00	General
12.	OPHTHPAC	10/22/90	2,000.00	General
13.	PAC of the American Hospital Association	10/22/90	1,000.00	General
14.	Sullivan J. Worchester PAC	11/02/90	1,000.00	General
15.	Transportation Political Education League	10/22/90	1,000.00	General

*/ Contributor check was in the amount of $1,925.00 but Committee only filed a 48 hour notice for $1,000, not for the entire amount.

9604372172

	Name	Deposit Date	Amount	Election
16.	U.S. Telephone PAC	11/02/90	1,000.00	General
17.	Labor Western Political League [FEC #C00169201]	10/18/90	2,000.00	General

Total Contributions: $19,925.00

9604372173

9604372173 4

Itemization of Expenditures

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

During a sample review of Committee disbursements it was noted that a material number of expenditures in amounts of less than $200.01 but aggregating greater than $200 per calendar year to the payee were not itemized as required. The Committee's Assistant Treasurer stated that the itemization of expenditures was done on a report period basis rather than on a calendar year basis.

Also, the Committee failed to itemize as disbursements 2 in-kind contributions in the amount of $1,498 as required by 11 C.F.R. §104.13 and 5 expenditures totaling $48,500 on the reports as originally filed. In addition to not being itemized as required, the $1,498 in in-kind contributions and the $48,500 in expenditures were not included in the reported totals*/. At the exit conference the Assistant Treasurer was provided a schedule listing these expenditures.

The interim audit report recommended that the Committee file amended Schedules B (Itemized Disbursements) to correct the irregularities noted above.

In response to the interim audit report, the Committee stated that they had already complied with the request in the amended reports filed after the exit conference. However, the Committee is incorrect. Of the disbursements requiring itemization, the amended reports filed during audit fieldwork corrected only the itemization of 2 of the 5 disbursements ($20,000 and $9,000) noted above.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office Of General Counsel.

---

*/ See the Report of the Audit Division on Jim Bates for Congress, Finding II.A., Misstatement of Financial Activity.

96043217885

Recordkeeping for Disbursements

Section 432(c)(5) of Title 2 of the United States Code states that the treasurer of a political committee shall keep an account of the name and address of every person to whom any disbursement is made, the date, amount, and purpose of the disbursement, and the name of the candidate and the office sought by the candidate, if any, for whom the disbursement was made, including a receipt, invoice, or canceled check for each disbursement in excess of $200.

The Committee failed to maintain cancelled checks relative to disbursements made during calendar year 1989. Thus our review of 1989 disbursements was limited significantly. It should be noted that the Committee did make available a check register, as well as, invoices.

The interim audit report recommended that the Committee provide the canceled checks or microfilm copies (front and back).

In response to the interim audit report the Committee stated that it does not have money to request copies of the checks from the bank. However, the Committee provided copies of the 1989 bank statements and the Committee's check register.

The Audit staff reviewed the check register in conjunction with the bank statements and identified $62,222*/ in disbursements for which the required canceled checks were not maintained. See Attachment 1.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

---

*/ For 15 check register entries totaling $930 in amounts less than or equal to $200, it appears that the Committee is in compliance with the recordkeeping requirements. For these entries, a payee, address, date, amount and purpose is included.

JIM BATES FOR CONGRESS
SCHEDULE OF DISBURSEMENTS
WITHOUT ADEQUATE DOCUMENTATION

	CHECK NO.	DATE	PAYEE	AMOUNT
1	10563	01/04/89	Al Alvardo	75.00
2	10564	01/?/89	U.S. Postmaster	24.25
3	10566	01/04/89	Michelle Williams	100.00
4	10567	01/17/89	No payee listed	1,200.00
5	10568	01/06/89	Airborne	22.00
6	10569	01/06/89	University Press	211.67
7	10570	01/06/89	Dena Holman	5.60
8	10571	01/06/89	Tom Ryan	22.14
9	10572	01/06/89	AT & T	13.96
10	10574	01/07/89	National Democratic Club	20.00
11	10575	01/07/89	Gay Times	78.66
12	10576	01/07/89	Video Monitoring Services	26.63
13	10577	01/07/89	U.S. Postmaster	60.00
14	10578	01/07/89	H.P. Copy	43.77
15	10579	01/07/89	AT & T	73.10
16	10580	01/07/89	Michelle Pirone	26.00
17	10581	01/07/89	El Sol	20.00
18	10582	01/07/89	Lisa Ecks	100.00
19	10583	01/09/89	John Wainio	300.00
20	10584	01/09/89	Nick Johnson	383.00
21	10585	01/13/89	Petty Cash	50.00
22	10586	01/16/89	U.S. Postmaster	50.00
23	10587	01/16/89	San Diego Monitor	7.50
24	10588	01/20/89	Grove Office Supply	10.24
25	10589	01/20/89	American Express	387.55
26	10590	01/23/89	Postmaster	95.00
27	10591	01/28/89	Petty Cash	50.00
28	10592	01/28/89	Lisa Hicks	210.99
29	10593	01/28/89	Dwight Williams	200.00
30	10594	01/30/89	Lisa Ecks	100.00
31	10595	01/30/89	Chicano Federation	150.00
32	10596	01/30/89	Chula Vista	150.00
33	10597	01/30/89	North Shores Printery	96.76
34	10598	01/30/89	Jay Hansen	103.53
35	10599	01/30/89	Nick Johnson	124.20
36	10600	01/30/89	Neyenesch Printers	774.84
37	10606	01/23/89	Easter's Travel	92.00
38	10607	01/23/89	John Wainio	200.00
39	10608	01/23/89	Hotel Del Coronado	135.95
40	10609	01/23/89	Pacific Bell	498.50
41	10610	01/23/89	League of Women Voters	35.00
42	10611	01/23/89	Lou Elkins	160.23
43	10612	01/23/89	Neyenesch Printers	500.00
44	10614	01/23/89	George Lynch	15.00
45	10615	01/23/89	Al Alvarado	25.00
46	10616	01/23/89	Postmaster	50.00
47	10617	01/23/89	MAPA	30.00
48	10619	01/23/89	Westgate Hotel	107.34
49	10622	02/15/89	Jackie Main	450.00
50	10623	02/16/89	Claremont McKenna College	95.00
51	10624	02/16/89	Fedeo, Inc.	91.42

For amounts less than $200, the payee's address was not maintained.

96043217336

JIM BATES FOR CONGRESS
SCHEDULE OF DISBURSEMENTS
WITHOUT ADEQUATE DOCUMENTATION

	CHECK NO.	DATE	PAYEE	AMOUNT
52	10625	02/18/89	IFS Photo Services	39.45
53	10626	02/21/89	U.S. Postmaster	259.69
54	10627	02/21/89	Fairbank, Bregman and Maullen	1,000.00
55	10628	02/23/89	Smith Tribute Dinner	75.00
56	10629	02/24/89	National City Chamber	25.00
57	10630	02/28/89	John Wainio	128.40
58	10631	03/01/89	Willie Mae Henry	25.00
59	10632	03/01/89	Democratic Central Committee	75.00
60	10633	03/01/89	Postmaster	39.00
61	10634	03/01/89	AT & T	73.80
62	10635	03/01/89	Pacific Bell	132.43
63	10636	03/01/89	Airborne Express	8.50
64	10637	03/01/89	Bill Wachob	1,000.00
65	10638	03/01/89	Line Graphics	1,000.00
66	10639	03/01/89	North Shores Printery	535.49
67	10640	03/07/89	United Domestic Workers	1,000.00
68	10641	03/07/89	Louisa Pienta	75.00
69	10642	03/07/89	Louisa Pienta	35.00
70	10643	03/09/89	Ryder Truck Rental	100.00
71	10644	03/09/89	Al Alvarado	100.00
72	10645	03/09/89	Postmaster	25.00
73	10646	03/11/89	Pilipino American Assn. Dinner	25.00
74	10647	03/16/89	Line Graphics	4,000.00
75	10648	03/16/89	Petty Cash	50.00
76	10649	03/17/89	Logan Heights	10.00
77	10650	03/18/89	John Wainio	202.50
78	10651	03/18/89	John Wainio	500.00
79	10652	03/20/89	U.S. Postmaster	50.00
80	10653	03/21/89	Airborne Express	14.00
81	10654	03/21/89	Registrar of Voters	6.40
82	10655	03/21/89	Cantrell- Cutter	417.15
83	10656	03/21/89	Chicano Federation	100.00
84	10658	03/21/89	Oxford Center	212.93
85	10659	03/21/89	C.V. Kivanis	100.00
86	10660	03/21/89	Chula Vista	25.00
87	10661	03/21/89	Chicano Fed.	50.00
88	10662	03/23/89	Postmaster	75.00
89	10663	03/24/89	Congressman	52.42
90	10664	03/24/89	All-Service Cleaners	23.50
91	10665	03/28/89	Petty Cash	50.00
92	10666	03/31/89	Public Office Corporation	1,838.59
93	10667	04/07/89	Propellor Club	175.00
94	10668	04/07/89	Platinum Card Amer. Exp.	520.00
95	10669	04/07/89	Al Alvarado	15.39
96	10670	04/07/89	National City Chamber of Comm.	60.00
97	10671	04/07/89	First District Quartermaster	30.00
98	10672	04/07/89	Pacific Bell	87.14
99	10674	04/07/89	Lisa Ecks	11.00
100	10675	04/07/89	AT & T	14.02
101	10676	04/07/89	AT & T	73.45
102	10677	04/07/89	Postmaster	50.00

For amounts less than $200, the payee's address was not maintained.

96043217887

JIM BATES FOR CONGRESS
SCHEDULE OF DISBURSEMENTS
WITHOUT ADEQUATE DOCUMENTATION

	CHECK NO.	DATE	PAYEE	AMOUNT
103	10678	04/13/89	Cash	50.00
104	10679	04/21/89	Line Graphics	2,000.00
105	10680	04/18/89	UFW	100.00
106	10681	04/13/89	City of CV	16.00
107	10685	01/30/89	American Legion	18.00
108	10686	01/30/89	Boys & Girls Clubs of NC	100.00
109	10687	01/30/89	Grah Safe and Lock	56.40
110	10688	01/30/89	National Democratic Club	25.38
111	10690	01/30/89	David Ramage	42.50
112	10691	01/30/89	Congressman Jim Bates	47.00
113	10692	01/30/89	Tom Ryan	49.16
114	10693	01/30/89	Public Office Corp.	500.00
115	10694	01/30/89	Navy League	25.00
116	10695	01/30/89	AT & T	73.10
117	10696	01/30/89	Congressman Jim Bates	79.88
118	10697	01/30/89	Postmaster	257.75
119	10698	02/02/89	Al Alvarado	50.00
120	10699	02/03/89	Public Office Corp.	1,000.00
121	10700	02/03/89	U.S. Postmaster	130.00
122	10701	02/08/89	SDSU Foundation	75.00
123	10702	02/08/89	Cash	50.00
124	10703	02/09/89	Public Office Corporation	1,000.00
125	10704	02/09/89	Congressman Jim Bates	520.00
126	10705	02/09/89	Lisa Ecks	400.00
127	10706	02/09/89	John Wainio	181.08
128	10707	02/09/89	John Wainio	1,000.00
129	10708	02/09/89	Postmaster	43.75
130	10709	02/09/89	Dwight Williams	200.00
131	10710	02/14/89	Petty Cash	50.00
132	10711	02/15/89	John Wainio	1,800.00
133	10712	02/15/89	Dena Holman	5.34
134	10713	02/15/89	Michelle Pirone	7.50
135	10714	02/15/89	David Ramage	117.50
136	10715	04/27/89	Alice Paul	40.00
137	10716	04/27/89	Steve Perez	15.00
138	10717	04/27/89	SOS	10.00
139	10718	04/27/89	Otis Keenz	200.00
140	10719	04/27/89	Sierra Club	35.00
141	10720	04/27/89	Congressman Jim Bates	47.08
142	10721	04/27/89	Pacific Bell	40.20
143	10722	04/27/89	Freedom's Foundation	15.00
144	10723	04/27/89	AT & T	73.45
145	10724	04/27/89	15/20 Anniversary Council	100.00
146	10725	04/27/89	Otay Mesa Chamber of Commerce	75.00
147	10726	04/27/89	San Diego County Hispanic Chamb.	75.00
148	10727	04/27/89	Jewish Press Heritage	54.00
149	10728	04/27/89	San Diego Jewish Times	84.00
150	10729	04/27/89	Line Graphics	1,852.00
151	10730	05/01/89	Petty Cash	50.00
152	10731	05/01/89	Marilyn Bates	60.00
153	10732	05/04/89	Cash	50.00

For amounts less than $200, the payee's address was not maintained.

9604321738

JIM BATES FOR CONGRESS
SCHEDULE OF DISBURSEMENTS
WITHOUT ADEQUATE DOCUMENTATION

	CHECK NO.	DATE	PAYEE	AMOUNT
154	10733	05/04/89	Mission Hills Florist	41.73
155	10734	05/04/89	Greenbriar	178.01
156	10735	05/05/89	Accurate Lock & Key	14.68
157	10736	05/16/89	Spina Bifida Assn.	25.00
158	10737	05/16/89	Older Women's League	10.00
159	10738	05/16/89	Hostage	100.00
160	10739	05/16/89	Hob Nob Hill, Inc.	7.14
161	10740	05/16/89	Xema Jacobsen	39.00
162	10741	05/16/89	Erika Rave	10.00
163	10742	05/18/89	San Diego Office Supply	701.24
164	10743	05/18/89	Capitol Catering	500.00
165	10744	05/18/89	Postmaster	375.00
166	10745	05/25/89	Dena Holman	50.00
167	10746	05/25/89	Postmaster	62.50
168	10747	06/01/89	Postmaster	25.00
169	10748	06/01/89	Cash	50.00
170	10749	06/01/89	Campaigns and Elections	495.00
171	10750	06/03/89	Lido's	115.00
172	10751	06/03/89	Dena Holman	222.00
173	10752	06/08/89	Cash	50.00
174	10753	06/08/89	SD County Deputy Sheriffs Assn.	98.50
175	10754	06/08/89	U.S. Postmaster	100.00
176	10755	06/08/89	Capitol Catering	582.40
177	10756	06/08/89	AT & T	73.45
178	10757	06/08/89	Pacific Bell	46.19
179	10758	06/08/89	U.S. Postmaster	25.00
180	10759	06/08/89	Lisa Ecks	15.00
181	10760	06/08/89	Congressman Jim Bates	24.00
182	10761	06/08/89	David R. Ramage, Inc.	40.00
183	10762	06/08/89	RPUSA	15.00
184	10763	06/15/89	Cantrell-Cutter Printing Co.	492.61
185	10764	06/15/89	North Shores Printery	1,306.04
186	10765	06/17/89	U.S. Postmaster	200.00
187	10766	06/17/89	Greater SD Chamber of Commerce	185.00
188	10767	06/17/89	Institute for Research on Aging	30.00
189	10768	06/20/89	Congressman Jim Bates	154.93
190	10769	06/21/89	U.S. Postmaster	750.00
191	10770	06/21/89	Mission Hills Florist	55.11
192	10771	06/23/89	Fenn and King	3,000.00
193	10772	06/25/89	U.S. Postmaster	450.00
194	10773	06/25/89	Platinum Card	953.00
195	10774	06/25/89	Witness for Peace	25.00
196	10775	06/25/89	Louisa Pienta	26.11
197	10776	06/25/89	Cantrell-Cutter	69.75
198	10777	06/25/89	Star News	58.60
199	10778	06/15/89	Jim Bartell	50.00
200	10779	06/25/89	Richard Meyers	14.00
201	10780	06/25/89	AT & T	73.45
202	10781	06/25/89	Pacific Bell	12.98
203	10782	06/25/89	Al Alvarado	13.00
204	10783	06/25/89	U.S. Postmaster	25.00

For amounts less than $200, the payee's address was not maintained.

96043217339

JIM BATES FOR CONGRESS
SCHEDULE OF DISBURSEMENTS
WITHOUT ADEQUATE DOCUMENTATION

	CHECK NO.	DATE	PAYEE	AMOUNT
205	10784	06/26/89	U.S. Postmaster	150.00
206	10786	06/29/89	Cash	50.00
207	10787	06/30/89	Holiday Inn	167.34
208	10788	06/30/89	Dena Holman	1,110.00
209	10789	07/03/89	Public Office Corp.	2,000.00
210	10790	07/03/89	Mission Hills Florist	36.92
211	10791	07/03/89	John Wainio	8.29
212	10792	07/03/89	Stan Brand	2,000.00
213	10793	07/03/89	Al Alvarado	250.00
214	10794	07/03/89	Jim Bates	14.00
215	10795	07/06/89	Al or Petty Cash	50.00
216	10796	07/06/89	Petty Cash	50.00
217	10797	07/06/89	Deter's RL and Son	80.28
218	10799	07/07/89	Brickrow Band	150.00
219	10800	07/07/89	Cash	100.00
220	10801	07/07/89	Lou Elkins	674.91
221	10802	07/13/89	Public Office Corp.	1,000.00
222	10803	07/13/89	Democratic Study Group	1,000.00
223	10804	07/13/89	North Shores Printery	219.24
224	10805	07/13/89	Richard Young Products	31.45
225	10806	07/13/89	Airborne Express	23.50
226	10807	07/13/89	Xema Jacobson	89.00
227	10808	07/13/89	Congressman Jim Bates	435.00
228	10809	07/13/89	Paul Finn	17.59
229	10810	07/13/89	AT & T	14.02
230	10811	06/30/89	Spieckel's Bldg.	540.00
231	10812	07/21/89	Public Office Corp.	1,000.00
232	10813	07/21/89	DSG Campaign Fund	1,000.00
233	10814	07/21/89	Allright Parking	95.00
234	10815	07/21/89	Dena Holman	127.13
235	10816	07/21/89	NWPC	22.00
236	10817	07/21/89	Sierra Club	33.00
237	10818	07/21/89	Congressman Jim Bates	19.42
238	10819	07/21/89	AT & T	73.45
239	10821	07/21/89	United Negro College Fund	100.00
240	10822	07/21/89	Mission Hills Florist	42.27
241	10823	07/21/89	North Shores Printery	118.13
242	10824	07/21/89	Cash	20.00
243	10825	07/24/89	Postmaster	50.00
244	10826	07/24/89	Al Alvarado	300.00
245	10827	07/28/89	U.S. Postmaster	25.00
246	10828	08/01/89	Petty Cash	50.00
247	10829	08/02/89	Dena Holman	1,000.00
248	10830	08/04/89	American Legion Post 6	20.00
249	10831	08/03/89	Pacific Bell	54.48
250	10832	08/04/89	American Opinion Bookstore	11.72
251	10833	08/05/89	Al Alvarado	300.00
252	10834	08/10/89	Nick Johnson	75.00
			Total	62,221.71

For amounts less than $200, the payee's address was not maintained.

96043721710

9604372172 1

Checks Paid on Insufficient Funds

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office.

Section 100.7(b)(11) of Title 11, Code of Federal Regulations states, in part, that an overdraft made on a checking or savings account shall be considered a contribution by the bank or institution unless: the overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule.

The Committee maintained its operating account at the San Diego National Bank.*/ This was the Committee's only identified bank account. The Audit staff noted that 32 items totaling $178,639 cleared the Committee's account when there were insufficient funds in the account to pay for these items. See Attachment 1. In addition, it appears the bank arbitrarily did not honor 17 items totaling $59,726. See Attachment 2. For example, on May 31, 1990 while the account was in an overdrawn position, the bank honored an $11,259 check, but returned checks for $9,748 and $4,300. On June 6, 1990 the bank paid checks totaling $5,472, but returned 2 checks for $2,000 and $4,300, these transactions were made while the account was overdrawn. Finally, on November 5, 1990 the bank returned 4 checks totaling $11,868, but honored 5 checks totaling $3,396 when there were insufficient funds in the Committee's account to cover these transactions.

Although the bank did assess an overdraft fee of $12 for each check it honored, it did not appear that the overdrafts were subject to a definite interest rate nor was there evidence that a definite repayment schedule was in effect.

The interim audit report recommended that the Committee provide evidence to include a statement from the bank which demonstrates that the overdrafts on its operating account should not be considered a prohibited contribution by the bank. It was further recommended that the Committee provide a copy of its 1989 check register.

---

*/ The Committee reported a $1,000 contribution from the President of San Diego National Bank.

In response to the interim audit report, the Committee provided a letter from the President/CEO of San Diego National Bank which states that "...overdrafts were handled either by a deposit being made to cover the overdraft before the check was returned or the check was returned where there was not a sufficient deposit. To our knowledge that procedure was followed without exception and no checks were honored unless deposits were made to cover them in full...that has always been the procedure followed by our bank when we are involved with political candidates' campaign accounts."

The statement made by the President/CEO of San Diego National Bank appears to be inaccurate since the number of days which elapsed between the date that the overdrafts occurred and the dates of the deposits to cover the overdrafts ranged from 1 to 3 days. For example: On Thursday September 20, 1990, San Diego National Bank paid Committee check number 11480 in the amount of $35,000, causing the Committee's account to be overdrawn by $2,122. The balance per the bank did not become positive until Monday September 24, 1990.

The Committee also provided a copy of its check register for calendar year 1989. The transactions noted above occurred in 1990. Therefore the Audit staff is unable to verify the Committee's check register balance at the time of the transactions.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

9604321722

Jim Bates For Congress
Schedule of Checks Paid on Insufficient Funds

Item	Check Number	Date Cleared	Check Amount	Balance After Cleared*
1.	Wire Transfer	04/25/90	$15,080.00	($4,333.35)
2.	11287	04/25/90	$75.00	($4,408.35)
3.	11321	04/25/90	$6.30	($4,414.65)
4.	11352	04/30/90	$18,141.00	($434.85)
	Total Checks Paid on Insufficient Funds in April, 1990**		$25,222.30	
5.	11386	05/29/90	$11,258.75	($2,797.94)
6.	10908	05/29/90	$14,113.00	($16,910.94)
7.	11378	05/30/90	$3,750.00	($3,478.94)
8.	11394	05/30/90	$800.00	($4,278.94)
9.	11396	05/31/90	$11,258.75	($9,144.95)
	Total Checks Paid on Insufficient Funds in May, 1990		$41,180.50	
10.	11393	06/01/90	$4,120.00	($2,044.95)
11.	11407	06/05/90	$5,793.92	($6,009.37)
12.	11408	06/05/90	$3,325.00	($9,334.37)
13.	11402	06/06/90	$5,422.00	($4,243.37)
14.	11409	06/06/90	$50.00	($4,293.37)
15.	10920	06/07/90	$1,750.00	($199.37)
16.	10919	06/11/90	$2,500.00	($576.18)
17.	11405	06/15/90	$699.00	($249.35)
	Total Checks Paid on Insufficient Funds in June, 1990		$23,659.92	
18.	11424	07/11/90	$2,500.00	($428.52)
	Total Checks Paid on Insufficient Funds in July, 1990		$2,500.00	
19.	11480	09/20/90	$35,000.00	($2,121.87)
20.	11488	09/21/90	$35.19	($607.06)
21.	11492	09/21/90	$20.69	($627.75)

9 6 0 4 3 2 1 7 3

Jim Bates For Congress
Schedule of Checks Paid on Insufficient Funds

Item	Check Number	Date Cleared	Check Amount	Balance After Cleared*
	Total Checks Paid on Insufficient Funds in September, 1990		$35,055.88	
22.	11587	10/24/90	$11,488.65	($3,340.00)
23.	11586	10/25/90	$5,900.00	($4,420.47)
24.	11593	10/31/90	$16,026.21	($11,263.45)
	Total Checks Paid on Insufficient Funds in October, 1990		$33,326.86	
25.	11607	11/01/90	$6,627.58	($4,595.03)
26.	11610	11/02/90	$3,100.00	($1,908.53)
27.	11592	11/02/90	$4,570.00	($6,478.53)
28.	11612	11/05/90	$360.00	($296.68)
29.	11622	11/05/90	$400.00	($696.68)
30.	11560	11/05/90	$436.45	($1,133.13)
31.	11604	11/05/90	$1,000.00	($2,133.13)
32.	11619	11/05/90	$1,200.00	($3,333.13)
	Total Checks Paid on Insufficient Funds in November, 1990		$17,694.03	
	Total Amount of Checks Paid on Insufficient Funds		$178,639.49	

*The number of days that the Committee's operating account remained in an overdrawn status ranged from 1 to 3 days.

**Proceeds from CD were deposited on 04/26/90. For the remainder of the audit period there were no funds invested in CD's or otherwise available to cover overdrafts.

9604572174

Jim Bates For Congress
Checks Returned Due To Insufficient Funds

Item	Check Number	Check Amount	Date Presented	Balance When Presented
1.	11397	$9,747.83	05/31/90	($9,168.95)
2.	11398	$4,300.00	05/31/90	($9,168.95)
3.	10921	$2,000.00	06/06/90	($4,329.37)
4.	11398	$4,300.00	06/06/90	($4,329.37)
5.	11410	$7,500.00	06/18/90	$2,910.65
6.	11609	$1,430.00	11/05/90	$436.47
7.	11613	$1,810.63	11/05/90	$436.47
8.	11614	$2,000.00	11/05/90	$436.47
9.	11620	$6,627.51	11/05/90	$436.47
10.	11602	$3,200.00	11/06/90	$161.87
11.	11617	$1,000.00	11/06/90	$161.87
12.	11609	$1,430.00	11/09/90	$766.35
13.	11613	$1,810.63	11/09/90	$766.35
14.	11614	$6,627.51	11/09/90	$766.35
15.	11616	$1,342.00	11/09/90	$766.35
16.	11620	$2,000.00	11/09/90	$766.35
17.	11626	$2,600.00	11/30/90	$1,813.72
Total Returned Checks		$59,726.11		

9 5 0 4 3 2 1 7 5

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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

DEC 7 4 17 PM '94

FIRST GENERAL COUNSEL'S REPORT

LRA #435
STAFF MEMBER: James S. Portnoy

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Jim Bates for Congress, Inc.
and Sandra Kennedy, as Treasurer
Jim Bates
Mark A. Battaglia
David L. Bain
Sami I. Bandak
San Diego National Bank

RELEVANT STATUTES:
2 U.S.C. § 431(11)
2 U.S.C. § 432(c)(5)
2 U.S.C. § 434(a)(6)(A)
2 U.S.C. § 434(b)(2)
2 U.S.C. § 434(b)(3)
2 U.S.C. § 434(b)(5)(A)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
11 C.F.R. § 100.7(a)(1)(i)(A)
11 C.F.R. § 104.3(b)(4)(i)
11 C.F.R. § 104.3(d)
11 C.F.R. § 104.5(f)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(i)(2)
11 C.F.R. § 110.9(a)
11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

9504372176

I. GENERATION OF MATTER

This matter was generated by an audit of Jim Bates for Congress ("the Committee") and Sandra Kennedy, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b).1/ The Audit Division's referral materials are attached as Attachment 1. The Committee is the principal campaign committee for Jim Bates, who ran for re-election to Congress in the 44th district of California in 1990.2/ Mr. Bates won the primary election with approximately 63% of the vote, but was narrowly defeated in the general election.

The Commission approved the Interim Audit Report on the Committee on March 12, 1993. The Committee responded to the Interim Audit Report by letter dated May 31, 1993. Mr. Bates submitted an additional response to the Interim Audit Report dated June 1, 1993.

II. FACTUAL AND LEGAL ANALYSIS

A. PROHIBITED CONTRIBUTIONS

The Federal Election Campaign Act ("the Act") prohibits corporations and labor organizations from making contributions in connection with an election. 2 U.S.C. § 441b(a). Commission regulations provide that a contribution that appears to be prohibited must be refunded within thirty days, unless the committee determines that the contribution is legal. 11 C.F.R. § 103.3(b)(1). In addition, to ensure that prohibited

---

1/ The scope of this audit addresses the activity of Jim Bates for Congress during the 1990 election cycle.

2/ Mr. Bates was first elected to Congress in 1982.

9604372170

contributions are not used by a committee, a committee either must establish a separate account for such contributions or maintain sufficient funds in its account to make all necessary refunds. 11 C.F.R. § 103.3(b)(4).

Upon review of the Committee's contributor records, the Audit staff identified fifteen contributions totaling $4,475 from apparently prohibited sources. These included nine corporate contributions totaling $3,600 and six contributions from labor organizations totaling $875. See Attachment 1, Exhibit B at 2.

In the Interim Audit Report, the Audit staff recommended that the Committee provide evidence demonstrating that the foregoing contributions were not prohibited or that they were refunded within 30 days as provided in 11 C.F.R. § 103.3(b)(4). The Committee did not provide any such evidence. Alternatively, the Audit staff recommended that the Committee refund the prohibited contributions and provide evidence that the refunds were made. Committee reports filed after the audit period do not disclose any contribution refunds.

In response to the Interim Audit Report, the Committee stated that the apparently prohibited contributions represented "mistakes" that would be "reconciled," "reversed" or "corrected." Attachment 1, Exhibit B at 2. It is unclear what the Committee meant by this statement. In any event, the Committee has not provided any evidence that the apparently prohibited contributions were lawful or that it refunded the contributions.

9604372178

Based on the foregoing, it appears that the Committee accepted prohibited contributions totaling $4,475 in violation of the Act. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 441b(a).

B. EXCESSIVE CONTRIBUTIONS

1. Contributions Improperly Attributed To Previous Elections

The Act establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). Similarly, a candidate or committee may not knowingly accept a contribution in excess of $1,000. 2 U.S.C. § 441a(f). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2).4/ In addition, a contribution may be designated for a previous election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

9504372179

3/

4/ Unless otherwise noted, the Commission regulations cited in this Report are the regulations that were in effect during the audit period, January 1, 1989 to December 31, 1990.

The Interim Audit Report concluded that the Committee received apparently excessive contributions totaling $19,710 from twenty-eight individuals and one unregistered political committee.5/ Of that amount, $12,185 was received during the period between the 1988 general election and the 1990 primary election, but was attributed by the Committee to the 1988 general election. The remaining $7,525 was received during the period between the 1990 primary election and the 1990 general election, but was attributed to the 1990 primary. See generally 11 C.F.R. § 110.1(b).

Because the Committee attributed the contributions to elections that were over, the Audit staff recommended that the Committee provide written designations from the contributors and demonstrate that it had net outstanding debts from the 1988 general election and the 1990 primary election at the time the contributions attributed to those elections were received. See 11 C.F.R. §§ 110.1(b)(2), 110.1(b)(3)(i). In a series of correspondence between June 25, 1993 and December 15, 1993, the Committee provided the Audit Division with letters from seven contributors reattributing a total of $3,250 to their spouses.6/

5/ This amount includes a $500 excessive contribution from Mark A. Battaglia with respect to the 1990 primary, but does not include an apparent $5,000 contribution (in the form of a loan to the Candidate) that Mr. Battaglia made on May 25, 1990. Although the loan appears to constitute an excessive contribution, it is discussed separately in section C.1., infra.

6/ The Audit Division's referral to this Office states that the Committee provided written designations for contributions totaling $3,085. Upon further review, however, the Audit staff has advised this Office that the correct amount is $3,250.

9304372180

However, the Committee neither submitted reattribution letters for the remaining excessive contributions nor provided any information demonstrating that those contributions satisfied the requirements of 11 C.F.R. § 110.1(b)(2) and 11 C.F.R. § 110.1(b)(3)(i). Accordingly, the Committee appears to have accepted a total of $16,460 in excessive contributions with respect to the 1988 general election and the 1990 primary election. See Attachment 1, Exhibit A.7/

2. Contribution From A Trust Account

A minor child may contribute to a candidate or political committee -- subject to the same $1,000 per election contribution limit as an adult -- provided the decision to contribute is made knowingly and voluntarily, the funds contributed are owned or controlled exclusively by the minor (such as income earned by the minor or the proceeds of a trust for which the child is the beneficiary) and the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(i)(2).

9504372180

7/ The Audit Division's referral to this Office lists $21,460 in apparently excessive contributions received by the Committee. Attachment 1, Exhibit A at 6. That amount includes the $5,000 loan from Mr. Battaglia to the candidate discussed in note 5, supra, and section C.1., infra. As stated on page 11, this Office concurs with the Audit staff that the Battaglia loan appears to be an excessive contribution. However, for analytical purposes, this report addresses the Battaglia loan in connection with other questionable loans to the Committee, rather than in connection with the apparently excessive contributions that did not take the form of loans.

On or about May 28, 1990, the Committee received a contribution check for $2,000 drawn on the account of a trust called the "Paul E. Hall 1987 Revocable UTD Trust [for the benefit of] Charles E. Myers, II." A handwritten notation on the memorandum line of the check states that the check represents contributions from the trustee of the trust (and signer of the check), Paul E. Hall, and from the beneficiary of the trust, Charles E. Myers, II. The check does not indicate the amount of each person's contribution. The Committee attributed the contribution to Mr. Hall and Mr. Myers in equal parts -- $1,000 each.

In the Interim Audit Report, the Audit staff recommended that the Committee provide documentation verifying the ownership of the funds contained in the trust account, that the beneficiary had knowledge of the contribution and that the contribution was made voluntarily. In a June 1, 1993 letter, the Candidate identified Mr. Myers as his son. At the same time, the Committee submitted to the Audit staff a letter from Mr. Myers stating that $1,000 of the check amount represented a contribution from him, that the contribution was made voluntarily and with his knowledge, and that he had sufficient control over the funds in the account to make the contribution. This letter appears to satisfy the requirements of 11 C.F.R. § 110.1(i)(2) with respect to $1,000 of the $2,000, the portion that the Committee attributed to Mr. Myers.

By contrast, the Committee has not demonstrated the permissibility of the $1,000 portion of the contribution that it

9504321882

attributed to Mr. Hall. Contributions made with trust funds normally are attributed to the trust's beneficiaries for disclosure and contribution limitation purposes. See Advisory Opinion 1981-52; Advisory Opinion 1978-7. In his June 1, 1993 letter, Mr. Bates stated that Mr. Hall had been out of the country, but would provide a statement regarding the trust account. To date, however, neither Mr. Hall nor the Committee has provided any documentation regarding the ownership of the funds in the trust account or Mr. Hall's authority to use trust funds to make contributions in his own name. As such, it appears that the check drawn on the trust may constitute an excessive contribution from Mr. Myers.

3. Facially Excessive Contributions

As previously discussed, the Act establishes a contribution limit of $1,000 per individual per election. 2 U.S.C. § 441a(a)(1)(A). The Audit Division's referral to this Office identifies several contributions that, on their face, exceed this limit. Two such contributions exceed the individual contribution limit by sufficiently large amounts to warrant mention; David L. Bain gave $3,700 to Mr. Bates' 1990 primary campaign and $2,000 to Mr. Bates' 1990 general election campaign and Sami I. Bandak gave $2,100 to Mr. Bates' 1990 primary campaign.8/

8/ As discussed in footnote 7, supra, Mark A. Battaglia's $5,000 loan to the Candidate apparently constitutes an excessive contribution; however, the Battaglia loan raises different issues from those raised by the excessive contributions discussed in this section, and thus will be discussed separately, in section C.1., infra.

9 6 5 4 3 7 2 1 8 0 7

4. Conclusion

Based on the foregoing, it appears that the Committee accepted $17,460 in excessive contributions. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 441a(f).

It further appears that David L. Bain and Sami I. Bandak made excessive contributions totaling $3,700 and $1,100, respectively. However, in light of the amounts involved and the age of the apparently excessive contributions, the Office of General Counsel believes that Commission resources would best be utilized by directing further enforcement action against the Committee rather than Mr. Bain and Mr. Bandak. As such, the Office of General Counsel recommends that the Commission find reason to believe that David L. Bain and Sami I. Bandak violated 2 U.S.C. § 441a(a)(1)(A), but take no further action. If the Commission approves this recommendation, the notification letters to Mr. Bain and Mr. Bandak will contain appropriate admonishment language.

C. LOAN TRANSACTIONS

Under the Act, a loan is a contribution. 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.7(a)(1). Therefore, a loan to a candidate or a committee is subject to the Act's $1,000 individual contribution limitation and the prohibition against corporate contributions. 2 U.S.C. § 441a(a)(1)(A); 2 U.S.C. § 441b(a). The legality of a loan is determined at the time the loan is made. 11 C.F.R. § 100.7(a)(1)(i)(B). As such,

9604372184

a loan that exceeds the contribution limitation is unlawful whether or not it is repaid. 11 C.F.R. § 100.7(a)(1)(i)(A).

The Act does not limit a candidate's contributions to his or her own campaign; thus, the $1,000 contribution limitation does not apply to loans made from a candidate's personal funds. 11 C.F.R. § 110.10. However, a candidate who makes a contribution or an expenditure from funds that are not his personal funds violates Commission regulations. 11 C.F.R. § 110.9(a). So, too, does a committee that accepts such a contribution. Id.

The Committee reported receiving four loans from the Candidate totaling $30,300, including one loan for $10,000 and three other loans totaling $20,300. The Audit staff determined that the $10,000 loan actually consisted of two $5,000 checks, a cashier's check from the San Diego National Bank and a personal check from Mark A. Battaglia to Mr. Bates. Both checks were made payable to "Jim Bates;" however, they were deposited in the Committee's checking account. The remaining three loans, totaling $20,300, were drawn on Mr. Bates' checking account at the U.S. House of Representatives Bank.

1. Battaglia Check

The personal check from Mark Battaglia to Mr. Bates bears the handwritten notation "loan" on the memorandum line.9/ Accordingly, in the Interim Audit Report, the Audit staff

9/ Although the evidence currently available to this Office does not identify Mr. Battaglia or explain his relationship to Mr. Bates, we anticipate that this information will be revealed during the investigation into this matter.

9604321805

requested the Committee to provide evidence that the portion of Mr. Bates' loan to the Committee represented by Mr. Battaglia's check was made with the Candidate's personal funds. In his response to the Interim Audit Report, Mr. Bates stated that Mr. Battaglia's check did not constitute a loan to the Committee. Rather, he stated that the $5,000 check represented a personal loan to him from Mr. Battaglia, which had been included with the Committee's bank records "by mistake." Mr. Bates further stated that the loan has been repaid. However, Mr. Bates did not provide any evidence to support these assertions. Thus, this transaction appears to be a contribution to the campaign from Mr. Battaglia rather than a loan from Mr. Bates. See 11 C.F.R. § 110.10(b)(1) (defining candidate's "personal funds" as those he controlled prior to becoming a candidate).

To date, the Committee has provided no evidence that the source of the loan was the Candidate's personal funds. On the contrary, the evidence indicates that Mr. Battaglia was the source of the funds. As such, the loan from Mr. Battaglia represents an excessive contribution to the Bates Committee.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, accepted an excessive contribution from Mark A. Battaglia, in violation of 2 U.S.C. § 441a(f). The Office of General Counsel further recommends that the Commission find reason to believe that Mark A. Battaglia made an excessive contribution to the Committee, in violation of 2 U.S.C. § 441a(a)(1)(A).

9604321806

2. San Diego National Bank Check

The Act prohibits banks from making contributions or expenditures in connection with elections for federal office. 2 U.S.C. § 441b(a). However, a bank loan to a candidate or a committee to finance a campaign is not a contribution from the lending institution if the loan is made in accordance with applicable banking laws and regulations and in the ordinary course of business. 11 C.F.R. § 100.7(b)(11). A loan will be deemed to have been made in the ordinary course of business if it satisfies four requirements: (1) the loan bears the usual and customary interest rate for the type of loan involved; (2) the loan is made on a basis which assures repayment; (3) the loan is evidenced by a written instrument; and (4) the loan is subject to a due date or amortization schedule. Id. Such a loan nevertheless must be reported by the recipient committee in accordance with 11 C.F.R. § 104.3(a).

As previously noted, the Bates Committee reported receiving a $10,000 loan from the Candidate, $5,000 of which the audit disclosed to be comprised of a certified check from the San Diego National Bank to Mr. Bates. In the Interim Audit Report, the Audit staff recommended that the Committee identify the purchaser of the certified check and the source of funds used to effect the purchase. In response to the Interim Audit Report, the Committee provided a letter from the Bank stating that the certified check represents the proceeds of a loan to Mr. Bates. Attachment 2. The Committee concedes that Mr. Bates used the loan proceeds for his campaign. However, documentation

9504372180 7

establishing that the loan conforms to the requirements of 11 C.F.R. § 100.7(b)(11) has not been provided.10/

In light of the foregoing, this Office recommends that the Commission find reason to believe that the Bates Committee accepted a prohibited contribution, in the form of a loan, from San Diego National Bank in violation of 2 U.S.C. § 441b(a). This Office further recommends that the Commission find reason to believe that San Diego National Bank made a prohibited contribution, in the form of a loan, to the Bates Committee in violation of 2 U.S.C. § 441b(a).

3. Checks Drawn on Mr. Bates' Account at the House of Representatives Bank

As described previously, Mr. Bates made three loans to the Committee in the form of checks drawn on his account at the House of Representatives Bank. The Interim Audit Report requested the Committee to demonstrate that the funds underlying these loans actually were Mr. Bates' personal funds. The Committee did not provide any such evidence. In fact, the only reference that either the Committee or the Candidate made to these loans was Mr. Bates' statement, in his June 1, 1993 letter, that "[a]ll 4 loans [reported by the Committee as being from the Candidate] were drawn on the Candidate's United States House of Representatives bank account." As the foregoing discussion of the Battaglia loan and the San Diego National Bank

10/ It should be noted that the Committee's treasurer, Sandra Kennedy, apparently is employed by the Bank, and the President/CEO of the Bank, Murray L. Galinson, contributed $1,000 to the Committee.

9604372188

loan show, Mr. Bates' statement is not accurate. Moreover, even if his statement were accurate, it would not resolve the underlying question regarding the source of funds for the three loans drawn on Mr. Bates' House Bank account.

Mr. Bates has stated publicly that he had insufficient funds in his House Bank account to make the loans to his campaign committee, and that he funded the loans by use of overdrafts. The Los Angeles Times, for example, reported that Mr. Bates admitted that at least three of his loans to the Committee -- for $18,000 -- were overdrafts, and that the actual total may have been higher. Leonard Bernstein, Bates Used Overdrafts As Campaign Loans, Los Angeles Times, March 21, 1992. A similar report appeared in Roll Call. See also Glenn R. Simpson, Members on List of Bank Abusers Loaned Funds to Own Campaigns, Roll Call, March 19, 1992.11/

The foregoing indicates that Mr. Bates' loans to the Committee may not have been made with his personal funds, as provided in 11 C.F.R. § 110.10. Therefore, this Office recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 11 C.F.R. § 110.9(a) by accepting improper loans from Jim Bates, and that Jim Bates violated 11 C.F.R. § 110.9(a) by making contributions from funds other than personal funds.

11/ These reports also state that Mr. Bates was cited by the House Ethics Committee for abuse of the House Bank, and that he wrote 89 overdraft checks totaling over $170,000 during a 30 month period ending in 1990. Id.

9604321809

Although the United States House of Representatives Bank was the source of funds for the loans in issue here, we do not recommend that the Commission take any action against the House Bank. First, as a legal matter, it appears that the House Bank is not covered by the contribution limits of the Act. The House Bank is not a person as defined in 2 U.S.C. § 431(11); thus, the contribution limits imposed by 2 U.S.C. § 441a(a) do not apply to it.12/ Second, as a practical matter, the House Bank is defunct and cannot become involved in similar situations in the future. The demise of the House Bank also poses substantial problems for an investigation; for example, procuring documents likely would prove difficult, if not impossible.13/ Moreover, even if the Commission were to find that the House Bank violated the Act or the Commission's regulations, no entity remains against which the Commission could take action.

9604372810

12/ The House Bank does not fit easily into any of the categories of entities that the Act includes in the definition of a "person." See 2 U.S.C. § 431(11). For example, it is neither an "individual" nor a "corporation." Arguably, the House Bank could be characterized as an "organization." However, the Act expressly states that the term "person . . . does not include the Federal Government or any authority of the Federal Government." Id. We have been advised that the Department of Justice considers the House Bank to have been a part of the Federal Government and House Bank funds used to cover overdrafts to have been U.S. Treasury funds. Accordingly, as a part of the Federal Government, the House Bank would seem to be excluded from the coverage of the Act.

13/ In an attempt to overcome this difficulty, we intend to seek access to House Bank documents that are in the possession of the Justice Department as a result of the criminal investigation into House Bank overdrafts.

4. Reporting of Loans Received

The Act and Commission regulations provide that a candidate's authorized committee must report all loans made to the committee by the candidate or any other person. 2 U.S.C. §§ 434(b)(2)(G) and (H); 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(3)(vii). The Committee appears to have violated this requirement.

The Committee reported that Mr. Bates loaned the Committee $30,300; however, as discussed previously, the funds for those loans actually originated with Mr. Battaglia, San Diego National Bank and the House of Representatives Bank. Accordingly, the reports that the Committee filed do not accurately state the source of funds for the loans in question.

In light of the foregoing, it appears that the disclosure reports filed by the Committee are not accurate. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. §§ 434(b)(2) and (3).14/

9504321811

14/ The Audit staff also reported that the Committee failed to: (1) properly itemize the $30,300 in loans purportedly received from Mr. Bates on Schedule A (Itemized Receipts); (2) properly itemize $3,000 in loans from sources other than the Candidate on Schedule A or Schedule C (Loans); and (3) report continuously loans totaling $2,500 from sources other than the Candidate on Schedule C. The Office of General Counsel believes that no action is warranted with respect to the Committee's failure to properly itemize these loans.

Following the exit conference, based upon a list provided to the Committee by the Audit staff, the Committee filed amended reports including Schedules C that itemized the foregoing loans. Although the Committee did not amend its Schedules A, the public record now clearly reflects the Committee's characterization of the loans. Moreover, because the information contained in the Committee's amended Schedules C is not accurate regarding the

D. CHECKS PAID ON INSUFFICIENT FUNDS

The Act prohibits contributions from banks or corporations. 2 U.S.C. § 441b(a). Commission regulations provide that an overdraft made on a committee checking account shall be considered a contribution by a bank unless three conditions are met: (1) the overdraft is made on an account that is subject to overdraft protection; (2) the overdraft is subject to a definite interest rate that is usual and customary; and (3) there is a definite repayment schedule. 11 C.F.R. § 100.7(b)(11).

The Committee maintained its bank account at the San Diego National Bank. The Audit staff reports that the Bank honored 32 checks totaling $178,639.49 at times when the Committee's account contained insufficient funds. However, the Audit staff also reports that the Bank declined to honor 17 NSF checks totaling $59,726. These apparently contradictory actions often occurred on the same day. For example, on May 31, 1990 -- while the account was overdrawn -- the Bank honored a check for $11,259, but returned checks for $9,748 and $4,300. Similarly, on June 6, 1990, the Bank honored checks totaling $5,472, but returned checks for $2,000 and $3,396. Finally, on November 5, 1990, the Bank honored five checks totaling $3,396 for which there were insufficient funds in the Committee's account, but returned four checks totaling $11,868.

9604321812

(Footnote 14 continued from previous page)
source of funds for the loans reportedly made by Mr. Bates, no purpose would be served by compelling the Committee to submit Schedules A containing the same information.

The Audit staff reports that the Bank assessed a $12 overdraft fee for each NSF check that it honored. However, the checks apparently were not subject to a definite interest rate or a definite repayment schedule. See 11 C.F.R. § 100.7(b)(11).

The Interim Audit Report recommended that the Committee provide evidence -- such as a statement from the bank -- demonstrating that the overdrafts should not be considered prohibited contributions by the Bank. In response, the Committee submitted a letter from Murray L. Galinson, President/CEO of San Diego National Bank, stating that:

> overdrafts were handled either by a deposit being made to cover the overdraft before the check was returned or the check was returned where there was not a sufficient deposit. To our knowledge that procedure was followed without exception and no checks were honored unless deposits were made to cover them in full.
>
> I might add that has always been the procedure followed by our bank when we are involved in political candidates' campaign accounts.

The Audit staff advises that Mr. Galinson's letter is not accurate. Rather, a lag of one to three days appears to have elapsed from the time that the Bank honored the Committee's overdrafts to the time the Committee deposited funds to cover the checks. For example, on Thursday, September 20, 1990, the Bank honored the Committee's check number 11480 in the amount of $35,000 -- which caused the Committee's account to be

9604372181

overdrawn by $2,122. However, the Committee's account did not become positive again until Monday, September 24, 1990.15/

In addition, as noted previously, there may be a connection between the Bank and the Committee. The Committee's treasurer, Sandra Kennedy, apparently is employed by the Bank. Also, Mr. Galinson contributed $1,000 to the Committee. This raises a question whether the Bank afforded the Committee preferential treatment.

Based on the foregoing, it appears that the Committee received $178,639.49 in prohibited contributions from San Diego National Bank, in the form of overdrawn checks, in violation of the Act.16/ The Office of General Counsel therefore recommends that the Commission find reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, and San Diego National Bank violated 2 U.S.C. § 441b(a).

E. REQUIRED 48 HOUR NOTICES

A candidate or committee must notify the Clerk of the House of Representatives within 48 hours after receiving a contribution of $1000 or more, if that contribution is received less than twenty days and more than 48 hours before an election. 2 U.S.C. § 434(a)(6)(A). See also 11 C.F.R. § 104.5(f). Such notification shall be in writing and shall

---

15/ It also should be noted that the Audit staff could not verify the Committee's check register balance at the time of the overdrafts because the Committee failed to provide the Audit staff with its 1990 check register. The Committee did provide its 1989 check register.

16/ It should be noted, however, that the Committee ultimately deposited sufficient funds to cover all the overdrawn checks.

2604321814

identify the contributor, the amount of the contribution, and the date received. Id. The notification shall be in addition to the reporting of the contributions on the post-election report. Id.

The primary election in the State of California was held on June 5, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1000 or more received between May 17, 1990 and June 2, 1990. During this period, the Committee received five contributions totaling $5,000 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

The general election in the State of California was held on November 6, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1000 or more received between October 18, 1990 and November 3, 1990. During this period, the Committee received twelve contributions totaling $14,925 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

During the exit conference, the Committee's assistant treasurer conceded that she had misinterpreted the regulation that sets forth the 48 hour notice requirement. In addition, the Committee failed to demonstrate that it had a system in place to assure compliance with the 48 hour reporting requirement.

9604372185

Based on the foregoing, it appears that the Committee failed to timely notify the Clerk of the House of Representatives of contributions of $1,000 or more that the Committee received between two and twenty days before the primary and general elections. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

F. ITEMIZATION OF EXPENDITURES

Under the Act, a Committee must report the name and address of each person to whom the Committee made an aggregate expenditure in excess of $200 during the calendar year to meet an operating expense, together with the date, amount and purpose of such operating expenditure. 2 U.S.C. § 434(b)(5)(A). See also 11 C.F.R. 104.3(b)(4)(i).

The Audit staff calculated that approximately 3.23% of the Committee's 1989 expenditures and 19.32% of the Committee's 1990 expenditures were improperly itemized.17/ (The Audit staff has advised this Office that virtually all the improper itemizations involved expenditures that individually were less than $200 but aggregated to more than $200 to the recipient.) Accordingly, the Interim Audit Report recommended that the Committee file amended Schedules B (Itemized Disbursements) to disclose the unitemized expenditures. Rather than do so, however, the Committee asserted that it already had complied

17/ The Audit staff based its calculation upon a sample review of 443 expenditures in 1989 and 607 expenditures in 1990.

9604372816

with the recommendation by filing amended reports on June 4, 1993, after the exit conference. The Audit staff advises that the amended reports do not include the requisite itemization.

In addition, at the exit conference, the Audit staff informed the Committee that it failed to itemize as disbursements two in-kind contributions totaling $1,498[18]/ and five other expenditures totaling $48,500, and provided the Committee with a schedule listing the unitemized expenditures. These disbursements also were not included in the Committee's reported total expenditures.

As noted, the Committee filed amended reports after the exit conference. However, the Audit staff reports that the amended filings only corrected the failure to itemize two of the aforementioned contributions totaling $29,000.

Based on the foregoing, it appears that the Committee failed to itemize $20,998 in expenditures that were identified on the schedule that the Audit staff provided to the Committee. It further appears that the Committee failed to itemize the expenditures that were identified during the sample review conducted by the Audit staff. Therefore, the Office of General Counsel recommends that the Commission find reason to believe

9604372187

18/ In order to ensure an accurate balance sheet, 11 C.F.R. § 104.13(a) states that in-kind contributions must be reported as both contributions and expenditures, as provided in 11 C.F.R. §§ 104.3(a) and (b), which, respectively, require the itemization of contributions and disbursements aggregating more than $200 to or from a single person in a calendar year. The Audit staff has advised the Office of General Counsel that the in-kind contributions in issue here were properly reported as contributions, but were not properly reported as expenditures.

that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 434(b)(5)(A).

G. RECORDKEEPING FOR DISBURSEMENTS

The Act requires the treasurer of a political committee to keep an account of the name and address of every person to whom a disbursement is made, the date, amount and purpose of the disbursement and, for each disbursement over $200, a receipt, invoice or canceled check. 2 U.S.C. § 432(c)(5); see also 11 C.F.R. § 102.9(b)(2).

The Committee provided the Audit staff with copies of its 1989 bank statements and check registers. However, the Committee did not maintain canceled checks for disbursements made during calendar year 1989. To remedy this deficiency, the Interim Audit Report recommended that the Committee procure copies of the checks from its bank and submit them to the Audit staff. The Committee declined to procure the check copies, stating that it lacked sufficient funds to do so. The Audit Division reports that the absence of the canceled checks significantly limited its review of $62,222 in Committee disbursements during 1989.19/

Based on the foregoing, it appears that the Committee failed to maintain proper recordkeeping for disbursements, in violation of the Act. Therefore, the Office of General Counsel

---

19/ The Audit staff reports that the check register contained sufficient information to satisfy the Committee's recordkeeping obligations with respect to fifteen disbursements (of under $200 each) totaling $930. Those disbursements are not included in the $62,222.

9604372181-8

recommends that the Commission find reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 432(c)(5).

III. PLAN FOR FURTHER INVESTIGATION

Provided the Commission finds reason to believe as recommended by this report, this Office will need to obtain additional information regarding the following transactions: (1) the loans from Jim Bates to the Bates Committee that that were drawn on Mr. Bates' account at the House of Representatives Bank; (2) the loan from Mark A. Battaglia to Jim Bates; (3) the loan from San Diego National Bank to Jim Bates; and (4) San Diego National Bank's treatment of Bates Committee checks drawn on insufficient funds.

During the audit, the Committee did not provide complete or timely responses to the Audit Division's information requests. As a consequence, to ensure that we receive complete cooperation with the investigation, we propose to serve interrogatories and document requests on Mr. Bates, Mr. Battaglia and San Diego National Bank. Additionally, depending upon the responses to our interrogatories and document requests, we may need to depose Mr. Bates and Mr. Battaglia, as those individuals are the best sources of information regarding the transactions at issue.20/

9604372189

20/ In this regard, we note that the violations in this matter are potentially serious; for example, it appears that Mr. Bates funded his campaign with over $30,000 in House Bank overdrafts, and that Mr. Bates reported making a loan to his campaign that apparently was funded by an excessive contribution from Mr. Battaglia. Mr. Bates also benefited from the Bank's having honored NSF checks totaling over $178,000.

In light of the foregoing, this Office recommends that the Commission approve the attached subpoenas to produce documents and orders to submit written answers directed to Mr. Bates, San Diego National Bank21/ and Mr. Battaglia. See Attachment 4. We further recommend that the Commission approve the attached deposition subpoenas to Mr. Bates and Mr. Battaglia. Id. We note, however, that we do not intend to serve the deposition subpoenas until we have reviewed the responses to the interrogatories and document requests.

IV. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a).

3. Find reason to believe that Jim Bates violated 11 C.F.R. § 110.9(a) by making contributions to Jim Bates for Congress using funds other than his personal funds.

4. Find reason to believe that San Diego National Bank made a prohibited contribution to Jim Bates for Congress in the form of a loan to Jim Bates in violation of 2 U.S.C. § 441b(a).

5. Find reason to believe that San Diego National Bank made prohibited contributions to Jim Bates for Congress by honoring checks drawn on insufficient funds in violation of 2 U.S.C. § 441b(a).

21/ We have determined that the information requested in the subpoena and order directed to San Diego National Bank may be protected by the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3401 et seq. Accordingly, if the Commission approves the subpoena and order directed to the Bank, this Office will take the steps necessary to ensure compliance with the procedural requirements of the Financial Privacy Act.

9604372180

6. Find reason to believe that Mark A. Battaglia made a contribution in excess of his contribution limit to Jim Bates for Congress in the form of a loan to Jim Bates in violation of 2 U.S.C. § 441a(a)(1)(A).

7. Find reason to believe that David L. Bain made a contribution in excess of his contribution limit to Jim Bates for Congress in violation of 2 U.S.C. § 441a(a)(1)(a), but take no further action.

8. Find reason to believe that Sami I. Bandak made a contribution in excess of his contribution limit to Jim Bates for Congress in violation of 2 U.S.C. § 441a(a)(1)(a), but take no further action.

9. Approve the attached Factual and Legal Analyses.

10. Approve the attached subpoenas to produce written documents and orders to submit written answers.

11. Approve the attached deposition subpoenas.

12. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

12/7/94
Date

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachments
1. Referral Materials
2. Letter from San Diego National Bank to Jim Bates for Congress Committee
3. Factual and Legal Analyses
4. Subpoenas and Orders

9504372180

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	LRA #435
Jim Bates for Congress, Inc. and	)	
Sandra Kennedy, as Treasurer;	)	(MUR 4166)
Jim Bates;	)	
Mark A. Battaglia;	)	
David L. Bain;	)	
Sami I. Bandak;	)	
San Diego National Bank	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 10, 1995, do hereby certify that the Commission took the following actions with respect to the above-captioned referral:

1. Open a MUR.

2. Find reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a).

3. Find reason to believe that Jim Bates violated 11 C.F.R. § 110.9(a) by making contributions to Jim Bates for Congress using funds other than his personal funds.

(continued)

9504372182

4. Find reason to believe that San Diego National Bank made a prohibited contribution to Jim Bates for Congress in the form of a loan to Jim Bates in violation of 2 U.S.C. § 441b(a).

5. Find reason to believe that San Diego National Bank made prohibited contributions to Jim Bates for Congress by honoring checks drawn on insufficient funds in violation of 2 U.S.C. § 441b(a).

6. Find reason to believe that Mark A. Battaglia made a contribution in excess of his contribution limit to Jim Bates for Congress in the form of a loan to Jim Bates in violation of 2 U.S.C. § 441a (a)(1)(A).

7. Find reason to believe that David L. Bain made a contribution in excess of his contribution limit to Jim Bates for Congress in violation of 2 U.S.C. § 441a(a) (1)(a), but take no further action.

8. Find reason to believe that Sami I. Bandak made a contribution in excess of his contribution limit to Jim Bates for Congress in violation of 2 U.S.C. § 441a(a)(1)(a), but take no further action.

(continued)

9604372183

9. Approve the Factual and Legal Analyses recommended in the General Counsel's report dated December 7, 1994.

10. Approve the subpoenas to produce written documents and orders to submit written answers as recommended in the General Counsel's December 7, 1994 report.

11. Approve the deposition subpoenas recommended in the General Counsel's December 7, 1994 report.

12. Approve the appropriate letters as recommended in the General Counsel's December 7, 1994 report.

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

Attest:

1-11-95
Date

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

9604372180 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166
Jim Bates

Dear Mr. Bates:

On January 10, 1995, the Federal Election Commission found that there is reason to believe you violated 11 C.F.R. § 110.9(a), a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, 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 or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be

9504372185

entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9604372186

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Jim Bates for Congress, Inc.

) MUR 4166

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Jim Bates
Route 2, Box 85
Homedale, Idaho 83628

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 24th day of January, 1995.

For the Commission,

Danny L. McDonald
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request
Questions

9604372187

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1989 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

9604372188

"You" shall mean the person or persons to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any loan from Mark A. Battaglia to you or to Jim Bates for Congress, Inc., including but not limited to a loan in the amount of $5000 made

96043721809

on or about May 25, 1990. This request includes, but is not limited to: correspondence in which the loan is mentioned; promissory notes and other documents setting forth the fact or the terms of the loan; canceled checks; and receipts reflecting repayment.

2. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any loan from San Diego National Bank to you or to Jim Bates for Congress, Inc., including but not limited to a loan in the amount of $5000 made on or about May 25, 1990. This request includes but is not limited to: correspondence in which the loan is mentioned; promissory notes and other documents setting forth the fact and/or the terms of the loan; canceled checks; and receipts reflecting repayment.

3. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any loan from you to Jim Bates for Congress, Inc., including but not limited to a loan in the amount of $10,000 made on or about May 29, 1990. This request includes but is not limited to: correspondence in which the loan is mentioned; promissory notes and other documents setting forth the fact and/or the terms of the loan; canceled checks; and receipts reflecting repayment.

IV. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

1. Identify any loan(s) you or Jim Bates for Congress, Inc. received from Mark A. Battaglia during the period from January 1, 1989 to December 31, 1990.

2. For each loan identified in response to Question 1:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged. Also, identify any collateral provided, along with an estimate of the value of that collateral and an explanation of how you determined that value;

B. State the purpose of the loan;

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to Mr. Battaglia by you or on your behalf, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance;

9504372180

D. State the date and describe the circumstances and content of all communications between you and Mr. Battaglia regarding or pertaining to the loan, at any time from January 1, 1989 to the present. In particular, recount all conversations during which you solicited the loan from Mr. Battaglia or Mr. Battaglia agreed to make the loan. Also, recount any subsequent communications between you and Mr. Battaglia, including but not limited to communications concerning repayment of the loan.

3. Identify any loan(s) you or Jim Bates for Congress, Inc. received from San Diego National Bank during the period from January 1, 1989 to December 31, 1990.

4. For each loan identified in response to Question 4:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged. Also, identify any collateral provided, along with an estimate of the value of that collateral and an explanation of how you determined that value;

B. State the purpose of the loan.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to San Diego National Bank by you or on your behalf, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance.

D. Identify all representatives of San Diego National Bank with whom you communicated regarding the loan, from January 1, 1989 to present. Also, state the date and describe the circumstances and content of each such communication.

5. Identify any loan(s) you made to Jim Bates for Congress, Inc. during the period from January 1, 1989 to December 31, 1990.

6. For each loan identified in response to Question 5:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged;

B. State the purpose of the loan;

9504372187 1

C. Identify the source of funds for the loan. If the loan was made from personal funds, identify the source of the personal funds used to make the loan. If the loan was drawn on your account at the United States House of Representatives Bank, state whether, at the time the loan was made, your account contained sufficient funds to make the loan, or whether the loan was funded, in whole or in part, by an overdraft. If the loan was funded, in whole or in part, by an overdraft, state whether, at the time you made the loan, you knew your account contained insufficient funds to make the loan.

D. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to you, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance.

7. Identify the individuals who were responsible for Jim Bates for Congress, Inc.'s compliance with the federal election laws and Federal Election Commission regulations concerning contribution limitations.

8. Describe the procedures utilized by Jim Bates for Congress, Inc. to assure compliance with the federal election laws and Federal Election Commission regulations concerning contribution limitations.

9604372182

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jim Bates MUR 4166

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act ("the Act") establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). Under the Act, a loan is a contribution. 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.7(a)(1). Therefore, a loan to a candidate or a committee is subject to the Act's $1,000 individual contribution limitation. 2 U.S.C. § 441a(a)(1)(A).

The Act does not limit a candidate's contribution of personal funds to his or her own campaign; thus, the $1,000 contribution limitation does not apply to loans made from a candidate's personal funds. 11 C.F.R. § 110.10. However, a candidate who makes a contribution from funds that are not his or her personal funds violates Commission regulations. See 11 C.F.R. § 110.9(a).

9604372187

Jim Bates for Congress, Inc. ("the Committee") is the principal campaign committee of Jim Bates, who ran for re-election to Congress in the 44th district of California in 1990. The Committee reported receiving four loans from Mr. Bates totaling $30,300, including three loans totaling $20,300 that were drawn on Mr. Bates' checking account at the U.S. House of Representatives Bank. Mr. Bates has stated publicly that he had insufficient funds in his House Bank account to make the loans to his campaign committee, and that he funded the loans by use of overdrafts. The Los Angeles Times, for example, reported that Mr. Bates admitted that three of his loans to the Committee -- for at least $18,000 -- were overdrafts, and that the actual total may have been higher. Leonard Bernstein, Bates Used Overdrafts As Campaign Loans, Los Angeles Times, March 21, 1992. A similar report appeared in Roll Call. See Glenn R. Simpson, Members on List of Bank Abusers Loaned Funds to Own Campaigns, Roll Call, March 19, 1992.

The foregoing indicates that Mr. Bates' loans to the Committee may not have been made with his personal funds, as provided in 11 C.F.R. § 110.10. Therefore, there is reason to believe that Jim Bates violated 11 C.F.R. § 110.9(a) by making contributions to the Committee from funds other than personal funds.

9604372184

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sandra Kennedy, Treasurer
Jim Bates for Congress
2727 De Anza Road, K-2
San Diego, California 92109

RE: MUR 4166
Jim Bates for Congress and
Sandra Kennedy as
Treasurer

Dear Ms. Kennedy:

On January 10, 1995, the Federal Election Commission found that there is reason to believe that Jim Bates for Congress ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

9604372185

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless the bank notifies the Commission in writing that it wishes the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

cc: Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

9604372186

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jim Bates for Congress, Inc. and Sandra Kennedy as Treasurer

MUR 4166

A. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

B. PROHIBITED CONTRIBUTIONS

The Federal Election Campaign Act ("the Act") prohibits corporations and labor organizations from making contributions in connection with an election. 2 U.S.C. § 441b(a). Commission regulations provide that a contribution that appears to be prohibited must be refunded within thirty days, unless the committee determines that the contribution is legal. 11 C.F.R. § 103.3(b)(1). In addition, to ensure that prohibited contributions are not used by a committee, a committee either must establish a separate account for such contributions or maintain sufficient funds in its account to make all necessary refunds. 11 C.F.R. § 103.3(b)(4).

The Commission conducted an audit of the activities of Jim Bates for Congress, Inc. ("the Committee") during the 1990 election cycle. See 2 U.S.C. § 438(b). Upon review of the Committee's contributor records, the Audit staff identified

9604372187

fifteen contributions totaling $4,475 from apparently prohibited sources. These included nine corporate contributions totaling $3,600 and six contributions from labor organizations totaling $875.

In the Interim Audit Report, the Audit staff recommended that the Committee provide evidence demonstrating that the foregoing contributions were not prohibited or that they were refunded within 30 days as provided in 11 C.F.R. § 103.3(b)(4). The Committee did not provide any such evidence. Alternatively, the Audit staff recommended that the Committee refund the prohibited contributions and provide evidence that the refunds were made. Committee reports filed after the audit period do not disclose any contribution refunds.

In response to the Interim Audit Report, the Committee stated that the apparently prohibited contributions represented "mistakes" that would be "reconciled," "reversed" or "corrected." It is unclear what the Committee meant by this statement. In any event, the Committee has not provided any evidence that the apparently prohibited contributions were lawful or that it refunded the contributions.

Based on the foregoing, it appears that the Committee accepted prohibited contributions totaling $4,475 in violation of the Act. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 441b(a).

9604372188

C. **EXCESSIVE CONTRIBUTIONS**

1. **Contributions Improperly Attributed To Previous Elections**

The Act establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). Similarly, a candidate or committee may not knowingly accept a contribution in excess of $1,000. 2 U.S.C. § 441a(f). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2). In addition, a contribution may be designated for a previous election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

The Committee received apparently excessive contributions totaling $19,710 from twenty-eight individuals and one unregistered political committee. Of that amount, $12,185 was received during the period between the 1988 general election and the 1990 primary election, but was attributed by the Committee to the 1988 general election. The remaining $7,525 was received during the period between the 1990 primary election and the 1990 general election, but was attributed to the 1990 primary. See generally 11 C.F.R. § 110.1(b).

Because the Committee attributed the contributions to elections that were over, the Interim Audit Report recommended that the Committee provide written designations from the

9604372189

contributors and demonstrate that it had net outstanding debts from the 1988 general election and the 1990 primary election at the time the contributions attributed to those elections were received. See 11 C.F.R. §§ 110.1(b)(2), 110.1(b)(3)(i). In a series of correspondence between June 25, 1993 and December 15, 1993, the Committee provided the Audit Division with letters from seven contributors reattributing a total of $3,250 to their spouses. However, the Committee did not submit reattribution letters for the remaining excessive contributions or provide any information demonstrating that those contributions satisfied the requirements of 11 C.F.R. § 110.1(b)(2) and 11 C.F.R. § 110.1(b)(3)(i). Accordingly, the Committee appears to have accepted a total of $16,460 in excessive contributions with respect to the 1988 general election and the 1990 primary election.

2. Contribution From A Trust Account

A minor child may contribute to a candidate or political committee -- subject to the same $1,000 per election contribution limit as an adult -- provided the decision to contribute is made knowingly and voluntarily, the funds contributed are owned or controlled exclusively by the minor (such as income earned by the minor or the proceeds of a trust for which the child is the beneficiary) and the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(i)(2).

2604372180

On or about May 28, 1990, the Committee received a contribution check for $2,000 drawn on the account of a trust called the "Paul E. Hall 1987 Revocable UTD Trust [for the benefit of] Charles E. Myers, II." A handwritten notation on the memorandum line of the check states that the check represents contributions from the trustee of the trust (and signer of the check), Paul E. Hall, and from the beneficiary of the trust, Charles E. Myers, II. The check does not indicate the amount of each person's contribution. The Committee attributed the contribution to Mr. Hall and Mr. Myers in equal parts -- $1,000 each.

In the Interim Audit Report, the Audit staff recommended that the Committee provide documentation verifying the ownership of the funds contained in the trust account, that the beneficiary had knowledge of the contribution and that the contribution was made voluntarily. In a June 1, 1993 letter, the Candidate identified Mr. Myers as his son. At the same time, the Committee submitted a letter from Mr. Myers stating that $1,000 of the check amount represented a contribution from him, that the contribution was made voluntarily and with his knowledge, and that he had sufficient control over the funds in the account to make the contribution. This letter appears to satisfy the requirements of 11 C.F.R. § 110.1(i)(2) with respect to $1,000 of the $2,000, the portion that the Committee attributed to Mr. Myers.

By contrast, the Committee has not demonstrated the permissibility of the $1,000 portion of the contribution that it

9504321811

attributed to Mr. Hall. Contributions made with trust funds normally are attributed to the trust's beneficiaries for disclosure and contribution limitation purposes. See Advisory Opinion 1981-52; Advisory Opinion 1978-7. In his June 1, 1993 letter, Mr. Bates stated that Mr. Hall had been out of the country, but would provide a statement regarding the trust account. To date, however, neither Mr. Hall nor the Committee has provided any documentation regarding the ownership of the funds in the trust account or Mr. Hall's authority to use trust funds to make contributions in his own name. As such, it appears that the check drawn on the trust constitutes a $1,000 excessive contribution from Mr. Myers.

3. Conclusion

Based on the foregoing, it appears that the Committee accepted $17,460 in excessive contributions. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 441a(f).

D. LOAN TRANSACTIONS

Under the Act, a loan is a contribution. 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.7(a)(1). Therefore, a loan to a candidate or a committee is subject to the Act's $1,000 individual contribution limitation and the prohibition against corporate contributions. 2 U.S.C. § 441a(a)(1)(A); 2 U.S.C. § 441b(a). The legality of a loan is determined at the time the loan is made. 11 C.F.R. § 100.7(a)(1)(i)(B). As such, a loan that exceeds the contribution limitation is unlawful whether or not it is repaid. 11 C.F.R. § 100.7(a)(1)(i)(A).

9604372182

The Act does not limit a candidate's contributions to his or her own campaign; thus, the $1,000 contribution limitation does not apply to loans made from a candidate's personal funds. 11 C.F.R. § 110.10. However, a candidate who makes a contribution from funds that are not his personal funds violates Commission regulations. 11 C.F.R. § 110.9(a). So, too, does a committee that accepts such a contribution. Id.

The Committee reported receiving four loans from Mr. Bates totaling $30,300, including one loan for $10,000 and three other loans totaling $20,300. The $10,000 loan actually consisted of two $5,000 checks, a cashier's check from San Diego National Bank and a personal check from Mark A. Battaglia to Mr. Bates. Although both checks were made payable to "Jim Bates," they were deposited in the Committee's checking account. The remaining three loans, totaling $20,300, were drawn on Mr. Bates' checking account at the U.S. House of Representatives Bank.

1. Battaglia Check

The personal check from Mark Battaglia to Mr. Bates bears the handwritten notation "loan" on the memorandum line. Accordingly, in the Interim Audit Report, the Audit staff requested the Committee to provide evidence that the portion of Mr. Bates' loan to the Committee represented by Mr. Battaglia's check was made with the Candidate's personal funds. In response, Mr. Bates stated that Mr. Battaglia's check did not constitute a loan to the Committee. Rather, he stated that the $5,000 check represented a personal loan to him from Mr. Battaglia, which had been included with the Committee's bank

9604372184 3

records "by mistake." Mr. Bates also stated that the loan had been repaid. However, Mr. Bates did not provide any evidence to support these assertions. Thus, the loan appears to represent a $5,000 contribution to the campaign from Mr. Battaglia rather than a loan from Mr. Bates. See 11 C.F.R. § 110.10(b)(1). Therefore, there is reason to believe that the Committee accepted an excessive contribution, in the form of a loan from Mark A. Battaglia, in violation of 2 U.S.C. § 441a(f).

2. San Diego National Bank Check

The Act prohibits banks from making contributions or expenditures in connection with elections for federal office. 2 U.S.C. § 441b(a). However, a bank loan to a candidate or a committee to finance a campaign is not a contribution from the lending institution if the loan is made in accordance with applicable banking laws and regulations and in the ordinary course of business. 11 C.F.R. § 100.7(b)(11). A loan will be deemed to have been made in the ordinary course of business if it satisfies four requirements: (1) the loan bears the usual and customary interest rate for the type of loan involved; (2) the loan is made on a basis which assures repayment; (3) the loan is evidenced by a written instrument; and (4) the loan is subject to a due date or amortization schedule. Id.

As previously noted, the Committee reported receiving a $10,000 loan from the Candidate, $5,000 of which was comprised of a certified check from the San Diego National Bank to Mr. Bates. In the Interim Audit Report, the Audit staff recommended that the Committee identify the purchaser of the certified check

9604372184

and the source of funds used to effect the purchase. In response, the Committee provided a letter from the Bank stating that the certified check represents the proceeds of a loan to Mr. Bates. The Committee thus concedes that Mr. Bates used the loan proceeds for his campaign. However, documentation establishing that the loan conforms to the requirements of 11 C.F.R. § 100.7(b)(11) has not been provided.

Therefore, there is reason to believe that the Committee accepted a prohibited contribution, in the form of a loan, from San Diego National Bank in violation of 2 U.S.C. § 441b(a).

3. Checks Drawn on Mr. Bates' Account at the House of Representatives Bank

Mr. Bates made three loans to the Committee in the form of checks drawn on his account at the House of Representatives Bank. The Interim Audit Report requested the Committee to demonstrate that the funds underlying these loans actually were Mr. Bates' personal funds. The Committee did not provide any such evidence. In fact, the only reference that either the Committee or Mr. Bates made to these loans was Mr. Bates' statement, in his June 1, 1993 letter, that "[a]ll 4 loans [reported by the Committee as being from the Candidate] were drawn on the Candidate's United States House of Representatives bank account." As the foregoing discussion of the Battaglia loan and the San Diego National Bank loan show, Mr. Bates' statement is not accurate. Moreover, even if his statement were accurate, it would not resolve the underlying question regarding

9604372181815

the source of funds for the three loans drawn on Mr. Bates' House Bank account.

Mr. Bates has stated publicly that he had insufficient funds in his House Bank account to make the loans to his campaign committee, and that he funded the loans by use of overdrafts. The Los Angeles Times, for example, reported that Mr. Bates admitted that at least three of his loans to the Committee -- for $18,000 -- were overdrafts, and that the actual total may have been higher. Leonard Bernstein, Bates Used Overdrafts As Campaign Loans, Los Angeles Times, March 21, 1992. A similar report appeared in Roll Call. See also Glenn R. Simpson, Members on List of Bank Abusers Loaned Funds to Own Campaigns, Roll Call, March 19, 1992.

The foregoing indicates that Mr. Bates' loans to the Committee may not have been made with his personal funds, as provided in 11 C.F.R. § 110.10. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 11 C.F.R. § 110.9(a) by accepting improper loans from Jim Bates.

4. Reporting of Loans Received

The Act and Commission regulations provide that a candidate's authorized committee must report all loans made to the committee by the candidate or any other person. 2 U.S.C. §§ 434(b)(2)(G) and (H); 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(3)(vii).

The Committee reported that Mr. Bates loaned the Committee $30,300; however, as discussed previously, the funds for those

9604372181 8 6

loans actually originated with Mr. Battaglia, San Diego National Bank and the House of Representatives Bank. Accordingly, the reports that the Committee filed do not accurately state the source of funds for the loans in question.

Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. §§ 434(b)(2) and (3).

E. CHECKS PAID ON INSUFFICIENT FUNDS

The Act prohibits contributions from banks. 2 U.S.C. § 441b(a). Commission regulations provide that an overdraft made on a committee checking account shall be considered a contribution by a bank unless three conditions are met: (1) the overdraft is made on an account that is subject to overdraft protection; (2) the overdraft is subject to a definite interest rate that is usual and customary; and (3) there is a definite repayment schedule. 11 C.F.R. § 100.7(b)(11).

The Committee maintained its bank account at the San Diego National Bank. The Audit staff reports that the Bank honored 32 checks totaling $178,639.49 at times when the Committee's account contained insufficient funds. However, the Audit staff also reports that the Bank declined to honor 17 NSF checks totaling $59,726. These apparently contradictory actions often occurred on the same day. For example, on May 31, 1990 -- while the account was overdrawn -- the Bank honored a check for $11,259, but returned checks for $9,748 and $4,300. Similarly, on June 6, 1990, the Bank honored checks totaling $5,472, but

9604372181 7

returned checks for $2,000 and $3,396. Finally, on November 5, 1990, the Bank honored five checks totaling $3,396 for which there were insufficient funds in the Committee's account, but returned four checks totaling $11,868.

The Audit staff reports that the Bank assessed a $12 overdraft fee for each NSF check that it honored. However, the checks apparently were not subject to a definite interest rate or a definite repayment schedule. See 11 C.F.R. § 100.7(b)(11).

The Interim Audit Report recommended that the Committee provide evidence demonstrating that the overdrafts should not be considered prohibited contributions by the Bank. In response, the Committee submitted a letter from Murray L. Galinson, President/CEO of San Diego National Bank, stating that:

> overdrafts were handled either by a deposit being made to cover the overdraft before the check was returned or the check was returned where there was not a sufficient deposit. To our knowledge that procedure was followed without exception and no checks were honored unless deposits were made to cover them in full.
>
> I might add that has always been the procedure followed by our bank when we are involved in political candidates' campaign accounts.

The Audit staff advises that Mr. Galinson's letter is not accurate. Rather, a lag of one to three days appears to have elapsed from the time that the Bank honored the Committee's overdrafts to the time the Committee deposited funds to cover the checks. For example, on Thursday, September 20, 1990, the Bank honored the Committee's check number 11480 in the amount

9563218

of $35,000 -- which caused the Committee's account to be overdrawn by $2,122. However, the Committee's account did not become positive again until Monday, September 24, 1990.

Based on the foregoing, it appears that the Committee received $178,639.49 in prohibited contributions from San Diego National Bank, in the form of overdrawn checks. Therefore, there is reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 441b(a).

F. REQUIRED 48 HOUR NOTICES

A committee must notify the Clerk of the House of Representatives within 48 hours after receiving a contribution of $1000 or more, if that contribution is received less than twenty days and more than 48 hours before an election. 2 U.S.C. § 434(a)(6)(A). See also 11 C.F.R. § 104.5(f). Such notification shall be in writing and shall identify the contributor, the amount of the contribution, and the date received. Id. The notification shall be in addition to the reporting of the contributions on the post-election report. Id.

The primary election in the State of California was held on June 5, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1000 or more received between May 17, 1990 and June 2, 1990. During this period, the Committee received five contributions totaling $5,000 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

9604372181819

The general election in the State of California was held on November 6, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1000 or more received between October 18, 1990 and November 3, 1990. During this period, the Committee received twelve contributions totaling $14,925 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

During the exit conference, the Committee's assistant treasurer conceded that she had misinterpreted the regulation that sets forth the 48 hour notice requirement. In addition, the Committee failed to demonstrate that it had a system in place to assure compliance with the 48 hour reporting requirement.

Based on the foregoing, it appears that the Committee failed to timely notify the Clerk of the House of Representatives of contributions of $1,000 or more that the Committee received between two and twenty days before the primary and general elections. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

G. ITEMIZATION OF EXPENDITURES

Under the Act, a Committee must report the name and address of each person to whom the Committee made an aggregate expenditure in excess of $200 during the calendar year to meet an operating expense, together with the date, amount and

9604372180

purpose of such operating expenditure. 2 U.S.C. § 434(b)(5)(A). See also 11 C.F.R. 104.3(b)(4)(i).

The Audit staff calculated that approximately 3.23% of the Committee's 1989 expenditures and 19.32% of the Committee's 1990 expenditures were improperly itemized.[1] Accordingly, the Interim Audit Report recommended that the Committee file amended Schedules B (Itemized Disbursements) to disclose the unitemized expenditures. Rather than do so, the Committee asserted that it already had complied with the recommendation by filing amended reports on June 4, 1993, after the exit conference. The amended reports, however, do not include the requisite itemization.

In addition, at the exit conference, the Audit staff informed the Committee that it failed to itemize as disbursements two in-kind contributions totaling $1,498 and five other expenditures totaling $48,500, and provided the Committee with a schedule listing the unitemized expenditures. These disbursements also were not included in the Committee's reported total expenditures.

As noted, the Committee filed amended reports after the exit conference. However, the Audit staff reports that the amended filings only corrected the failure to itemize two of the aforementioned contributions totaling $29,000.

Based on the foregoing, it appears that the Committee failed to itemize $20,998 in expenditures that were identified

1. The Audit staff based its calculation upon a sample review of 443 expenditures in 1989 and 607 expenditures in 1990.

9604372185 1

on the schedule that the Audit staff provided to the Committee. It further appears that the Committee failed to itemize the expenditures that were identified during the sample review conducted by the Audit staff. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 434(b)(5)(A).

H. RECORDKEEPING FOR DISBURSEMENTS

The Act requires the treasurer of a political committee to keep an account of the name and address of every person to whom a disbursement is made, the date, amount and purpose of the disbursement and, for each disbursement over $200, a receipt, invoice or canceled check. 2 U.S.C. § 432(c)(5); see also 11 C.F.R. § 102.9(b)(2).

The Committee provided the Audit staff with copies of its 1989 bank statements and check registers. However, the Committee did not maintain canceled checks for disbursements made during calendar year 1989. To remedy this deficiency, the Interim Audit Report recommended that the Committee procure copies of the checks from its bank and submit them to the Audit staff. The Committee declined to procure the check copies, stating that it lacked sufficient funds to do so. The Audit Division reports that the absence of the canceled checks significantly limited its review of $62,222 in Committee

9604372185 2

disbursements during 1989.[2]

Based on the foregoing, it appears that the Committee failed to maintain proper recordkeeping for disbursements. Therefore, there is reason to believe that the Committee and Sandra Kennedy, as treasurer, violated 2 U.S.C. § 432(c)(5).

9 5 0 4 3 7 2 1 8 3

2. The Audit staff reports that the check register contained sufficient information to satisfy the Committee's recordkeeping obligations with respect to fifteen disbursements (of under $200 each) totaling $930. Those disbursements are not included in the $62,222.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark A. Battaglia
1127 F Avenue
Coronado, CA 92118

RE: MUR 4166
Mark A. Battaglia

Dear Mr. Battaglia:

On January 10, 1995, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Submit Written Answers and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, 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 or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be

9504372185 4

entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9604372185 5

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 4166

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Mark A. Battaglia
1127 F Avenue
Coronado, California 92118

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 24th day of January, 1995.

For the Commission,

Danny L. McDonald
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request
Questions

9504321856

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1989 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

9504372198 57

"You" shall mean the person or persons to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any loan from you to Jim Bates or to Jim Bates for Congress, Inc., including but not limited to a loan in the amount of $5000 made on or

9504372188

about May 25, 1990. This request specifically includes, but is not limited to: correspondence in which such a loan is mentioned; promissory notes and other documents setting forth the fact or the terms of such a loan; canceled checks; and receipts reflecting repayment.

IV. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

1. Identify any loan(s) you made to Jim Bates or Jim Bates for Congress, Inc. during the period from January 1, 1989 to December 31, 1990.

2. For each loan identified in response to Question 1:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged. Also, identify any collateral provided, along with an estimate of the value of that collateral and an explanation of how you determined that value;

B. State the purpose of the loan.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to you, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance.

D. State the date and describe the circumstances and content of all communications between you and Mr. Bates regarding or pertaining to the loan, at any time from January 1, 1989 to the present. In particular, recount all conversations during which Mr. Bates solicited the loan from you or you agreed to make the loan. Also, recount any subsequent communications between you and Mr. Bates concerning the loan, including but not limited to communications concerning repayment of the loan.

3. Other than the loan(s) discussed in Questions 1 and 2, supra, have you ever loaned money to Jim Bates? If so, describe the circumstances of those loans and provide the terms and conditions. Also, state whether the loans were repaid.

9504372185 9

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mark A. Battaglia MUR 4166

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act ("the Act") establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2). In addition, a contribution may be designated for a previous election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

Under the Act, a loan is a contribution. 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.7(a)(1). Therefore, a loan to a candidate or a committee is subject to the Act's $1,000 individual contribution limitation and the prohibition against corporate contributions. 2 U.S.C. § 441a(a)(1)(A); 2 U.S.C. § 441b(a). The legality of a loan is determined at the

9504372180

time the loan is made. 11 C.F.R. § 100.7(a)(1)(i)(B). As such, a loan that exceeds the contribution limitation is unlawful whether or not it is repaid. 11 C.F.R. § 100.7(a)(1)(i)(A).

Jim Bates for Congress, Inc. ("the Committee") reported receiving a $1,000 contribution from Mark A. Battaglia on January 26, 1989 and a $500 contribution from Mr. Battaglia on January 8, 1990. The Committee attributed the $1,000 contribution to the next election, the 1990 primary election. Although the $500 contribution was received before the 1990 primary election, the Committee attributed it to the 1990 general election. However, the Committee did not provide the Commission with the required written designation from Mr. Battaglia. See 11 C.F.R. § 110.1(b)(2). Therefore, the $500 contribution also must be attributed to the 1990 primary election.

The Committee reported receiving a $10,000 loan from the Candidate on May 25, 1990. However, the loan actually consisted of two $5,000 checks, one of which was a personal check from Mr. Battaglia to Mr. Bates. The check from Mr. Battaglia to Mr. Bates bears the handwritten notation "loan" on the memorandum line. Although the check was made payable to "Jim Bates," it was deposited in the Committee's checking account. The check therefore constitutes a contribution from Mr. Battaglia rather than a loan from Mr. Bates. See 11 C.F.R. § 110.10(b)(1). Moreover, the contribution must be attributed to the 1990 primary election, the next election after it was received. See 11 C.F.R. § 110.1(b)(2). As such, the check from Mr. Battaglia

9604372184

to Mr. Bates represents a $5,000 contribution to the Committee with respect to the 1990 primary election.

Based on the foregoing, it appears that Mr. Battaglia contributed $6,500 to the Committee with respect to the 1990 primary election. These contributions exceed the Act's contribution limits by $5,500. See 2 U.S.C. § 441a(1)(A). Therefore, there is reason to believe that Mark A. Battaglia violated 2 U.S.C. § 441a(1)(A) by making $5,500 in excessive contributions to the Committee.

9604321842

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

RE: MUR 4166
San Diego National Bank

Dear Mr. Galinson:

On January 10, 1995, the Federal Election Commission found that there is reason to believe that San Diego National Bank ("the Bank") violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Bank may submit any factual or legal materials that it believes are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If the Bank is interested in pursuing pre-probable cause conciliation, it should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause

9604372184

must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If the Bank intends 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.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless the bank notifies the Commission in writing that it wishes the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

9604372184

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: San Diego National Bank MUR 4166

A. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

B. LOAN TO JIM BATES

The Federal Election Campaign Act ("the Act") prohibits banks from making contributions in connection with an election. 2 U.S.C. § 441b(a). Under the Act, a loan is a contribution. 2 U.S.C. § 431(8)(A)(i); see also 11 C.F.R. § 100.7(a)(1). Therefore, a loan to a candidate or a committee is subject to the Act's prohibition against bank contributions. 2 U.S.C. § 441b(a).

However, a bank loan to a candidate or a committee to finance a campaign is not a contribution from the lending institution if the loan is made in accordance with applicable banking laws and regulations and in the ordinary course of business. 11 C.F.R. § 100.7(b)(11). A loan will be deemed to have been made in the ordinary course of business if it satisfies four requirements: (1) the loan bears the usual and customary interest rate for the type of loan involved; (2) the

9604372185

loan is made on a basis which assures repayment; (3) the loan is evidenced by a written instrument; and (4) the loan is subject to a due date or amortization schedule. Id. Such a loan nevertheless must be reported by the recipient committee in accordance with 11 C.F.R. § 104.3(a).

The Committee reported receiving four loans from the Candidate totaling $30,300, including a $10,000 loan made on or about May 29, 1990. The $10,000 loan, however, actually consisted of two $5,000 checks, including a cashier's check from the San Diego National Bank made payable to Jim Bates. The check from the Bank was deposited directly in the Committee's checking account.

The Commission previously recommended that the Committee identify the purchaser of the certified check and the source of funds used to effect the purchase. In response, the Committee provided a letter from the Bank stating that the certified check represents the proceeds of a loan to Mr. Bates. The Committee concedes that Mr. Bates used the loan proceeds for his campaign. However, documentation establishing that the loan conforms to the requirements of 11 C.F.R. § 100.7(b)(11) has not been provided.

Therefore, there is reason to believe that San Diego National Bank violated 2 U.S.C. § 441b(a) by making a prohibited contribution, in the form of a loan, to the Bates Committee.

C. CHECKS PAID ON INSUFFICIENT FUNDS

As noted previously, the Act prohibits contributions from banks. 2 U.S.C. § 441b(a). Commission regulations provide that

9604372186

an overdraft made on a committee checking account shall be considered a contribution by a bank unless three conditions are met: (1) the overdraft is made on an account that is subject to overdraft protection; (2) the overdraft is subject to a definite interest rate that is usual and customary; and (3) there is a definite repayment schedule. 11 C.F.R. § 100.7(b)(11).

The Committee maintained a checking account at the San Diego National Bank. The Bank honored 32 checks totaling $178,639.49 at times when the Committee's account contained insufficient funds. However, the Bank also declined to honor 17 NSF checks totaling $59,726. These apparently contradictory actions often occurred on the same day. For example, on May 31, 1990 -- while the account was overdrawn -- the Bank honored a check for $11,259, but returned checks for $9,748 and $4,300. Similarly, on June 6, 1990, the Bank honored checks totaling $5,472, but returned checks for $2,000 and $3,396. Finally, on November 5, 1990, the Bank honored five checks totaling $3,396 for which there were insufficient funds in the Committee's account, but returned four checks totaling $11,868.

The Bank assessed a $12 overdraft fee for each NSF check that it honored. However, the checks apparently were not subject to a definite interest rate or a definite repayment schedule. See 11 C.F.R. § 100.7(b)(11).

The Commission previously recommended that the Committee provide evidence -- such as a statement from the Bank -- demonstrating that the overdrafts should not be considered prohibited contributions by the Bank. In response, the

9604372187

Committee submitted a letter from Murray L. Galinson, President/CEO of the Bank, stating that:

> overdrafts were handled either by a deposit being made to cover the overdraft before the check was returned or the check was returned where there was not a sufficient deposit. To our knowledge that procedure was followed without exception and no checks were honored unless deposits were made to cover them in full.
>
> I might add that has always been the procedure followed by our bank when we are involved in political candidates' campaign accounts.

Mr. Galinson's letter is not accurate. Rather, a lag of one to three days appears to have elapsed from the time that the Bank honored the Committee's overdrafts to the time the Committee deposited funds to cover the checks. For example, on Thursday, September 20, 1990, the Bank honored the Committee's check number 11480 in the amount of $35,000 -- which caused the Committee's account to be overdrawn by $2,122. However, the Committee's account did not become positive again until Monday, September 24, 1990.

Based on the foregoing, it appears that the Committee received $178,639.49 in prohibited contributions from San Diego National Bank, in the form of overdrawn checks, in violation of the Act. Therefore, there is reason to believe that San Diego National Bank violated 2 U.S.C. § 441b(a).

9504372188

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

RE: MUR 4166

Dear Mr. Galinson:

Enclosed is a Subpoena to Produce Documents and Order to Submit Written Answers to Questions, directed to San Diego National Bank. The Right to Financial Privacy Act of 1978 permits the customer whose records are sought ten days from the date of receipt of the Subpoena and Order to move to quash them. Upon the expiration of this period, the Commission will notify you that it has complied with the Right to Financial Privacy Act. In the absence of judicial intervention, it is then your obligation to comply with the terms of the Subpoena and Order. See 12 U.S.C. §§ 3405 and 3411.

Please be advised that 2 U.S.C. § 437g(a)(12) prohibits making public any Commission investigation without the written consent of the person with respect to whom such investigation is made. You are advised that no such consent has been given in this case.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Subpoena and Order

9604372189

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 4166

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of your receipt of the Commission's Certification of Compliance with the Right to Financial Privacy Act.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 24th day of January, 1995.

For the Commission,

Danny L. McDonald
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request
Questions

9604372180

9 6 0 4 3 7 2 1 8 7 1

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1989 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the person or persons to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to a loan from you to Jim Bates or to Jim Bates for Congress, Inc. in the amount of $5000 on or about May 25, 1990. This request

9 6 0 4 3 7 2 1 8 7 2

includes, but is not limited to: correspondence in which the loan is mentioned; promissory notes and other documents setting forth the fact or the terms of the loan; canceled checks; and receipts reflecting repayment.

2. With respect to the letter from Murray L. Galinson to Robert J. Costa, dated May 28, 1993, and attached hereto as Attachment 1:

A. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any policy or procedure followed by you in handling overdraft checks drawn on the campaign accounts of political candidates.

B. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any policy or procedure followed by you in handling overdraft checks drawn on the account of Jim Bates for Congress (account number 01037226-70). This request includes, but is not limited to, all documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any agreement between you and Jim Bates for Congress concerning overdraft checks drawn on the account of Jim Bates for Congress (account number 01037226-70).

IV. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

1. Identify any loan(s) you made to Jim Bates or Jim Bates for Congress, Inc. during the period from January 1, 1989 to December 31, 1990.

2. For each loan identified in response to Question 1:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate and/or fees charged. Also, identify any collateral provided, along with an estimate of the value of that collateral and an explanation of how you determined that value;

B. State the purpose of the loan.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to you, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance.

9604372187 3

D. State the date and describe the circumstances and content of all communications between you and Mr. Bates regarding or pertaining to the loan, at any time from January 1, 1989 to the present. In particular, recount the events when Mr. Bates applied for the loan and describe the circumstances under which you approved his application.

E. Identify all employees or other representatives of San Diego National Bank who communicated with Mr. Bates regarding the loan, from January 1, 1989 to present. Also, state the date and describe the circumstances and content of each such communication.

3. Other than the loan(s) discussed in Questions 1 and 2, supra, have you ever loaned money to Jim Bates? If so, describe the circumstances of those loans and provide the terms and conditions of those loans. Also, state whether the loans were repaid.

9 5 6 4 3 7 2 1 8 7 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

Sami I. Bandak
3303 Avenida Hacienda
Escondido, CA 92025

RE: MUR 4166
Sami I. Bandak

Dear Mr. Bandak:

On January 10, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(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 as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that your making an excessive contribution to the Jim Bates for Congress Committee appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter.

If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

9604372187 5

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Sami I. Bandak MUR 4166

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act ("the Act") establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2). In addition, a contribution may be designated for a previous election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

Jim Bates for Congress, Inc. ("the Committee") reported receiving eight contributions totaling $2,100 from Sami I. Bandak: $350 (May 18, 1989); $500 (November 30, 1989); $125 (July 3, 1989); $25 (January 19, 1990); $75 (January 19, 1990); $125 (March 13, 1990); $400 (May 14, 1990); $500 (May 30, 1990). The Committee attributed the first four contributions, which total $1,000, to the next election, the 1990 primary election.

9504372187 6

Although the remaining four contributions, which total $1,100, also were received before the 1990 primary election, the Committee attributed them to the 1990 general election. However, the Committee did not provide the Commission with the required written designation from Mr. Bandak. See 11 C.F.R. § 110.1(b)(2). Therefore, the additional $1,100 in contributions also must be attributed to the 1990 primary election.

Based on the foregoing, it appears that Mr. Bandak contributed $2,100 to the Committee with respect to the 1990 primary election. These contributions exceed the Act's contribution limits by $1,100. See 2 U.S.C. § 441a(1)(A). Therefore, there is reason to believe that Sami I. Bandak violated 2 U.S.C. § 441a(1)(A) by making $1,100 in excessive contributions to the Committee.

9604372187

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 24, 1995

David L. Bain
1650 Torrance Street
San Diego, CA 92103

RE: MUR 4166
David L. Bain

Dear Mr. Bain:

On January 10, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(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 as it pertains to you. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that your making an excessive contribution to the Jim Bates for Congress Committee appears to be a violation of 2 U.S.C. § 441a(a)(1)(A). You should take steps to ensure that this activity does not occur in the future.

The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter.

If you have any questions, please contact James S. Portnoy, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

Enclosure
Factual and Legal Analysis

9504372187878

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: David L. Bain MUR 4166

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act ("the Act") establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2). In addition, a contribution may be designated for a previous election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

Jim Bates for Congress, Inc. ("the Committee") reported receiving three contributions totaling $5,700 from David L. Bain: $1,700 (April 3, 1989); $2,000 (May 31, 1989) and $2,000 (June 18, 1990). Mr. Bain's $2,000 contribution of May 31, 1990 was properly attributed to the 1990 primary election. Mr. Bain's $2,000 contribution of June 18, 1990 was properly attributed to the 1990 general election. However, Mr. Bain's

9604372187 9

$1,700 contribution of April 3, 1989 was improperly attributed to the 1988 general election. Although the 1990 primary election was the next election to be held at the time this contribution was made, the Committee did not provide the Commission with the required written designation from Mr. Bain. See 11 C.F.R. § 110.1(b)(2). Therefore, this contribution should be attributed to the 1990 primary election.

Based on the foregoing, it appears that Mr. Bain contributed $3,700 to the Committee with respect to the 1990 primary election. These contributions exceed the Act's contribution limits by $2,700. In addition, it appears that Mr. Bain contributed $2,000 to the Committee with respect to the 1990 general election. This contribution exceeded the Act's contribution limits by $1,000. Therefore, there is reason to believe that David L. Bain violated 2 U.S.C. § 441a(1)(A).

9604372180

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 9, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166

Dear Mr. Bates:

Records or information concerning your transactions held by the financial institution named in the attached subpoena and order are being sought by this agency in accordance with the Right to Financial Privacy Act of 1978 for the following purpose: to investigate possible violations of the Federal Election Campaign Act of 1971, as amended, by you in connection with your congressional campaign.

If you desire that such records or information not be made available, you must:

1. Fill out the accompanying motion paper and sworn statement or write one of your own, stating that you are the customer whose records are being requested by the Commission and either giving the reasons you believe that the records are not relevant to the legitimate law enforcement inquiry stated in this notice or any other legal basis for objecting to the release of the records.

2. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts: the United States District Court for the District of Idaho or the United States District Court for the District of Columbia.

3. Serve the Commission by mailing or delivering a copy of your motion and statement to: Federal Election Commission, Office of the General Counsel, 999 E Street, N.W., Washington, D.C. 20463.

9504321881

4. Be prepared to come to court and present your position in further detail.

5. You do not need a lawyer, although you may wish to employ one to represent and protect your rights.

If you do not follow the above procedures, upon the expiration of ten days from the date of service or 14 days from the date of mailing of this notice, the records or information requested therein will be made available. These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer.

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

Sincerely,

James S. Portnoy
Attorney

Enclosures
Subpoena and Order to San Diego National Bank
Motion to Quash Subpoena and Order
Affidavit

9604372182

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of) MUR 4166

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 15 days of your receipt of the Commission's Certification of Compliance with the Right to Financial Privacy Act.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 24th day of January, 1995.

For the Commission,

Danny L. McDonald

Danny L. McDonald
Chairman

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request
Questions

9604372183

I. INSTRUCTIONS

In answering these interrogatories and requests for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1989 to date.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

II. DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

9504372184

"You" shall mean the person or persons to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

III. REQUEST FOR PRODUCTION OF DOCUMENTS

You are hereby ordered to produce the following documents:

1. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to a loan from you to Jim Bates or to Jim Bates for Congress, Inc. in the amount of $5000 on or about May 25, 1990. This request

9504372183 5

includes, but is not limited to: correspondence in which the loan is mentioned; promissory notes and other documents setting forth the fact or the terms of the loan; canceled checks; and receipts reflecting repayment.

2. With respect to the letter from Murray L. Galinson to Robert J. Costa, dated May 28, 1993, and attached hereto as Attachment 1:

A. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any policy or procedure followed by you in handling overdraft checks drawn on the campaign accounts of political candidates.

B. All documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any policy or procedure followed by you in handling overdraft checks drawn on the account of Jim Bates for Congress (account number 01037226-70). This request includes, but is not limited to, all documents discussing, describing, memorializing, evidencing or otherwise relating or pertaining to any agreement between you and Jim Bates for Congress concerning overdraft checks drawn on the account of Jim Bates for Congress (account number 01037226-70).

IV. ORDER TO SUBMIT WRITTEN ANSWERS

You are hereby ordered to provide written answers, under oath, to the following questions:

1. Identify any loan(s) you made to Jim Bates or Jim Bates for Congress, Inc. during the period from January 1, 1989 to December 31, 1990.

2. For each loan identified in response to Question 1:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate and/or fees charged. Also, identify any collateral provided, along with an estimate of the value of that collateral and an explanation of how you determined that value;

B. State the purpose of the loan.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to you, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining balance.

960432186

D. State the date and describe the circumstances and content of all communications between you and Mr. Bates regarding or pertaining to the loan, at any time from January 1, 1989 to the present. In particular, recount the events when Mr. Bates applied for the loan and describe the circumstances under which you approved his application.

E. Identify all employees or other representatives of San Diego National Bank who communicated with Mr. Bates regarding the loan, from January 1, 1989 to present. Also, state the date and describe the circumstances and content of each such communication.

3. Other than the loan(s) discussed in Questions 1 and 2, supra, have you ever loaned money to Jim Bates? If so, describe the circumstances of those loans and provide the terms and conditions of those loans. Also, state whether the loans were repaid.

9504372187

UNITED STATES DISTRICT COURT
FOR

Jim Bates, Petitioner	)	
v.	)	MOTION TO QUASH COMMISSION SUBPOENA/ORDER
THE FEDERAL ELECTION COMMISSION, Respondent	)	

MOTION TO QUASH COMMISSION SUBPOENA/ORDER

This matter comes before the court pursuant to 12 U.S.C. § 3401 et. seq., Right to Financial Privacy Act of 1978. Petitioner, Jim Bates, requests this court to quash a subpoena and order of the Federal Election Commission which seeks to obtain certain bank documents and information relating to accounts maintained by Petitioner.

In support of this application, Petitioner swears to the following:

1. Petitioner procured a loan from San Diego National Bank.

2. The Commission seeks financial records relating to the above loan as part of its investigation pursuant to 2 U.S.C. § 437g.

3. Petitioner believes the Commission is not entitled to these records because

9504372138

Jim Bates

UNITED STATES DISTRICT COURT
FOR

Jim Bates, Petitioner	)	
	)	AFFIDAVIT
v.	)	
FEDERAL ELECTION COMMISSION, Respondent	)	

AFFIDAVIT

County:
State:

Jim Bates, being duly sworn, makes the following his affidavit and states:

1. I hereby affirm that all of the statements in the Motion to Quash Commission Subpoena/Order are true and accurate to the best of my knowledge and belief.

2. Further the affiant sayeth not.

_____
Jim Bates

Subscribed and sworn to before me this day of , 1995.

_____
Notary Public

My Commission expires .

9504372189

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 14 11 48 AM '95

January 24, 1995

POSTMASTER

U.S. Postal Service
San Diego, CA 92109

MUR 4166

ADDRESS INFORMATION REQUEST

Pursuant to 39 C.F.R. § 265.6(d)(1), please furnish this agency with a new address, if available, for the individual or entity listed below, or verify whether the address given below is one at which mail for this individual or entity is currently being delivered.

NAME: Sandra Kennedy
LAST KNOWN ADDRESS: 2727 De Anza Road, K-2
San Diego, CA 92109

Under 39 C.F.R. § 265.9(g)(5)(i), we request a waiver of fees. In this connection I hereby certify that the Federal Election Commission, an agency of the U.S. Government, requires the information requested above in the performance of its official duties, and that all other known sources for obtaining it have been exhausted. A return envelope is enclosed for your convenience. Please feel free to contact me at (202) 219-3690 or (800) 424-9530 if you have any questions.

James S. Portnoy by JSM
James S. Portnoy
Attorney

FOR POST OFFICE USE ONLY

(X) Mail is Delivered to Above Address
( ) Moved, left no forwarding address
( ) No such address
( ) Other (Please Specify)



Forwarding Address: _____

_____

Effective date of this change: _____

9604372180

MARK POLLICK
ATTORNEY AT LAW
THE CHAMBER BUILDING
110 WEST "C" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-9000
FAX (619) 232-6126

February 8, 1995

FEB 13 11 51 '95

VIA FACSIMILE & U.S. MAIL

James S. Portnoy, Esq.
Federal Elections Commission
Washington, D.C. 20463

Re: MUR 4166
Jim Bates for Congress and Sandra Kennedy as Treasurer

Dear Mr. Portnoy:

On February 7, 1995, I was retained by Sandra Kennedy to represent her in connection with the above-entitled matter. I have enclosed the Statement of Designation of Counsel executed by Ms. Kennedy.

Ms. Kennedy advises me that she was served by certified mail of the Commission's findings on January 30, 1995. Ms. Kennedy is in the process of providing me with information and documentation for purposes of responding to the Commission's findings.

Based on the nature of the charges and other commitments I have as a result of my law practice, I am requesting that you grant me an extension of twenty (20) days to file a response.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,

Mark Pollick

MP/pb

STATEMENT OF DESIGNATION OF COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 13 11 54 AM '95

MUR 4166

NAME OF COUNSEL: Mark Pollick, Esq.

ADDRESS: 110 W. "C" Street
Suite 2100
San Diego, CA 92101

TELEPHONE: (619) 232-9000

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.

2/7/95
Date

Signature

RESPONDENT'S NAME: _____

ADDRESS: _____

_____

_____

HOME PHONE: _____

BUSINESS PHONE: _____

9604372182

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 14, 1995

Mark Pollick
Attorney at Law
The Chamber Building
110 West "C" Street
Suite 2100
San Diego, California 92101

RE: MUR 4166 (Jim Bates for Congress and
Sandra Kennedy, as Treasurer)

Dear Mr. Pollick:

I write in response to your letter dated February 8, 1995. Your request for twenty additional days to respond to the Commission's reason to believe finding with respect to Jim Bates for Congress and Ms. Kennedy, as treasurer ("the Committee"), is approved. The Committee's response will now be due on March 6, 1995. Please be advised that no further extensions will be granted.

Also, per your request, I enclose a blank "Statement of Organization" form.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Statement of Organization

9604372180

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

1. (a) NAME OF COMMITTEE IN FULL ☐ (Check if name is changed)	2. DATE
(b) Number and Street Address ☐ (Check if address is changed)	3. FEC Identification Number
(c) City, State and ZIP Code	4. Is This Report An Amendment? ☐ YES ☐ NO

5. TYPE OF COMMITTEE (Check one)

☐ (a) This committee is a principal campaign committee. (Complete the candidate information below.)

☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate	Candidate Party Affiliation	Office Sought	State/District

☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)

☐ (d) This committee is a _____ committee of the _____ Party.
(National, State or subordinate) (Democratic, Republican, etc.)

☐ (e) This committee is a separate segregated fund.

☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship

Type of Connected Organization
☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7. **Custodian of Records:** Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name **Mailing Address** **Title or Position**

8. **Treasurer:** List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name **Mailing Address** **Title or Position**

9. **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc. **Mailing Address and ZIP Code**

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

TYPE OR PRINT NAME OF TREASURER	SIGNATURE OF TREASURER	DATE

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.
ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

For further information contact:
Federal Election Commission
Toll-free 800-424-9530
Local 202-219-3420

FE5AN045

FEC FORM 1
(revised 4/87)

9604372134

San Diego National Bank
1420 Kettner Boulevard
Post Office Box 12605
San Diego, California
92112-3605
Phone 619-231-4989
FAX 619-233-7017
An Equal Opportunity Lender. Member FDIC

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
FEB 16 12 13 PM '95

February 13, 1995

Federal Election Commision
Attention: James Portnoy
999 E Street
Northwest Washington, D.C. 20463

RE: MUR 4166
San Diego National Bank

Dear Ms. Portnoy:

Pursuant to our telephone conversation of February 7, 1995, enclosed you will find responses regarding the above mentioned matter. I have instructed my staff to respond to the request in the form of 1) an affidavit and 2) a general statement . Hopefully this information will permit the matter to be resolved pursuant to your informal methods of settlement.

My understanding is the enclosed material will be sufficient for your requirements at this time. At such time as other information originally identified has been cleared for release by all parties involved and if it becomes necessary to provide specific items, please contact our office.

Thank you for your prompt response to my phone call. Should you have any questions, please feel free to contact me personally.

Sincerely,

Murray Galinson
President / CEO

9504321805

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

AFFIDAVIT

FEB 16 12 13 PM '95

February 13, 1995

Federal Election Commision
Attention: James Portnoy
999 E Street
Northwest Washington, D.C. 20463

RE: Jim Bates for Congress
Account Number 0103722600

This account has been reviewed for overdraft activity. During the time period of December 2, 1987 through July, 1992 , there were checks presented against a non-sufficient funds balance. The checks were either returned or a deposit was received to cover the NSF balance except on two occasions. The two occasions are identified as follows:

1. September 20, 1990 overdrawn balance of $2121.87 covered the 2nd business day (Sept. 24, 1990) with a $10,365.00 deposit.

2. August 15, 1988 overdrawn balance of $177.95 covered on August 17, 1988 with a deposit of $ 2465.00.

It is virtually impossible to determine at this time if there were any contributing factors to the overdrafts such as a deposit rejecting and therefore posted a day late or if a deposit was inadvertently held over for a day.

The information provided in this format is based upon bank records and representative of facts known to the signor.

Feb 13, 1995
Date

Joyce Chewning
Senior Vice President

9504372186

General Statement

The Bank has two options for posting checks on an account against non-sufficient funds. The option used by the Bank is described as follows:

Pay All System

All checks, debits and administrative charges are posted to the account creating a negative balance if the balance is less than debits presented. The checks are reviewed and a decision is made to pay the checks or return them. If a deposit is not made the day after posting the checks, the account is then in an overdrawn state.

Under Regulations particular to overdrafts, banks have 24 working hours in which to return a non-sufficient funds check before it is considered an overdraft. As was the case on the account in question, the practice of the Bank was to call the customer and inform them of the potential overdraft. If a deposit was made to cover the check (s), no further action was taken. If a deposit was not made, check(s) were returned.

Regarding the question of conforming loans, all loans to Mr. Bates were considered conforming and did meet the criteria outlined in your inquiry.

Feb 13 1995
Date

Joyce Chewning
Senior Vice President

9504321807

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 16 12 13 PM '95

JURAT

I certify that I am over the age of 18 years of age and have resided in the State of California for more than five years.

Joyce Chewning

Sate of California) ss.
County of San Diego)

Subscribed and sworn to before me on February 13, 1995.

Kristan V. Gregg



950043,2188

Feb 15, 1995

Danny K. McDonald

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 21 11 23 AM '95

Chairman
Federal Election Commission
Washington DC 20463

MUR4166

Dear Mr. Chairman,

I have received most of the letters from the Commission regarding the 1990 audit.

I must admit it's quite a mess. Most of the items are not violations, though there are some, but poor record keeping + documentation. I'm in Idaho and have written for the records. I'm working on my farm — I didn't want to "Lobby" when I left Congress. As noted on the attached form, I can't afford an attorney, so will handle everything myself.

I just lost my Treasurer

(see attached letter) so I have all that to handle - I thought it was being taken care of —

I'm preparing a response, which I'll mail in a few days, but it will be incomplete — could you consider an extension?

Also I need some advice, or at least explanation, whether I should or can pursue, conciliation &/or pre-probable cause conciliation.

Your consideration would be appreciated — also what are the penalties for these violations?

Sincerely

960437 21-2200

STATEMENT OF DESIGNATION OF COUNSEL

MUR 4166

NAME OF COUNSEL: JIM BATES

ADDRESS: Rt 2 Box 85
HOMEDALE, IDAHO
83628

TELEPHONE: NONE

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.

2-15-95
Date

Signature

RESPONDENT'S NAME: JIM BATES

ADDRESS: Rt 2 Box 85
HOMEDALE, IDAHO
83628

HOME PHONE: NONE

BUSINESS PHONE: NONE

→ can't afford an attorney ✓ just lost my Treasurer so will handle everything myself.

9604372190 1

February 10, 1995

Jim Bates
Route 2, Box 85
Homedale, ID 83628

Dear Jim,

I remember the first time I called and asked you for a job and you allowed me to work in your downtown campaign office inputting contributions and sending out thank you letters as well as assisting in the fundraising events. I very much enjoyed that little job that took so much time and paid so little. You were a lot of the reason I got involved in the political system--and boy did I jump in with both feet!

Now, all these years (and campaigns) latter I need to ask you to do me another favor; I need you to release me as your treasurer and to sign yourself on instead.

I'm so sorry to have to add this burden on you but I can't continue in this position with the high personal cost to my husband and myself. I was so shocked when I received the FEC letter dated 1/24/95 with the findings of the audit staff. This was directed to me, as treasurer, and it scared me immensely! The only thing I feel I did wrong was not knowing what the hell I was doing as treasurer and not really understanding the level of responsibility that entailed. I know I was always honest in my reporting and in my communication with the FEC. I also know--now--that the reporting should have been better, that I didn't verify lists and information--that I took too many things for granted.

What I've had to do now is hire an attorney to represent me in all this. The expense is much greater than Pat and I can afford but I'm concerned that without the proper representation the cost may be much greater to me in the long run. It never occurred to me that my volunteer work could come back to haunt me in such a devastating manner.

Please sign the enclosed letter assigning yourself as treasurer and return one copy to me, one copy should go to the FEC directly, one to he Clerk of the House of Representatives and one to the CA Secretary of State (I have included copies for you to sign and forward as well as addressed envelopes). Once the attorney tells me its okay, I will package up the campaign records in my possession and send them to you. If you need any of these records before that time, just let me know.

Jim, I wish I could waive a magic wand and help you in this. I've always believed in you and I've always believed you to have integrity and heart--I still believe those things.

Sincerely,

Sandra Kennedy

Sandra Kennedy
10887 Macouba Place
San Diego, CA 92124

C 2 C 9 6 0 0 4 3 7 2 1 9

MARK POLLICK
ATTORNEY AT LAW
THE CHAMBER BUILDING
110 WEST "C" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-9000
FAX (619) 232-6126

FEB 21 9 46 AM '95
FEB 21 10 13 AM '95

February 16, 1995

James S. Portnoy, Esq.
Federal Elections Commission
Washington, D.C. 20463

Re: MUR 4166
Jim Bates for Congress and Sandra Kennedy as Treasurer

Dear Mr. Portnoy:

This is to confirm my telephone conversation with you on February 9, 1995 in which I confirmed that I am representing Sandra L. Kennedy, personally, in regard to the above-entitled matter. I am not representing the Campaign Committee nor Mr. Bates.

You graciously granted an extension of 20 days until March 6, 1995 to respond on behalf of Ms. Kennedy to the Commission's findings.

If you should have any questions, please do not hesitate to contact me.

Very truly yours,

Mark Pollick

Mark Pollick

MP/pb

cc: Sandra L. Kennedy

9504321292

MARK POLLICK
ATTORNEY AT LAW
THE CHAMBER BUILDING
110 WEST "C" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101
TELEPHONE (619) 232-9000
FAX (619) 232-6126

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
FEB 24 1 33 PM '95

February 21, 1995

VIA FACSIMILE & U.S. MAIL

James S. Portnoy, Esq.
Federal Elections Commission
Washington, D.C. 20463

Re: MUR 4166
Jim Bates for Congress and Sandra Kennedy as Treasurer

Dear Mr. Portnoy:

In accordance with our telephone conversation today, enclosed please find a copy of the notice received from Jim Bates, substituting himself as Treasurer for the Campaign Committee.

I have forwarded the Statement of Organization form to Mr. Bates per your instruction.

This will also confirm our discussion today, in which you advised me that due to the fact that Ms. Kennedy has been replaced as Treasurer, she is relieved from any liability arising out of her role as Treasurer for the Campaign Committee. Therefore, it will not be necessary for Ms. Kennedy to respond to the allegations contained in the January 24, 1995 letter to her from the Commission.

Thank you for your courtesy and cooperation in resolving this matter.

Very truly yours,

Mark Pollick

MP/pb

Attachment

cc: Ms. Sandra L. Kennedy

9504321994

JIM BATES FOR CONGRESS COMMITTEE
FEC NUMBER 097152
ROUTE 2, BOX 85
HOMEDALE, IDAHO 83628

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

FEB 24 1 33 PM '95

FEDERAL ELECTION COMMISSION
999 E STREET, NW
WASHINGTON, DC 20463

RE: RENAMING OF TREASURER

TO-WHOM-IT-MAY-CONCERN:

THIS NOTICE IS TO PROVIDE YOU WITH THE NAME OF JIM BATES AS THE NEW TREASURER FOR THE JIM BATES FOR CONGRESS COMMITTEE. THIS IS EFFECTIVE IMMEDIATELY AND SERVES TO REMOVE SANDRA L. KENNEDY AS TREASURER. PLEASE ALSO NOTE THE MAILING ADDRESS OF THE COMMITTEE IS REFERENCED ABOVE.

JIM BATES

2-15-95
DATE

9504321905

PARKING COMPANY OF AMERICA - SAN DIEGO, INC.
P.O. Box 12216 • SAN DIEGO, CALIFORNIA 92112 • (619)234-4222 • FAX (619) 234-1421

February 23, 1995

James S. Portnoy, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4166
Mark A. Battaglia

Dear Mr. Portnoy:

My name is Mark A. Battaglia. I live in San Diego, California. I am in the parking lot business through my company, Parking Company of America - San Diego, Inc.

Please consider this letter as my response to your letter of January 24, 1995, which I received on January 28, 1995, indicating that I "may submit any factual or legal materials that (I) believe are relevant to the Commission's consideration of this matter," as well as my response to your Subpoena to Produce Documents and Order to Submit Written Answers.

I have known Jim Bates since the late 1970's. I have made contributions to various of his local and federal campaigns over the years.

In approximately May of 1990, then-Congressman Bates came to my office at 1446 Front Street in San Diego, California. Bates indicated that he was incurring a lot of personal expenses and that his campaign for Congress was costing him substantial personal money. He said that he needed a personal loan to help him make his car payment, house payment, etc.

I agreed to loan Bates $5,000. I wrote a personal check to him and noted on the check that it was for a "loan" (see enclosed check). I considered this to be a personal loan, not any sort of campaign contribution. The possible use of these funds for campaign purposes was never discussed and certainly not intended on my part.

Bates indicated that he would pay back the loan after the election when his financial situation improved. I accepted his word for this. I fully expected that the loan would be repaid.

95043721906

FEB 24 1 40 PM '95

Other than the check, there were no documents memorializing this loan, and there were no interest terms attached to the loan. If I had considered this to be a campaign contribution, I would have made the check out to "Bates for Congress Committee" as I did with all my contributions to his campaign. I did not do so, because I considered this to be a personal loan. It was not until 1993 that I learned for the first time from my attorneys that Bates may have deposited this check in a campaign account and not used it for the personal expenses for which he originally told me he needed the money.

After Bates was defeated in his attempt to be re-elected to Congress, he began doing some consulting work. Bates indicated that he had not forgotten the loan and that he would like to render consulting services in an effort to repay the loan. He did some consulting work for me in conjunction with a parking lot matter. In my mind, I considered this work to be in repayment of the personal loan.

In 1993, after he was out of Congress, Bates asked me for another loan. He said that he was in desperate need of $2,000 to pay personal bills and that he was at risk of loosing his home. He said that he was going to ask four friends for loans of $500 each. I again loaned Bates some money. This time is was in the amount of $500.

Your materials also make mention of campaign contributions in 1989 in an amount of $1,000 and in 1990 in the amount of $500. You note that both contributions must be "attributed" to the the 1990 primary election and that this results in an excess contribution.

With respect to these contributions to the Bates campaigns, I always relied upon Bates or his staffers to advise me as to the amount that was proper to give and when to give it. I had no knowledge of federal election laws or rules of "attribution" and always looked to them to advise me as to the propriety of contributions -- amount and timing.

2504321927

I am available to answer any questions that you might have. I have never had any intent to violate the Federal Campaign laws and do not believe I have done so. My actions were taken at the specific direction of Jim Bates or his staff and once my monies were turned over to them I had no control of any wrongful actions they may have taken. I have already spoken fully about these matters with the FBI and counsel for the Justice Department's House Bank Task Force. I am enclosing documents responsive to your request. I respectfully ask that you provide me with the opportunity to offer further explanation to you should you have any remaining questions. I trust that you will conclude that I have not violated any Federal Election Campaign laws.

Sincerely,

Mark A. Battaglia

Enclosures

Certification

I hereby certify that the statements set forth above are true to the best of my knowledge and belief.

Mark A. Battaglia

SUBSCRIBED AND SWORN To before me this 23 Day of February, 1995.

Karen Giavasis
Notary Public

KAREN GIAVASIS
COMM. # 1031096
Notary Public — California
SAN DIEGO COUNTY
My Comm. Expires JUN 26, 1998

My Commission Expires:

9504-21908

MARK A. BATTAGLIA
[redacted]

2133

4/29 1993

PAY TO THE ORDER OF Jim Bates $ 500.00

Five-hundred and no/100 DOLLARS

Union Bank
San Diego Regional Office
530 "B" Street, Fourth Floor
San Diego, CA 92101

MEMO LOAD

Mark A Battaglia

[redacted]

ENDORSE HERE

Pay to the order of Mark A Battaglia
Jim Bates

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

JAN - 3 93

05/04/93
05/04/93 03
056001079

FEDERAL RESERVE BOARD OF GOVERNORS REG CC

0560010790 SISKIYOU CREST NATL BANK ALEXANDRIA STREET

6 0 6 1 2 7 2 3 0 9 6

Danny L. McDonald
Chairman
Federal Election Commission
Washington DC 20463

Feb 15, 1995

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
Feb 27 11 58 AM '95

MUR 4166

Dear Mr. McDonald,

In responding to your letter of Jan. 24, 1995. I did not intentionally violate any of the commissions regulations. In 21 years of elective office & over 16 campaign elections, and after raising and spending millions of dollars; I even authored Campaign Finance Reform Legislation, (as a City Councilman and County Supervisor; I don't recall any violations & seldom had any loans.

The main problem with this audit is that I have relied on my Treasurer (since resigned) see EXHIBIT "A", and the records were poorly done. Though it clearly was my responsibility

to see that matters were handled properly.

In the particular matter before us I'd like to give an overview of the situation & then make specific responses to all the questions.

In May 1990 I was being challenged in the Primary, (the 1st serious challenge in a long time). The challenger was spending a lot of his own money on TV (hundreds of thousands of dollars). As we neared the June Primary election date I may have over-reacted to the challenge. I felt we needed to match the television. It was the last week before the Primary election. I sought approximately another $20,000.00 TV buy. The money was coming into the campaign but the TV station needed their money in advance. It was the end of the month - I got paid

on the first of the month. The salary of $5,000— (approximately was deposited to my House of Representatives account, but it wouldn't be deposited for a week, and once it was I had monthly living expenses to pay. Therefore, I need a personal loan for that amount. I sought the loan (a personal loan) from a long time friend & supporter, who I knew could afford the personal loan. and would be in no hurry to be repaid. (I planned to use Honorariums from speaking events to repay the loan) It was later repaid about 9 mos later after I lost the General election. I did some consulting on a project for Mark Battaglia. The personal loan of $5,000— was a check with the notation "loan" I deposited this check

in my House of Representatives account. If the loan were to the Campaign I would have deposited the check in the Campaign account. I clearly was aware of the individual campaign limit of $1,000.00 per person per election campaign. I could have borrowed more, but chose $5,000 — because that was the amount of my monthly salary I was loaning the campaign. A few days later I learned we had a few thousand dollars (3 or 4) on our Cash Reserve. Current limit $12,000.00 with the Bank of Commerce San Diego, California.

About the same time — probably a Friday, I was trying to make a weekend TV buy right before the election, & secured a $5,000.00 loan

from San Diego National Bank. I really don't recall this transaction, but do recall over the last few years I had taken out loans (personal loans, no collateral, but prevailing interest rate & short term) to pay my daughters' tuition. All these loans have been repaid with interest & service charges. The proceeds were usually repaid with Honorarium checks. The bank should have all these records.

I was not aware that I could not secure a personal loan for campaign purposes.

Regarding the overdrafts on my House of Representatives account, I had been told many times by the Sergeant-at-Arms that members had "overdraft protection" similar to a Cash Reserve. While I never used this service for any other campaigns

I found that I needed to do so in this case. Mainly because we discovered our campaign account balance was inaccurate, and at the end of the frenetic primary campaign we had three people with 5 checks for postage, TV, ads & other last minute expenses. Those authorized to sign were myself, Sandra Kennedy and Jim Bartell, then Chief of Staff — Money was constantly being deposited so I thought we would be alright. One check for $10,000 — was overdrawn for only 1 day — clearly this was due to a late deposit. I was in San Diego & the account was in Washington D.C.

9602432-5

VII

The Office of the Deputy Assistant Attorney General (Criminal Division) issued a letter on April 21, 1994 stating that "there is no basis for pursuing a further inquiry regarding possible criminal violations concerning your account." See attached letter "Exhibit "B"".

All loans have been repaid, with the exception of myself. The campaign still owes me $2,600.00 which I doubt I will ever see. And which I really need.

Many of the actions taken were borderline & may have crossed the line & are apparent violations. For that I am extremely sorry and apologize to the Commission.

After my defeat in 1990, the Bank inquiry, and now the FEC audit

VIII

I would like to resolve this matter & get on with my life.

I shall send specific responses to each of the questions posed in the "Order to Submit Written Answers."

Your consideration & handling of this matter is most appreciated.

9604371819-7

EXHIBIT "A"

JIM BATES FOR CONGRESS COMMITTEE
FEC NUMBER 097152
ROUTE 2, BOX 85
HOMEDALE, IDAHO 83628

FEDERAL ELECTION COMMISSION
999 E STREET, NW
WASHINGTON, DC 20463

RE: RENAMING OF TREASURER

TO-WHOM-IT-MAY-CONCERN:

THIS NOTICE IS TO PROVIDE YOU WITH THE NAME OF JIM BATES AS THE NEW TREASURER FOR THE JIM BATES FOR CONGRESS COMMITTEE. THIS IS EFFECTIVE IMMEDIATELY AND SERVES TO REMOVE SANDRA L. KENNEDY AS TREASURER. PLEASE ALSO NOTE THE MAILING ADDRESS OF THE COMMITTEE IS REFERENCED ABOVE.

JIM BATES

2-15-95
DATE

95043721918

Criminal Division

ATTACHMENT "B"
EXHIBIT

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

APR 21 1994

Mr. Jim Bates
3025 Greyling Drive
San Diego, California 92123

Dear Mr. Bates:

This is to inform you that the Department of Justice has completed a review of your account at the House banking facility and the documents associated therewith which have come to our attention. On the evidence we have reviewed, we have concluded that there is no basis for pursuing a further inquiry regarding possible criminal violations concerning your account. Of course, as in any other similar inquiry, if additional information came to our attention, we would be required to reevaluate our conclusions.

While the Department of Justice does not normally advise individuals that they are no longer subject to investigation, because Judge Malcolm R. Wilkey, former Special Counsel to the Attorney General, established a precedent of sending such letters in connection with the investigation of the House banking facility, we have determined that the fairest approach is to continue that practice with respect to this investigation.

Sincerely yours,

John C Keeney

John C. Keeney
Deputy Assistant Attorney General

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

March 8, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

RE: MUR 4166

Dear Mr. Galinson:

Enclosed is a Certificate of Compliance with the Right to Financial Privacy Act of 1978, issued in connection with the Subpoena and Order sent to your financial institution on January 24, 1995, seeking the financial records of Jim Bates.

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

Sincerely,

James S. Portnoy
Attorney

Enclosure
Certificate

9304372190

CERTIFICATION OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT

TO: Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

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

RE: MUR 4166

I hereby certify, pursuant to Section 1103(b) of the Right to Financial Privacy Act of 1978, 12 U.S.C. § 3403(b), that the provisions of the Act have been complied with as to the Subpoena to Produce Documents and Order to Submit Written Answers forwarded to you in the above-captioned matter, responses to which are being ordered pursuant to 12 U.S.C. §§ 3402 and 3405.

Sincerely,

3/7/95
Date

Attorney

2504372119211

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 14, 1995

BY OVERNIGHT DELIVERY

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166

Dear Mr. Bates:

On January 10, 1995, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission also found that there is reason to believe that Jim Bates for Congress, Inc., violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 441b(a) and 441a(f).

In connection with the foregoing, please find enclosed a subpoena requiring you to appear on March 30, 1995 at 10 a.m. to have your deposition taken. The deposition will be held in Room 201, U.S. Attorney's Office, 877 West Main Street, Boise, Idaho.

You may consult with an attorney and have an attorney present at your deposition. If you intend to be represented by counsel, 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 or other communications from the Commission.

9504372192 2

Please contact me promptly to confirm that have you received the enclosed subpoena. I may be reached at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

Enclosures
Subpoena
Designation of Counsel Form

9604372192

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jim Bates) MUR 4166
)

SUBPOENA

TO: Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to MUR 4166. Notice is hereby given that the deposition is to be taken on March 30, 1995 in Room 201, U.S. Attorney's Office, 877 West Main Street, Boise, Idaho, beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Vice Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this 14th day of March, 1995.

For the Commission,

Lee Ann Elliott
Vice Chairman

ATTEST:

for Delores Hardy
Marjorie W. Emmons
Secretary to the Commission

9504321924

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jim Bates) MUR 4166
)

SUBPOENA

TO: Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to MUR 4166. Notice is hereby given that the deposition is to be taken on March 30, 1995 in Room 201, U.S. Attorney's Office, 877 West Main Street, Boise, Idaho, beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Vice Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this 14th day of March, 1995.

For the Commission,

Lee Ann Elliott

Lee Ann Elliott
Vice Chairman

ATTEST:

for Delores Hardy

Marjorie W. Emmons
Secretary to the Commission

9 3 0 4 3 7 2 1 9 2 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1995

BY OVERNIGHT DELIVERY

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166

Dear Mr. Bates:

On March 14, 1995, the Federal Election Commission issued a subpoena requiring you to appear on March 30, 1995 to have your deposition taken. A copy of the subpoena is attached for your reference. However, as we discussed on March 21, 1995, it has become necessary to reschedule your deposition for the following day, March 31, 1995, at 9:00 a.m. As previously scheduled, the deposition will be held in Room 201, U.S. Attorney's Office, 877 West Main Street, Boise, Idaho.

Please contact me promptly if you have any questions. I may be reached at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

Enclosure
Subpoena

9604372192716

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jim Bates) MUR 4166
)

SUBPOENA

TO: Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to MUR 4166. Notice is hereby given that the deposition is to be taken on March 30, 1995 in Room 201, U.S. Attorney's Office, 877 West Main Street, Boise, Idaho, beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Vice Chairman of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this 14th day of March, 1995.

For the Commission,

Lee Ann Elliott
Vice Chairman

ATTEST:

for Delores Hardy
Marjorie W. Emmons
Secretary to the Commission

9604372119227

THE DEPOSITION TRANSCRIPT OF JIM BATES
CAN BE FOUND AT THE END OF THIS CASE FILE.

9504372198

April 5, 1995

Danny L. McDonald
Chairman
Federal Election Commission
Washington D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
Apr 17 9 48 AM '95

Dear Mr. McDonald; MUR 4166

I am now responding to the order to provide written answers, under oath (though a deposition was taken March 31, 1995) to the following questions; my response is provided as follows:

1. Identify any loans you or Jim Bates for Congress Inc. received from Mark Battaglia during the period from January 1, 1989 to December 31, 1990.

During this period of time, or previously the only loan from Mark A. Battaglia was a $5,000 personal loan on or about May 25, 1990.

There were no written documents, interest no due D.t. were not discussed

simply an understanding that the loan would be repaid when I was able to do so - the check itself was the note.

The loan was requested by telephone & we didn't meet for several months after the transaction.

2. For each loan identified in response to Question 1:

A. State the date on which the loan was made & the terms of the loan, including the duration of the loan and the interest rate or fees charged. Also, identify any collateral provided along with an estimate of the value of that collateral and an explanation of how you determined that value.

The date of the check was the loan date. The check itself was the note with a notation "LOAN" on the bottom left hand side of the check. No duration time, interest rate or fees were discussed. There was no collateral

provided.

B. State the purpose of the loan;
The purpose of the $5,000 personal loan was to cover my family's personal living expenses for the month of June 1990. (The same amount I was personally loaning the campaign which came from my monthly salary which would be automatically deposited in my House Bank Account on the 1st of June 1990)

In retrospect this may have been a violation of FEC regulations & rules since I accomplished indirectly, that which was prohibited from being done directly.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to Mr. Battaglia by you or on your behalf; specifically including the date, amount, source and method of each such payment

If the loan has not been repaid in whole state the remaining balance on the loan and indicate how you calculated that remaining balance;

The personal loan of $5,000.00 from Mr. Mark Battaglia to me personally was repaid around February 1991. Prior to the Audit. At the time I repaid the loan I was employed as a governmental consultant to Mr. Mark Battaglia. I lost my re-election bid after 8 years, 4 terms & 8 elections. I was also the Executive Director of the American Tank Testers' Association and also had a few other clients. I agreed (after discussing it with the former Customs Director Allan Rappaport) to attempt to secure a GSA lease for a parking lot at the Mexican Border (to San Diego.)

I paid Mr. Allen Rappoport for his advice & services in developing a new plan. With the addition of a new circulation plan on the existing property I felt it was a doable project. I worked with Custom INS, SSA & other involved government agencies. It took about two months & about 60 hrs. for meetings, consultation, telephone calls, letters & appts. I charged $100— per hour for 60 hours or $6,000.00. I felt since he had done me a favor by making the loan & not charging interest I would call it even by paying off the personal loan for $5,000— Mr Battaglia had made for me. This transaction is a matter of record with the Clerk of the House of Representatives

It falls under the Lobby Registration & Disclosure Legislation. I believe it was filed in April 1991 (before the Audit) & cannot locate my copy at this time.

D. State the date & describe the circumstances and content of all communications between you & Mr. Battaglia regarding or pertaining to the loan, at any time from January 1, 1989 to the present. In particular, recount all conversations during which you solicited the loan from Mr. Battaglia or Mr. Battaglia agreed to make the loan. Also, recount any subsequent communications between you & Mr. Battaglia including, but not limited to communications concerning repayment of the loan.

On approximately May 25 1990 I called Mr. Mark Battaglia on the phone (since time was limited, most communications were by phone) & mentioned the need to buy TV for the last weekend of the campaign & that I was loaning my campaign several thousands

$ dollars and would have personal family monthly living expenses for June 1990 that I would be unable to meet and could he loan me $5,000-. He agreed & someone picked up the check from his office that day. There were no further discussions until several months later after I had lost my re-election bid. I ~~simply~~ simply stated I would pay him back as soon as possible.

3. Identify any loan(s) you or Jim Bates for Congress, Inc. received from San Diego National Bank during the period from January 1, 1989 to December 31, 1990.

I recall a loan for $5,000 during that time from San Diego National Bank.

4. For each loan identified in response to Question 4:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged. Also identify any collateral provided, along with an estimate of the value of that collateral and an explanation

The $5,000- ~~personal~~ loan to me was made around May 25, 1990. The actual date may be determined by the ~~check~~ bank itself. Which prepared ~~signed~~ the note. The terms, interest and collateral were ~~straight~~ regular bank rates. The interest was approximately 2% above prime. It was a 90 or 180 day note without collateral - It was a signature loan. Actual & specific figures may be provided by San Diego National Bank.

B. State the purpose of the loan.

The purpose was for the Campaign.

C. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to San Diego National Bank by you or on your behalf, specifically including the date, amount, source and method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan. and indicate how you calculated that remaining balance.

960437219736

D. Identify all representatives of San Dieg National Bank with whom you communicated regarding the loan, from January 1, 1989 to present. Also, state the date and describe the circumstances and content of each such communication.

I don't recall the names or content and circumstances regarding this loan. However. I understand records have been subpoened.

5. Identify any loans you made to Jim Bates for Congress, Inc. during the period from January 1, 1989 to December 31, 1990.

As I recall I loaned the campaign 30,300— of which all but 2,600— has been repaid to me. The loans for $6,000-, $10,000, $10,000 & 4,300.00 were made without interest charged.

6. For each loan identified in response to Question 5:

A. State the date on which the loan was made and the terms of the loan, including the duration of the loan and the interest rate or fees charged:

9603437219737

X

The loans were made approximately between May 25, 1990 and June 30, 1990. There were no note, terms, no interest rate was charged, nor fees.

B. State the purpose of the loan;
The purpose of the loan(s) were to finance the Jim Bates for Congress Inc. Campaign.

C. Identify the source of funds for the loan. If the loan was made from personal funds, identify the source of the personal funds used to make the loan. If the loan was drawn on your account at the United States House of Representatives Bank, state whether, at the time the loan was made, your account contained sufficient funds to make the loan, or whether the loan was funded, in whole or in part, by an overdraft. If the loan was funded, in whole or in part, by an overdraft state whether, at the time you made the loan, you knew your account contained insufficient funds to make the loan.

96043721978

The loans were funded as follows:

$6,000— From my Cash Reserve Account (see attachment "A")

$10,000— My monthly Salary $5,000— (Replaced by Mark Battaglia $5,000) San Diego National Bank $5,000—

$10,000— This amount was drawn on my House of Representatives account (not a Bank) with the intention to repay this amount with incoming Campaign funds.

$4,300.00 This amount was also overdrawn and I was aware, but had overdraft protection, as stated by the Sergeant-at-Arms.

D. State whether the loan has been repaid, either in whole or in part. If the loan has been repaid in whole or in part, identify all loan payments made to you, specifically including the date, amount, source & method of each such payment. If the loan has not been repaid in whole, state the remaining balance on the loan and indicate how you calculated that remaining L.O.

95043721979

The loans made by me, have been repaid to me, with the exception of $2,600—. The disclosure statement indicate the time, date, place & amount of each payment to me.

7. Identify the individuals who were responsible for Jim Bates for Congress, Inc's compliance with the federal election laws and Federal Election Commission regulations concerning contribution limitations.

Myself, my Chief of Staff, Jim Bartell; my Campaign Manager, Dena Holman; my asst Treasurer, Sandra Burton Kennedy (she later became Treasurer, the actual Treasurer.

8. Describe the procedures utilized by Jim Bates for Congress Inc. to assure compliance with the federal election laws and Federal Election Commission regulations concerning contribution limitations.

As each check was received I, Jim Bates reviewed it to be sure it was not a corporate check or over the limit.

96043721940

Then my Chief of Staff, Jim Bartell would review them + the final review was by Sandra Kennedy, the Treasurer. a record of each person who made significant contributions was kept. On occasion a small check would be refunded if the person contributed over the limit. The contributor was also advised of the rules at the time of the solicitation or contribution.

This completes the 6 question Subpoena.

Sincerely

April 12, 1995
DATE

Jim BATES

96-432-2-2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 22, 1995

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166

Dear Mr. Bates:

I write to advise you that I will be leaving the Commission on September 22, 1995. Henceforth, Lorraine Raushenbush will be representing the Commission in the above-referenced matter. She may be reached at (202) 219-3690.

Sincerely,

James S. Portnoy
Attorney

9504372199412

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
Sep 11 12 40 PM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Jim Bates for Congress, and	)	MUR 4166
Jim Bates, as Treasurer, et al.	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

On January 10, 1995, the Commission found reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, ("the Committee") violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. 110.9(a), and that Jim Bates violated 11 C.F.R. § 110.9(a). In addition, the Commission found reason to believe that San Diego National Bank ("the Bank") violated 2 U.S.C. § 441b(a), and that Mark A. Battaglia violated 2 U.S.C. § 441a(a)(1)(A).1/

The Commission directed the Office of General Counsel to conduct an investigation pertaining to the foregoing findings. In connection with that investigation, this Office deposed Mr. Bates and served written discovery on the Bank. This report contains our recommendations based upon the information garnered during our investigation and the respondents' responses to the Commission's reason to believe findings.

1/ The Commission also found reason to believe that David L. Bain and Sami I. Bandak violated 2 U.S.C. § 441a(a)(1)(A), but took no further action.

9504372194

II. DISCUSSION

A. PROHIBITED CONTRIBUTIONS

The Federal Election Campaign Act ("the Act") prohibits corporations and labor organizations from making contributions in connection with an election. 2 U.S.C. § 441b(a). The Commission found reason to believe that the Committee accepted fifteen contributions totaling $4,475 from apparently prohibited sources. These included nine corporate contributions totaling $3,600 and six contributions from labor organizations totaling $875.

The Committee has not provided any evidence that the apparently prohibited contributions were lawful or that it refunded the contributions. Therefore, it appears that the Committee accepted prohibited contributions totaling $4,475 in violation of 2 U.S.C. § 441b(a).

B. EXCESSIVE CONTRIBUTIONS

1. Contributions Improperly Attributed To Previous Elections

The Act establishes a $1,000 limit on the amount that an individual may contribute to a candidate or a committee with respect to an election. 2 U.S.C. § 441a(a)(1)(A). Similarly, a candidate or committee may not knowingly accept a contribution in excess of $1,000. 2 U.S.C. § 441a(f). A contribution will be deemed to have been made "with respect to" the next election after it is made, unless the contributor designates it in writing for another election. 11 C.F.R. § 110.1(b)(2).

9504372194

The Commission found reason to believe that the Committee received 25 excessive contributions totaling $16,460.2/ Of that amount, 15 contributions totaling $9,335 were received during the period between the 1988 general election and the 1990 primary election, but were attributed by the Committee to the 1988 general election. The remaining 10 contributions totaling $7,125 were received during the period between the 1990 primary election and the 1990 general election, but were attributed to the 1990 primary.

The Committee has not submitted reattribution letters for the foregoing excessive contributions or provided any information demonstrating that those contributions satisfied the requirements of 11 C.F.R. § 110.1(b)(2) and 11 C.F.R. § 110.1(b)(3)(i). Accordingly, it appears that the Committee accepted a total of $16,460 in excessive contributions with respect to the 1988 general election and the 1990 primary election in violation of 2 U.S.C. § 441a(f).

2. Contribution From A Trust Account

On or about May 28, 1990, the Committee received a $2,000 contribution check drawn on the account of a trust called the "Paul E. Hall 1987 Revocable UTD Trust [for the benefit of] Charles E. Myers, II." A handwritten notation on the memorandum line of the check states that the check represents contributions

2/ This amount includes a $500 excessive contribution from Mark A. Battaglia with respect to the 1990 primary, but does not include a $5,000 contribution in the form of a loan to Mr. Bates that Mr. Battaglia made on May 25, 1990. Although the loan constitutes an excessive contribution, it is discussed separately, infra.

9043219445

from the trustee of the trust (and signer of the check), Paul E. Hall, and from the beneficiary of the trust, Charles E. Myers, II. The check does not indicate the amount of each person's contribution. The Committee attributed the contribution to Mr. Hall and Mr. Myers in equal parts -- $1,000 each.

The Committee has demonstrated that the portion of the check attributed to the beneficiary of the trust, Mr. Myers, was lawful. However, the Committee has not demonstrated the lawfulness of the portion of the contribution that it attributed to the trustee, Mr. Hall. Contributions made with trust funds normally are attributed to the trust's beneficiaries for disclosure and contribution limitation purposes. See Advisory Opinion 1981-52; Advisory Opinion 1978-7. The Committee has not provided any documentation regarding the ownership of the funds in the trust account or Mr. Hall's authority to use trust funds to make contributions in his own name. Nor did Mr. Bates provide any evidence during his deposition. As such, the entire amount of the $2,000 check must be attributed to Mr. Myers. Thus, it appears that the Committee accepted a $1,000 excessive contribution from Mr. Myers in violation of 2 U.S.C. § 441a(f).

C. **LOAN TRANSACTIONS**

1. San Diego National Bank Loan

The Committee reported receiving, inter alia, a loan for $10,000 from Mr. Bates. The Audit staff determined that the loan was comprised of two $5,000 checks: a cashier's check from

9604372196

the San Diego National Bank and a personal check from Mark A. Battaglia. Both checks were made payable to Mr. Bates.3/

In response to the Interim Audit Report, the Committee provided a letter from the Bank stating that the check represented the proceeds of a loan to Mr. Bates. The Committee conceded that Mr. Bates used the loan proceeds for his campaign. However, the Committee failed to demonstrate that the loan was made in the ordinary course of business, as required by 11 C.F.R. § 100.7(b)(11). Consequently, the Commission found reason to believe that the loan was a prohibited contribution from the Bank to the Committee in violation of 2 U.S.C. § 441b(a).

Evidence collected during our investigation indicates that the loan met the requirements set forth in the Commission's regulations. A loan will be deemed to have been made in the ordinary course of business if it satisfies four requirements: (1) the loan bears the usual and customary interest rate for the type of loan involved; (2) the loan is made on a basis which assures repayment; (3) the loan is evidenced by a written

9504372194 7

3/ The Audit staff found copies of the $5,000 checks in the Committee's records and concluded that they had been deposited directly into the Committee's account. In his deposition, Mr. Bates asserted that the check copies mistakenly were included in the Committee's records. Attachment 3 at 9-11. He further testified that he had deposited the checks in his personal account at the U.S. House of Representatives Bank and had written a $10,000 personal check to the Committee. Id. at 72, 80. Because all House Bank records are in the possession of the Justice Department, we have not been able to confirm Mr. Bates' testimony. However, for the Commission's purposes it is irrelevant what form the funds took when they were transmitted to the Committee; Mr. Bates has conceded that the actual sources of the funds were the Bank and Mr. Battaglia.

instrument; and (4) the loan is subject to a due date or amortization schedule. 11 C.F.R. § 100.7(b)(11). At his deposition, Mr. Bates testified that the loan from San Diego National Bank was a "standard" signature loan, for which the Bank charged a standard interest rate, that the loan had a prescribed term of three months, and that the loan was evidenced by a promissory note from Mr. Bates to the Bank. Mr. Bates further testified that the loan was repaid. Attachment 3 at 7, 26-28.

Subsequently, the Bank provided this Office with a copy of Mr. Bates' loan application and the promissory note. According to those documents, the loan bore an interest rate of 14% and matured in 90 days. The documentation also reveals that Mr. Bates was a long-time customer of the Bank, and that the Bank reviewed his 1988 tax return before approving the loan.

Based on the foregoing, it appears that the loan from San Diego National Bank to Mr. Bates conformed to the requirements of 11 C.F.R. § 100.7(b)(11), and thus was not a prohibited contribution in violation of 2 U.S.C. § 441b(a). The Office of General Counsel therefore recommends that the Commission take no further action against the Committee with respect to the loan from San Diego National Bank to the Committee. We also recommend that the Commission take no further action against San Diego National Bank with respect to the loan.4/

4/ A loan that conforms with the requirements of 11 C.F.R. § 100.7(b)(11) nevertheless must be reported by the recipient committee in accordance with 11 C.F.R. § 104.3(a). Although the Committee failed to report the source of the loan as San Diego National Bank, in view of the fact that the loan appears to have

9 5 0 4 3 7 2 1 9 4 8

2. Battaglia Loan

The Commission found reason to believe that Mark A. Battaglia made an excessive contribution to the Committee in the form of a $5,000 loan to Mr. Bates in violation of 2 U.S.C. § 441a(a)(1)(A), and that the Committee accepted an excessive contribution from Mr. Battaglia in violation of 2 U.S.C. § 441a(f).

In response to the Commission's reason to believe finding, Mr. Battaglia submitted a letter confirming that he loaned Mr. Bates $5,000. Attachment 2 at 1. Mr. Battaglia asserted that he considered the loan to be "personal" and not related to Mr. Bates' campaign. Id. However, Mr. Battaglia acknowledged that the purpose of the loan was to help Mr. Bates defray personal expenses that he was having difficulty paying due to expenses incurred in connection with his congressional campaign. Id. Mr. Bates also testified that he asked for the loan to cover his personal expenses so that he could continue to direct all his funds into the campaign.

Mr. Bates and Mr. Battaglia also provided consistent explanations of the manner in which Mr. Bates repaid the loan. In particular, in 1991, following Mr. Bates' departure from the Congress, Mr. Battaglia retained Mr. Bates to perform consulting services in connection with a proposal Mr. Battaglia's company made to lease parking lots at the United

9960437219

(Footnote 4 continued from previous page)
been lawful, and in order to promote the expeditious resolution of this case, this Office recommends that the Commission take no action regarding the reporting violation.

States-Mexican border from the General Services Administration. Attachment 2 at 2. Mr. Bates and Mr. Battaglia both stated that, in lieu of cash payments for his work, Mr. Bates' debt to Mr. Battaglia was forgiven. Id.; Attachment 3 at 16-18, 19-25. Mr. Battaglia submitted documentary evidence indicating that Mr. Bates actually performed services for him during 1993. Attachment 2 at 4-12, 14. In addition, while he has not furnished copies of these documents, Mr. Bates testified that he reported the loan forgiveness on his 1991 income tax return and on a lobbyist disclosure report he filed with the Clerk of the House of Representatives in 1991. Attachment 3 at 24-25.5/

A loan to a candidate made in connection with a federal election constitutes a contribution to the candidate's committee. 11 C.F.R. § 102.7(d). See Buckley v. Valeo, 424 U.S. 1 (1976); FEC v. Haley Congressional Committee, 852 F.2d 1111 (9th Cir. 1988) (guarantees of bank loan to candidate were contributions); FEC v. Webb for Congress, No. 89-664-CIV-5-BO (E.D.N.C. Jan. 2, 1991) (loan from candidate's mother to candidate was a contribution). Therefore, it appears that Mr. Battaglia's loan to Mr. Bates constitutes a contribution to the Committee. The legality of a loan is determined at the time the loan is made. 11 C.F.R. § 100.7(a)(1)(i)(B). As such, the

5/ Although Mr. Bates' repayment arrangement with Mr. Battaglia raises concerns, the Department of Justice has investigated the transaction and determined not to take any action. See Attachment 1 at 10 (Letter from Deputy Assistant Attorney General John C. Keeney to Jim Bates, dated April 21, 1994).

9604321950

fact that Mr. Bates repaid Mr. Battaglia does not obviate the violation. 11 C.F.R. § 100.7(a)(1)(i)(A).

3. Checks Drawn on Mr. Bates' Account at the House of Representatives Bank

Mr. Bates made three loans totaling $20,300 to the Committee in the form of checks drawn on his account at the House of Representatives Bank. Mr. Bates has stated publicly that he had insufficient funds in his House Bank account to make the loans to his campaign committee, and that he funded the loans by use of overdrafts. Leonard Bernstein, Bates Used Overdrafts As Campaign Loans, Los Angeles Times, March 21, 1992. See also Glenn R. Simpson, Members on List of Bank Abusers Loaned Funds to Own Campaigns, Roll Call, March 19, 1992. Moreover, at his deposition, Mr. Bates confirmed that the loans were made with overdrafts, and that he knew his account held insufficient funds at the time he made the loans. Attachment 3 at 12-15.

The foregoing demonstrates that Mr. Bates' loans to the Committee from his House Bank account were not made with his personal funds, as provided in 11 C.F.R. § 110.10. Therefore, it appears that Mr. Bates violated 11 C.F.R. § 110.9(a) by making contributions from funds other than personal funds, and the Committee violated 11 C.F.R. § 110.9(a) by accepting the loans from Mr. Bates.

9604372195

D. CHECKS PAID ON INSUFFICIENT FUNDS

The Committee maintained its checking account at the San Diego National Bank. Based on a review of the Committee's checking account statements, the Audit staff reported that the Bank honored 32 checks totaling $178,639.49 at times when the Committee's account contained insufficient funds. In light of the Audit staff's analysis, the Commission found reason to believe that the Bank made and the Committee received prohibited contributions. However, the evidence now indicates that, with two relatively small exceptions, the Bank did not honor NSF checks.

During the audit process, the Committee submitted a letter from Murray L. Galinson, President/CEO of San Diego National Bank, stating that:

> overdrafts were handled either by a deposit being made to cover the overdraft before the check was returned or the check was returned where there was not a sufficient deposit.

The Audit staff advised this Office that Mr. Galinson's letter appeared to be inconsistent with the Committee's bank statements, which indicated that a lag of one to three days elapsed from the time that the Bank honored the Committee's overdrafts to the time the Committee deposited funds to cover the checks.

During the investigation, the Bank resolved the apparent discrepancy between Mr. Galinson's letter and the Audit staff's analysis of the Committee's bank statements. First, the Bank submitted an affidavit from Joyce Chewning, Senior Vice President, stating that the Bank had reviewed the Committee's

9504372195 2

account "for overdraft activity" and that all checks presented against an NSF balance, except two, "were either returned or a check was received to cover the NSF balance . . ." Attachment 4 at 2. Additionally, the Bank submitted a "General Statement" from Ms. Chewning explaining that the Bank posted checks to the Committee's account immediately upon receipt, but did not actually honor the checks if the account contained insufficient funds. Attachment 4 at 3. Rather, the Bank called the Committee and informed it that a potential overdraft existed. Id. If the Committee deposited funds to cover the check within 24 hours, then the Bank honored the check; if not, the Bank returned the check to the Committee. Id.

The Bank's explanation is consistent with Mr. Bates' deposition testimony that the Bank would not honor NSF checks. Like the Bank, Mr. Bates averred that upon receipt of a check drawn against insufficient funds, the Bank would post the check to the Committee's account, then advise the Committee that the check would be dishonored unless additional deposits were made. Mr. Bates characterized the apparent discrepancy between the Committee's deposits and withdrawals as a matter of timing. Attachment 3 at 2-6. Although the Bank would post checks to the Committee's account upon receipt, it would not honor those checks until the Committee had deposited sufficient funds. The interval between the posting of the checks and the deposit of

9604372195

the funds created the appearance of an overdraft; however, no Bank funds were expended.7/

The Bank identified two apparent overdrafts that it could not explain: (1) on August 15, 1988, the Committee had an overdrawn balance of $177.95 that was covered by a $2,465 deposit on August 17, 1988; and (2) on September 20, 1990, the Committee had an overdrawn balance of $2,121.87 that was covered by a $10,365 deposit on September 24, 1990. Attachment 2 at 2. Due to the age of these transactions and the relatively small amounts and short time periods involved, we recommend that the Commission not pursue these apparent violations of the Act.

In light of the foregoing, it appears that the Bank did not honor a material number of Committee checks drawn on insufficient funds. We therefore recommend that the Commission take no further action against the Committee for violating 2 U.S.C. § 441b(a) with respect to overdraft checks. We further recommend that the Commission take no further action against San Diego National Bank.

9604372195 4

7/ The Committee's disbursement practices were less than ideal. For example, Mr. Bates stated that he authorized checks to be drawn on insufficient funds, with the expectation that money would be raised to cover the checks before they cleared the Committee's account. Attachment 3 at 2-5. In addition, Mr. Bates described the Bank's refusal to cover overdrafts as a "sore point" between the Committee and the Bank, and acknowledged that he had no knowledge of Commission regulations governing overdraft protection. Id. at 5-6.

E. REPORTING VIOLATIONS

1. Reporting of Loans Received

The Act and Commission regulations provide that a candidate's authorized committee must report all loans made to the committee by the candidate or any other person. 2 U.S.C. §§ 434(b)(2)(G) and (H); 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(3)(vii). The Committee appears to have violated this requirement with respect to loans purportedly from Mr. Bates to the Committee totaling $30,300. As discussed previously, the funds for those loans actually originated with Mr. Battaglia, San Diego National Bank and the House of Representatives Bank. Accordingly, the reports filed by the Committee do not accurately state the source of funds for the loans in question. Therefore, it appears that the Committee violated 2 U.S.C. §§ 434(b)(2) and (3).

2. 48 Hour Notices

A candidate or committee must notify the Clerk of the House of Representatives within 48 hours after receiving a contribution of $1000 or more, if that contribution is received less than twenty days and more than 48 hours before an election. 2 U.S.C. § 434(a)(6)(A). See also 11 C.F.R. § 104.5(f). Such notification shall be in writing and shall identify the contributor, the amount of the contribution, and the date received. Id.

The primary election in California was held on June 5, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of

9604372195

$1000 or more received between May 17, 1990 and June 2, 1990. During this period, the Committee received five contributions totaling $5,000 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

The general election in California was held on November 6, 1990. Therefore, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1000 or more received between October 18, 1990 and November 3, 1990. During this period, the Committee received twelve contributions totaling $14,925 that gave rise to the 48 hour notification requirement. The Committee, however, failed to file the required 48 hour notices.

The Committee's previous treasurer conceded that she had misinterpreted the regulation that sets forth the 48 hour notice requirement. At his deposition, Mr. Bates acknowledged that the Committee had not filed the required 48 hour notices, stating that the Committee's failure to do so was an oversight. Attachment 3 at 29-30. Mr. Bates' explanation is credible, but not exculpatory.

Therefore, it appears that the Committee failed to timely notify the Clerk of the House of Representatives of contributions of $1,000 or more that the Committee received between two and twenty days before the primary and general elections in violation of 2 U.S.C. § 434(a)(6)(A).

9604372196

3. Itemization of Expenditures

A Committee must report the name and address of each person to whom the Committee made an aggregate expenditure in excess of $200 during the calendar year to meet an operating expense, together with the date, amount and purpose of such operating expenditure. 2 U.S.C. § 434(b)(5)(A). See also 11 C.F.R. 104.3(b)(4)(i). The Commission found reason to believe that the Committee failed to itemize $20,998 in expenditures that were identified on a schedule the Audit staff provided to the Committee. Our investigation has not disclosed any evidence to refute the Commission's finding. Therefore, it appears that the Committee violated 2 U.S.C. § 434(b)(5)(A).

4. Recordkeeping for Disbursements

The treasurer of a committee must keep an account of the name and address of every person to whom a disbursement is made, the date, amount and purpose of the disbursement and, for each disbursement over $200, a receipt, invoice or canceled check. 2 U.S.C. § 432(c)(5); see also 11 C.F.R. § 102.9(b)(2).

The Committee did not maintain canceled checks for disbursements made during calendar year 1989. Moreover, the Committee declined to procure copies of the checks from the Bank and submit them to the Audit staff, stating that it lacked sufficient funds to do so. The Audit Division reports that the absence of the canceled checks significantly limited its review of $62,222 in Committee disbursements during 1989.

9604372195 7

In light of the foregoing, it appears that the Committee failed to maintain proper recordkeeping for disbursements, in violation of 2 U.S.C. § 432(c)(5).

F. DAVID L. BAIN AND SAMI I. BANDAK

On January 10, 1995, the Commission found reason to believe that David L. Bain and Sami I. Bandak made excessive contributions to the Committee in violation of 2 U.S.C. § 441a(a)(1)(A), but took no further action. At the time, this Office did not formally recommend that the Commission close the file in this matter with respect to Mr. Bain and Mr. Bandak. We now recommend that the Commission do so.

III. CONCILIATION

A. MR. BATES AND THE COMMITTEE

By letter dated February 15, 1995, Mr. Bates requested to enter into pre-probable cause conciliation negotiations with the Commission. Attachment 1. At his deposition, on March 31, 1995, Mr. Bates reiterated his interest in pre-probable cause conciliation. In light of Mr. Bates' testimony and the information we have obtained from other sources, we recommend that the Commission enter into pre-probable cause conciliation with Mr. Bates and the Committee.

9604321958

9604372195 9

9504372190

9604372191

B. Mark A. Battaglia

The Office of General Counsel also recommends that the Commission offer to enter into pre-probable cause conciliation with Mr. Battaglia and approve the attached proposed

conciliation agreement.

IV. **RECOMMENDATIONS**

1. Take no further action against Jim Bates for Congress, Inc. and Jim Bates, as Treasurer, with respect to the loan from San Diego National Bank to Jim Bates and the checks drawn on insufficient funds on the Committee's account at San Diego National Bank;

2. Enter into conciliation prior to a finding of probable cause to believe with Jim Bates and Jim Bates for Congress, Inc. and Jim Bates, as Treasurer, with respect to the remaining violations of 2 U.S.C. § 441b(a) and the violations of 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), and 11 C.F.R. 110.9(a);

3. Enter into conciliation prior to a finding of probable cause to believe with Mark A. Battaglia;

4. Take no further action against San Diego National Bank and close the file as to this respondent;

5. Close the file in this matter as to David L. Bain and Sami I. Bandak;

6. Approve the attached conciliation agreements; and

7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 9/8/95

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

9604372192

Attachments

1. Letter from Jim Bates to Danny L. McDonald (February 15, 1995)
2. Letter from Mark A. Battaglia to James S. Portnoy (February 23, 1995)
3. Excerpts from Transcript of Deposition of Jim Bates (March 31, 1995)
4. Letter from Murray Galinson to James S. Portnoy (February 13, 1995)
5. Conciliation Agreements

Staff Assigned: James S. Portnoy

9504372193

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4166
Jim Bates for Congress, and	)	
Jim Bates, as Treasurer,	)	
et al.	)	

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 26, 1995, do hereby certify that the Commission decided by a vote of 4-2 to take the following actions in MUR 4166:

1. Take no further action against Jim Bates for Congress, Inc. and Jim Bates, as Treasurer, with respect to the loan from San Diego National Bank to Jim Bates and the checks drawn on insufficient funds on the Committee's account at San Diego National Bank;

2. Enter into conciliation prior to a finding of probable cause to believe with Jim Bates and Jim Bates for Congress, Inc. and Jim Bates, as Treasurer, with respect to the remaining violations of 2 U.S.C. § 441b(a) and the violations of 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), and 11 C.F.R. § 110.9(a);

(continued)

2604372194

3. Enter into conciliation prior to a finding of probable cause to believe with Mark A. Battaglia;

4. Take no further action against San Diego National Bank and close the file as to this respondent;

5. Close the file in this matter as to David L. Bain and Sami I. Bandak;

6. Approve the conciliation agreements recommended in the General Counsel's September 8, 1995 report; and

7. Approve the appropriate letters as recommended in the General Counsel's September 8, 1995 report.

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

Attest:

10-6-95
Date

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

9504372195

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 1995

Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, California 92112

RE: MUR 4166

Dear Mr. Galinson

On January 10, 1995, the Commission found reason to believe that San Diego National Bank violated 2 U.S.C. § 441b(a). On February 16, 1995, you submitted a response to the Commission's reason to believe findings.

After considering the circumstances of the matter, the Commission determined on September 26, 1995, to take no further action against San Diego National Bank and closed the file as it pertains to San Diego National Bank. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

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

Sincerely,

Lorraine Rausherbush

Lorraine E. Rausherbush
Attorney

9504372196

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 2, 1995

Mark Battaglia
1127 F Avenue
Coronado, CA 92118

RE: MUR 4166

Dear Mr. Battaglia:

On January 10, 1995, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A). On September 26, 1995, the Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3690.

Sincerely,

Lorraine E. Raushenbush
Attorney

Enclosure
Conciliation Agreement

9504372199 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 2, 1995

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166
Jim Bates; Jim Bates for Congress Committee, and Jim Bates as treasurer.

Dear Mr. Bates:

On January 10, 1995, the Federal Election Commission found reason to believe that the Jim Bates for Congress Committee and you, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a), and that you violated 11 C.F.R. § 110.9(a). At your request, on September 26, 1995, the Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe .

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission . In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe , are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions or suggestions for changes in the agreement, or wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement

Sincerely,

Lorraine E. Raushenbush
Attorney

Enclosure
Conciliation Agreement

9604372198

Jim Bates
CONGRESS

Oct. 2, 1995

Dear Lorraine Rauschenbush: (MUR4166)

Attached are copies of letters I sent — also one response. What is the status of the case?

Attached is my card with phone numbers —

Regards

9604321979

From the desk of

Paul Herrera

Sept. 23, 1995

Dear Sir:

In responce to your letter my checking account Real Estate Services, was my personal account and not a corporate account. I was the only person.

Sincerely,
Paul Herrera

810 Lehigh Avenue
Chula Vista, Calif.
91913

9604372197O

Jim Bates
CONGRESS

August 30, 1995

Real Estate Services
810 Lehigh Avenue
Chula Vista, CA 91913

Dear Friend:

I want to thank you for your generous support of my past campaigns. It has been genuinely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $100 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

960437219711

Jim Bates
CONGRESS

August 30, 1995

Bicycle Club, Inc.
7301 Eastern Avenue
Bell Gardens, CA 92105

Dear Friend:

I want to thank you for your generous support of my past campaigns. It has been genuinely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $1,000 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

96043721972

Jim Bates
CONGRESS

August 30, 1995

Aguirre & Eckmann
1060 Eighth Avenue, Ste. 200
San Diego, CA 92101

Dear Mr. Aguirre:

I want to thank you for your generous support of my past campaigns. It has been sincerely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $1,000 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

Jim Bates
CONGRESS

August 30, 1995

Fiesta Catering
9360 Dowdy Drive
San Diego, CA 92126

Dear Friend:

I want to thank you for your generous support of my past campaigns. It has been sincerely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $300 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

9504372197 4

Jim Bates
CONGRESS

August 30, 1995

Charcoal House Restaurant
9566 Murray Drive
La Mesa, CA 92141

Dear Mr. Najor:

I want to thank you for your generous support of my past campaigns. It has been sincerely appreciated.

In August of ~~1990,~~ 1992 the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $500 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

9504372197 5

Jim Bates
CONGRESS

August 30, 1995

Insurance Unlimited
of San Diego County
7750 El Camino Real, Suite 2E
La Costa, CA 92009

Dear Friend:

I want to thank you for your generous support of my past campaigns. It has been genuinely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $100 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

9504372976

Jim Bates
CONGRESS

August 30, 1995

Jacquelin D. Trestrail, M.D.
Medical Corporation
2400 East 4th Street
National City, CA 92150

Dear Dr. Trestrail:

I want to thank you again for your generous support of my past campaigns. It has been genuinely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $150 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

96043721977

Jim Bates
CONGRESS

August 30, 1995

Carlton A. Hargrave
DBA McDonalds
28100 Front St.
Temecula, CA 92390

Dear Mr. Hargrave:

I want to thank you for your generous support of my past campaigns. It has been genuinely appreciated.

In August of 1990 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $200 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

96043721978

Jim Bates
CONGRESS

August 30, 1995

Real Estate Services
810 Lehigh Avenue
Chula Vista, CA 91913

Dear Friend:

I want to thank you for your generous support of my past campaigns. It has been genuinely appreciated.

In August of ~~1990~~ 1992, the Federal Election Commission conducted an audit of my campaign account. Several discrepancies became apparent, and one of those involved your contribution in 1990.

Unfortunately, your contribution of $100 was issued from a corporate bank account. Importantly, campaign finance law prohibits contributions issued from corporate accounts.

Please provide a contribution remitted from your personal account, and I will return the corporate contribution. By sending the appropriate check, the net result will correct the prohibited contribution.

Thank you for your help in resolving this problem.

Sincerely,

Jim Bates

P.S. My local mailing address is 3609 4th Avenue, San Diego, CA 92103, and my phone number in Idaho is (208) 337-5037.

95043721979

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
OCT 27 10 13 AM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 27 2 47 PM '95

October 24, 1995

Mark A. Battaglia
1127 F Avenue
Coronado, California 92118
(619) 435-3040 Fax (619) 425-6916

Via Federal Express
#5396362731

Federal Election Commission
Attn: Ms. Lorraine E. Raushenbush
999 "E" Street. N.W.
Washington, D.C. 20463
(202) 219-3690

RE: MUR 4166
MUR 3585 (Conciliation Agreement)

Dear Ms. Raushenbush:

I am in receipt of your letter dated October 2, 1995.

Enclosed please find a signed Conciliation Agreement and check #3053 in the amount of $1300.00.

Upon receipt please send me a fully executed copy of the enclosed Conciliation Agreement.

Thank you very much.

Sincerely,

Mark A. Battaglia

Mark A. Battaglia

MAB:j

9504372190

RECEIVED
FEDERAL ELECTION
COMMISSION
ACCOUNTING OFFICE
Oct 31 1 10 PM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

10/27/95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Oct 27 2 47 PM '95

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from Mark A. Battaglia, check number 3053, dated 10/26/95, and in the amount of $1,300.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

==========

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket a.a. by THOR

In reference to the above check in the amount of $1,3000, the MUR number is [redacted] and in the name of Mark A. Battaglia 4166. The account into which it should be deposited is indicated below:

✓ Budget Clearing Account (OGC), 95F3875.16

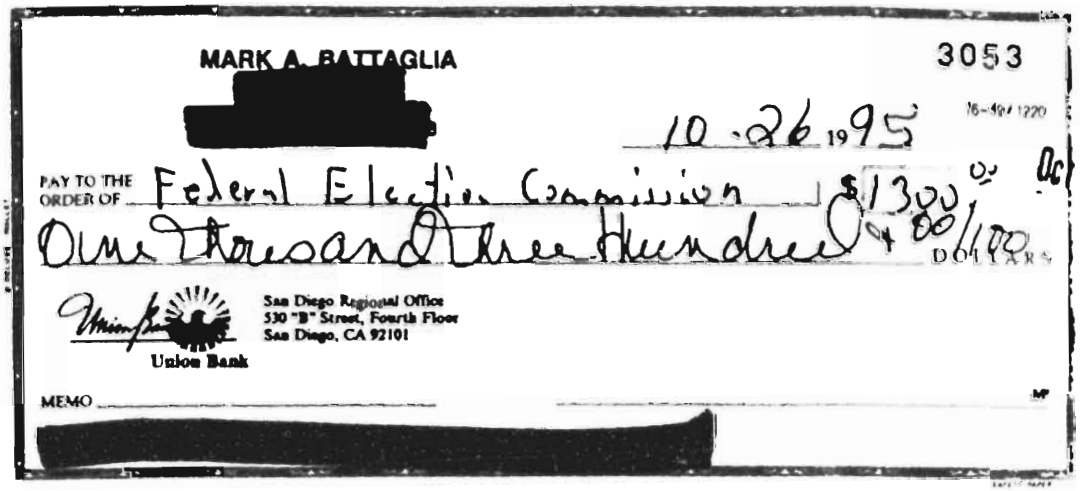
__ Civil Penalties Account, 95-1099.160

__ Other: _____

J. Brunson
Signature

10/30/95
Date

9 6 5 4 3 7 2 1 9 8 1



MARK A. BATTAGLIA

[redacted]

3053

10-26 1995

PAY TO THE ORDER OF Federal Election Commission $1300.00

One Thousand Three Hundred and 00/100 DOLLARS

Union Bank

San Diego Regional Office
530 "B" Street, Fourth Floor
San Diego, CA 92101

MEMO

[redacted]

9604372199332

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
NOV 1 2 37 PM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 1, 1995

To Whom It May Concern:

We are returning your correspondence and check dated 10/26/95, in the amount of $1,300.00, for the reason indicated below.

xx Check not signed

__ Check not made to proper payee. The check must be made payable to the "Federal Election Commission"

__ The numeric amount does not agree with the written amount

__ Other:

Please take the appropriate action and return the material to us. If you have any questions, please call (202) 219-3786.

Sincerely,

Rosa E. Swinton

Rosa E. Swinton
Accounting Technician

Enclosure

9504372193

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
Nov 13 11 08 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4166
Mark A. Battaglia	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by respondent Mark A. Battaglia. The attached agreement contains no changes from the agreement approved by the Commission on September 26, 1995, and we have received a check for the $1,300.00 civil penalty.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Mark A. Battaglia.
2. Close the file with respect to this respondent.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

11/9/95
Date

BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

Attachment
1. Conciliation Agreement

Staff Assigned: Lorraine E. Raushenbush

9604372 1984

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4166
Mark A. Battaglia	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on November 24, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 4166:

1. Accept the conciliation agreement with respondent Mark A. Battaglia, as recommended in the General Counsel's report dated November 9, 1995.

2. Close the file with respect to this respondent.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated November 9, 1995.

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

Attest:

11-24-95
Date

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

Received in the Secretariat: Mon., Nov. 13, 1995 11:03 a.m.
Circulated to the Commission: Mon., Nov. 13, 1995 4:00 p.m.
Deadline for vote: Fri., Nov. 24, 1995 4:00 p.m.

lrd

9504321935

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 29, 1995

Mark A. Battaglia
1127 F Avenue
Coronado, CA 92118

RE: MUR 4166
Mark A. Battaglia

Dear Mr. Battaglia:

On November 24, 1995, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted by you in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter as it pertains to you.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Lorraine E. Raushenbush
Attorney

Enclosure
Conciliation Agreement

9504372193 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Mark A. Battaglia	)	MUR 4166
	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Mark A. Battaglia ("Respondent") violated 2 U.S.C. § 441a(a)(1)(A).

NOW THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

III. Respondent enter voluntarily into this agreement with the Commission.

9304372193 7

IV. The pertinent facts in this matter are as follows:

1. Jim Bates was a candidate for re-election to the United States House of Representatives from the State of California in the Democratic primary election held on June 5, 1990 and the general election held on November 6, 1990. Jim Bates for Congress Committee was the authorized committee of Mr. Bates.

2. Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is unlawful for any person to make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

3. On or about January 26, 1989, Respondent contributed $1,000 to the Committee with respect to the 1990 primary election.

4. On or about May 25, 1990, Mr. Bates solicited a $5,000 loan from Respondent. Mr. Bates sought the loan to pay personal expenses in order that he could contribute all his personal funds to the Committee. The loan therefore was a contribution from Respondent to the Committee. Because the loan was made prior to the 1990 primary election, it was a contribution with respect to the 1990 primary election.

5. Mr. Bates repaid the loan to Respondent by providing consulting services to Respondent in 1991, after Mr. Bates' term of office had expired.

9304372195

6. Respondent legally could not contribute more than $1,000 to the Committee with respect to the 1990 primary election. Therefore, Respondent made a $5,000 excessive contribution to the Committee.

V. Respondent violated 2 U.S.C. § 441a(a)(1)(A).

VI. Respondent will pay a civil penalty to the Federal Election Commission in the amount of $1,300 pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. 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.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents 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.

9604321939

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman 11/29/95
Kim Bright-Coleman Date
Associate General Counsel

FOR THE RESPONDENTS:

Mark A. Battaglia - Individual 10/24/95
(Name) Date
(Position)

9604372192700

JIM BATES

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
DEC 13 11 18 AM '95

Dec 9, 1995

Attention:

Lorraine E. Ranshenbach

Enclosed is the $3,500 - check for the Civil penalties assessed in MUR 4166.

Thanks

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 14 11 34 AM '95

9504372191

3609 FOURTH AVENUE • SAN DIEGO, CALIFORNIA 92103 • (619) 295-6923
ROUTE 2 BOX 85 • HOMEDALE, IDAHO 83628 • (208) 337-5037

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 14 11 34 AM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

12/13/95

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Rosa E. Swinton
Accounting Technician

SUBJECt: Account Determination for Funds Received

We recently received a check from Jim Bates, check number 0812, dated 12/15/95, and in the amount of $3,500.00. Attached is a copy of the check and any correspondence that was forwarded. Please indicate below the account into which it should be deposited, and the MUR number and name.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC, Docket By aa

In reference to the above check in the amount of $3,500.00, the MUR number is 4166 and in the name of Jim Bates. The account into which it should be deposited is indicated below:

✓ Budget Clearing Account (OGC), 95F3875.16

__ Civil Penalties Account, 95-1099.160

__ Other: _____

Anita Alexander
Signature

12-14-95
Date

96043721902

0812

92 1/1241

JIM BATES
[redacted]

Dec. 15, 19 95

Pay to the Order of Federal Election Commission $ 3,500.00

Three thousand five hundred & no/100 Dollars

WEST ONE BANK
West One Bank, Idaho
Homedale Office 1-0052
P.O. Box 157
Homedale, ID 83628
1-800-221-5511

For [redacted]

96534521902

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JAN 4 10 22 AM '96

In the Matter of Jim Bates; Jim Bates for Congress, and Jim Bates, as treasurer	)	**SENSITIVE**
	MUR 4166	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 10, 1995, the Commission found reason to believe that Jim Bates for Congress and Sandra Kennedy, as treasurer, ("Committee") violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a), and that Jim Bates violated 11 C.F.R. § 110.9(a).[1] On September 26, 1995, the Commission authorized this Office to enter into negotiations with Mr. Bates, and the Committee, directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

[1] Jim Bates became treasurer of the Committee effective February 15, 1995.

9 6 5 4 3 7 2 1 9 2 5

9604372119966

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with Jim Bates for Congress, and Jim Bates, as treasurer.

2. Close the file.

3. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 1/3/96 BY: Kim Bright-Coleman
Kim Bright-Coleman
Associate General Counsel

9304372190 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Jim Bates for Congress and Jim Bates, as treasurer.	)	MUR 4166
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 16, 1996, the Commission decided by a vote of 5-0 to take the following actions in MUR 4166:

1. Accept the conciliation agreement with Jim Bates for Congress and Jim Bates, as treasurer, as recommended in the General Counsel's Report dated January 3, 1996.

2. Close the file.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated January 3, 1996.

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

Attest:

1-16-96
Date

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

Received in the Secretariat: Thurs., Jan. 04, 1996 10:22 a.m.
Circulated to the Commission: Thurs., Jan. 04, 1996 4:00 p.m.
Deadline for vote: Tues., Jan. 09, 1996 4:00 p.m.
Deadline Extended: Tues., Jan. 16, 1996 4:00 p.m.
lrd

9504372190 3

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 23, 1996

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166
Jim Bates for Congress, and Jim Bates, as treasurer

Dear Mr. Bates:

On January 16, 1996, the Federal Election Commission approved a revised conciliation agreement with you in settlement of violations of 2 U.S.C. §§ 432(c)(5), 434 (a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 110.9(a) of the Commission's Regulations.

Enclosed you will find a copy of the agreement. Please sign and return the agreement to the Commission. Please note that the civil penalty balance payment of $3,500 is due within 30 days. A copy of the fully executed conciliation agreement will be forwarded to you for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Lorraine Raushenbush

Lorraine E. Raushenbush
Attorney

Enclosure
Conciliation Agreement

9604372199

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1996

Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

RE: MUR 4166
Jim Bates for Congress, and Jim Bates, as treasurer

Dear Mr. Bates:

The Federal Election Commission is in receipt of the conciliation agreement signed by you in settlement of the above referenced matter. Accordingly, the file has been closed in this matter. Please be advised that the civil penalty in this agreement reflects unusual factors brought forth during the investigation.

The confidentiality provisions at 2 U.S.C. § 437(g)(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.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty balance payment of $3,500 is due within 30 days of the

conciliation agreement's effective date. If you have any questions, please contact Assistant General Counsel Rhonda Vosdingh at (202) 219-3690.

Sincerely,

Lorraine E. Raushenbush
Attorney

Enclosure
Conciliation Agreement

9604372001

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Jim Bates;	)	MUR 4166
Jim Bates for Congress Committee	)	
and Jim Bates as Treasurer	)	
	)	

9 6 0 4 3 7 2 2 0 6

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Jim Bates for Congress Committee and Jim Bates as treasurer ("the Committee") violated 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a). The Commission also found reason to believe that Jim Bates violated 11 C.F.R. § 110.9(a).

NOW THEREFORE, the Commission and the Committee and Mr. Bates (collectively "Respondents"), having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

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

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Jim Bates was a candidate for re-election to the United States House of Representatives from the State of California in the Democratic primary election held on June 5, 1990 and the general election held on November 6, 1990.

2. Jim Bates for Congress Committee was the authorized committee of Mr. Bates. Jim Bates is the treasurer of the Committee.

A. Prohibited Contributions

1. Pursuant to 2 U.S.C. § 441b(a), it is unlawful for corporations or labor organizations to make contributions with respect to any election for federal office, and for a candidate and his authorized political committees to accept such contributions.

2. During the period from January 30, 1989 to November 1, 1990, the Committee accepted nine contributions totaling $3,600 from corporations and six contributions totaling $875 from labor organizations. Accordingly, the Committee accepted prohibited contributions totaling $4,475.

B. Excessive Contributions

1. Pursuant to 2 U.S.C. § 441a(a)(1)(A), it is unlawful for any person to make contributions to any candidate and his authorized political committees with respect to any election for federal office which, in the aggregate, exceed $1,000.

9604372203

2. Pursuant to 2 U.S.C. § 441a(f), it is unlawful for a candidate and his authorized political committees to accept a contribution in excess of the limit set forth in 2 U.S.C. § 441a(a)(1)(A).

a. Contributions Improperly Attributed To Previous Elections

3. A contribution will be deemed to be made with respect to the next election after the contribution is made unless the contributor designates the contribution in writing for a previous election. 11 C.F.R. § 110.1(b)(2). A contribution may be designated for another election only to the extent that the contribution does not exceed the net debts outstanding from that previous election. 11 C.F.R. § 110.1(b)(3)(i).

4. The Committee accepted 15 contributions totaling $9,335 during the period between the 1988 general election and the 1990 primary election that the Committee attributed to the 1988 general election, but which the Committee was required to attribute to the 1990 primary election.

5. The contributors who made the contributions identified in paragraph 4 already had contributed the maximum lawful amount to the Committee with respect to the 1990 primary election. Therefore, the contributions constitute excessive contributions to the Committee with respect to the 1990 primary election.

6. The Committee accepted 10 contributions totaling $7,125 during the period between the 1990 primary election and the 1990 general election that the Committee attributed to the 1990 primary election, but which the Committee was required to attribute to the 1990 general election.

9604372200

7. The contributors who made the contributions identified in paragraph 6 already had contributed the maximum lawful amount to the Committee with respect to the 1990 general election. Therefore, the contributions constitute excessive contributions to the Committee with respect to the 1990 general election. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).

b. Contribution From A Trust Account

8. A contribution made with trust funds is attributable to the beneficiary of the trust.

9. On or about May 28, 1990, the Committee accepted a contribution in the form of a check for $2,000 drawn on the account of "Paul E. Hall 1987 Revocable UTD Trust [for the benefit of] Charles E. Myers, II. The check was signed by Paul E. Hall, as trustee. A handwritten notation on the check states: "contributors -- Hall & Myers."

10. The Committee attributed the contribution to Mr. Hall and Mr. Myers in equal portions of $1,000 each.

11. Mr. Hall did not have authority to use trust funds to make a contribution to the Committee in his own name. Accordingly, the entire $2,000 contribution is attributable to the trust's beneficiary, Mr. Myers.

12. Mr. Myers legally could not contribute more than $1,000 to the Committee in connection with an election. Therefore, the Committee accepted a $1,000 excessive contribution from Mr. Myers. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).

9604372205

c. Loan from Mark A. Battaglia

13. Pursuant to 2 U.S.C. § 431(8)(A)(i), a loan made for the purpose of influencing an election for federal office is a contribution subject to the contribution limits set forth in 2 U.S.C. § 441a(a)(1)(A).

14. Pursuant to 2 U.S.C. §§ 434(b)(2) and 434(b)(3), a committee must file a report disclosing, inter alia, the source of all loans that it receives.

15. On or about January 26, 1989, Mark A. Battaglia contributed $1,000 to the Committee with respect to the 1990 primary election. On or about January 8, 1990, Mr. Battaglia contributed $500 to the Committee with respect to the 1990 primary election.

16. On or about May 25, 1990, Mr. Bates solicited a $5,000 loan from Mr. Battaglia. Mr. Bates sought the loan to pay personal expenses so that he could contribute an equivalent amount of his personal funds to the Committee. The loan therefore was a contribution from Mr. Battaglia to the Committee. Because the loan was made prior to the 1990 primary election, it was a contribution with respect to the 1990 primary election.

17. Mr. Bates states that he repaid the loan to Mr. Battaglia by providing consulting services to Mr. Battaglia in 1991, after Mr. Bates' term of office had expired.

18. Mr. Battaglia legally could not contribute more than $1,000 to the Committee with respect to the 1990 primary election. Therefore, Mr. Battaglia's loan constituted a $5,000 excessive contribution from Mr. Battaglia to the Committee. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).

9504372206

19. The Committee incorrectly reported the loan from Mr. Battaglia as a loan from Mr. Bates. See 2 U.S.C. §§ 434(b)(2) and (3).

d. Loan From Mr. Bates to Committee Drawn on House of Representatives Bank Account

20. A candidate may make unlimited contributions to his or her campaign from personal funds, but may not use funds other than his personal funds to contribute to his or her campaign. 11 C.F.R. §§ 110.9 and 110.10.

21. Mr. Bates had a checking account at the United States House of Representatives Bank ("House Bank"). Mr. Bates made three loans totaling $20,300 to the Committee using checks drawn on his account at the House Bank: (1) $6,000 -- May 23, 1990; (2) $10,000 -- May 26, 1990; and (3) $4,300 -- May 30, 1990.

22. At the time Mr. Bates made the foregoing loans, he knew that his House Bank account contained insufficient funds for the loans and that the checks to the Committee were overdrafts.

23. The overdraft checks Mr. Bates used to make loans to the Committee were not Mr. Bates' personal funds. See 11 C.F.R. § 110.10.

24. Mr. Bates subsequently deposited funds sufficient to cover the overdrafts.

25. The Committee incorrectly reported Mr. Bates as the source of funds for the loans. See 2 U.S.C. §§ 434(b)(2) and (3).

2554322007

C. 48 Hour Notices

1. Pursuant to 2 U.S.C. § 434(a)(6)(A), a candidate or committee must notify the Clerk of the House of Representatives within 48 hours after receiving a contribution of $1,000 or more, if that contribution is received less than twenty days and more than 48 hours before an election. Notification shall be in writing and shall identify the contributor, the amount of the contribution and the date received.

2. Because the primary election in California was held on June 5, 1990, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1,000 or more received between May 17, 1990 and June 2, 1990.

3. The Committee failed to timely notify the Clerk of the House of Representatives of five contributions totaling $5,000 that it received between May 17, 1990 and June 2, 1990. See 2 U.S.C. § 434(a)(6)(A).

4. Because the general election in California was held on November 6, 1990, the Committee was required to notify the Clerk of the House of Representatives of any contribution of $1,000 or more received between October 18, 1990 and November 3, 1990.

5. The Committee failed to timely notify the Clerk of the House of Representatives of twelve contributions totaling $14,925 that it received between October 18, 1990 and November 3, 1990. See 2 U.S.C. § 434(a)(6)(A).

D. Itemization of Expenditures

1. Pursuant to 2 U.S.C. § 434(b)(5)(A), a committee must report the name and address of each person to whom the committee made an aggregate expenditure in excess of $200 during the calendar year to meet an operating expense, together with the date, amount and purpose of such operating expenditure.

2. The Committee failed to properly report $20,998 in expenditures as required by 2 U.S.C. § 434(b)(5)(A).

E. Recordkeeping for Disbursements

1. Pursuant to 2 U.S.C. § 432(c)(5), a committee must keep an account of the name and address of every person to whom a disbursement is made, the date, amount and purpose of the disbursement and, for each disbursement over $200, a receipt, invoice or canceled check.

2. The Committee failed to maintain canceled checks for disbursements made during calendar year 1989 and declined to procure copies of the canceled checks from its bank.

3. Due to the Committee's failure to maintain or procure canceled checks for disbursements made during calendar year 1989, the Commission was significantly limited in its review of $62,222 in Committee disbursements.

4. The Committee failed to maintain proper recordkeeping for disbursements as required by 2 U.S.C. § 432(c)(5).

V. 1 Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 432(c)(5) by failing to maintain proper recordkeeping for disbursements.

9604372209

2. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to notify the Clerk of the House of Representatives within 48 hours of receiving five contributions totaling $5,000 that the Committee received less than twenty days and more than 48 hours prior to the 1990 primary election, and by failing to notify the Clerk of the House of Representatives within 48 hours of receiving twelve contributions totaling $14,925 that the Committee received less than twenty days and more than 48 hours prior to the 1990 general election.

3. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 434(b)(2) and (3) by incorrectly reporting Jim Bates as the source of funds for $20,300 in loans to the Committee that were funded by overdrafts drawn on Mr. Bates' account at the House of Representatives Bank and a $5,000 loan to the Committee that was funded by a loan from Mark A. Battaglia to Mr. Bates.

4. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 434(b)(5)(A) by failing to properly report $20,998 in expenditures.

5. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 441a(f) by accepting $22,460 in excessive contributions.

6. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 2 U.S.C. § 441b(a) by accepting $4,475 in prohibited contribtuions.

7. Jim Bates for Congress Committee and Jim Bates, as treasurer, violated 11 C.F.R. § 110.9(a) by accepting $20,300 in loans from Jim Bates that were funded by overdrafts drawn on Mr. Bates' account at the House of Representatives Bank and thus were made with funds other than Mr. Bates' personal funds.

9604372201

8. Jim Bates violated 11 C.F.R. § 110.9(a) by making contributions to the Committee using funds other than his personal funds.

VI. Respondent Jim Bates will pay a civil penalty to the Federal Election Commission in the amount of seven thousand dollars ($7,000) pursuant to 2 U.S.C. § 437g(a)(5)(A). Respondent sent a first check for $3,500, that was received on December 14, 1995. It is agreed that the balance payment of $3,500 will be due by January 15, 1996.

In the event that any installment payment is not received by the Commission by the fifth day after it is due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the respondent. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.

VII. 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.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents 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.

9634372201

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman 2/15/96
Kim Bright-Coleman Date
Associate General Counsel

FOR THE RESPONDENTS:

Jim Bates Feb 6, 1996
Jim Bates Date

9604372012

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1996

Sami I. Bandak
3303 Avenida Hacienda
Escondido, CA 92025

RE: MUR 4166
Sami I. Bandak

Dear Mr. Bandak:

This is to advise you that this matter is now closed. 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 Assistant General Counsel Rhonda Vosdingh at (202) 219-3690.

Sincerely,

Lorraine Raushenbush

Lorraine E. Raushenbush
Attorney

9604372201?

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1996

David L. Bain
1650 Torrance Street
San Diego, CA 92103

RE: MUR 4166
David L. Bain

Dear Mr. Bain:

This is to advise you that this matter is now closed. 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 Assistant General Counsel Rhonda Vosdingh at (202) 219-3690.

Sincerely,

Lorraine Raushenbush

Lorraine E. Raushenbush
Attorney

9604372014

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1996

Mark Battaglia
1127 F Avenue
Coronado, CA 92118

RE: MUR 4166
Mark Battaglia

Dear Mr. Battaglia:

This is to advise you that this matter is now closed. 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 Assistant General Counsel Rhonda Vosdingh at (202) 219-3690.

Sincerely,

Lorraine Raushenbush

Lorraine E. Raushenbush
Attorney

9504372015

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1996

Murray L. Galinson, President/CEO
San Diego National Bank
Post Office Box 12605
1420 Kettner Boulevard
San Diego, CA 92112

RE: MUR 4166
San Diego National Bank

Dear Mr. Galinson:

This is to advise you that this matter is now closed. 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 Assistant General Counsel Rhonda Vosdingh at (202) 219-3690.

Sincerely,

Lorraine Raushenbush

Lorraine E. Raushenbush
Attorney

9604320216

BEFORE THE FEDERAL ELECTION COMMISSION

In The Matter of JIM BATES	NOTICE OF DELIVERY OF DEPOSITION MUR 4166

You are hereby notified that pursuant to the Idaho Rules of Civil Procedure, testimony by oral examination of **JIM BATES** was delivered to **James S. Portnoy, Esq.** on **April 25, 1995**.

( ) Signature was waived.

(X) The deposition has been read and signed by the witness.

( ) No corrections were made to the deposition.

(X) The attached sheet reflects corrections made to the deposition.

( ) Other_____

( ) The deponent failed to appear and/or failed to notify us in writing in accordance with Rule 30(e); therefore, the deposition has been delivered without signature.

CAPITOL REPORTERS

By Sarah Bastida

POST OFFICE BOX 1645, BOISE, IDAHO 83701 (208)344-8880

CERTIFICATE OF MAILING

I hereby certify that on **April 25, 1995** I caused a true and correct copy of the above and foregoing Notice of Delivery of Deposition to be mailed, in the United States mail, postage prepaid, to:

James S. Portnoy, Esq.
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Kenneth E. Kellner, Esq.
Assistant General Counsil
for Public Financing, Ethics
and Special Projects
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washinton, D.C. 20463

960433/22018

Sarah Bastida
CAPITOL REPORTERS

POST OFFICE BOX 1645, BOISE, IDAHO 83701 (208)344-8860

SIGNATURE PAGE

I, JIM BATES, have read the foregoing pages and have noted any stenographic errors of my testimony together with their respective corrections and the reasons therefor, on the following Errata Page.

(Signature) _____

(Date) April 24, 1995

****

STATE OF IDAHO)
) ss.
County of _____)

I, Heidi Kilian, a Notary Public in and for the State of Idaho, hereby acknowledge that the above-named deponent personally appeared before me and affixed his/her signature above as his/her own true act and deed.

_____

DATED: April 24, 1995

My Commission Expires: 1-11-99

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Capitol Reporters
Post Office Box 1645
Boise, Idaho 83701
(208) 344-8880

DEPOSITION OF:

Jim Bates

Case No. Mur 4166

CORRECTIONS

PAGE	LINE		REASONS
14	7	a piece of the pie	Sounds better
14	15	delete I was	sounds better
19	22	~~to~~ name of the fellow	reads better
19	24	staff persons'	grammar
24	13	& and such as, the	grammar
25	15	on fact, a legislation	delete, a.
26	6	Capitalize Govt Operations	
28	22	Capitalize National City	
28	23	~~Bonda~~ ~~Fonda~~ Benda	One l
41	11	thank you notes	add s
41	23	trying to be a	add to
43	8	And they get in a	add in
90	12	even see	not saw proper
94	20	Camacho	correct spelling

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4166
JIM BATES)
)

Boise, Idaho
March 31, 1995
9:10 a.m.

DEPOSITION OF JIM BATES

Reported by:
PATRICIA A. FENWICK

CAPITOL REPORTERS
Certified Shorthand Reporters
805 Park Boulevard
Suite 140
Boise, Idaho 83712
(208) 344-8880

Prepared for:
FEDERAL ELECTION COMMISSION
(Original)

ORIGINAL

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

DEPOSITION OF JIM BATES, taken at the instance of the Federal Election Commission, at the offices of the U.S. Attorney, in the City of Boise, State of Idaho, commencing at 9:10 a.m. on Friday, March 31, 1995, before PATRICIA A. FENWICK, CSR, a Notary Public in and for the State of Idaho, pursuant to Notice, and in accordance with the Federal Rules of Civil Procedure.

APPEARANCES

For the FEC:

JAMES S. PORTNOY, ESQ.
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

KENNETH E. KELLNER
Assistant General Counsel
for Public Financing, Ethics
and Special Projects
Office of the General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Pro Se:

Jim Bates
Route 2
Box 85
Homedale, ID 83628

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

I N D E X

WITNESS	EXAMINED BY	PAGE
JIM BATES	Mr. Portnoy	4

E X H I B I T S

DESCRIPTION	PAGE
1. 5/31/91 Report of Receipts and Disbursements	62
2. 5/28/93 letter to Robert J. Costa from Cynthia Valez; Cashier's Check	106
3. Copy of check to Jim Bates For Congress	113
4. 2/15/95 handwritten letter to Danny L. McDonald from Jim Bates	121
5. 6/1/93 letter to Robert J. Costa from Jim Bates	125
6. 3/21/95 Statement of Organization	132
7. 2/23/95 letter to Jim S. Portnoy from Mark A. Battaglia	139

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

BOISE, IDAHO, FRIDAY, MARCH 31, 1995, 9:10 A.M.

JIM BATES,

a witness produced at the instance of the Federal Election Commission, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. PORTNOY:

Q Please state your name for the record?

A Jim Bates.

Q Would you spell that, please?

A J-i-m B-a-t-e-s.

Q Thank you, Mr. Bates. Before we started this deposition, you advised us that you had some questions you would like to explore. Please feel free to ask away.

A Just so I understand what we are doing here, I am representing myself and we are taking a deposition which is in effect the response to the subpoenas or the written letters that hadn't been completed, and would I be able to get a copy of this deposition?

Q We will be able to give you a copy to

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

review. We will then have to make -- there are Commission procedures before we can provide copies of depositions --

A Okay.

Q -- but we will be happy to address that in the future. When the deposition is completed and when the transcript has been typed up, you will be given an opportunity to review it for accuracy and content and then we can discuss what kind of availability there will be of permanent copies.

A Okay. And we are going to go through the specific subpoena or request of written material of me, and then acting as the now treasurer, we will go through the questions of the campaign committee itself.

Q I am going to resist characterizing the kinds of questions we are going to ask.

A Okay.

Q You can safely assume that they will all pertain to the same matter that was addressed in the Commission's notification to you that it had found reason to believe that there may have been violations of the Federal Elections Campaign Act and also in any subsequent documentation that the Commission has sent to you or to the committee, but

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

I am not prepared to impose a limitation.

A Okay. The reason I ask is then I still need to prepare written responses to those?

Q That is correct.

A Is that right?

Q That is correct.

A How much time do I have to do that? The time is up, I think, according to the original timetable.

MR. PORTNOY: Let's go off the record for a second.

(Discussion off the record.)

Q BY MR. PORTNOY: We are prepared to give you a reasonable time to respond to the subpoena. We can after the deposition discuss whether we will be prepared to modify the subpoena based on the answers that we have gotten here. But I will represent to you that we are not going to haul you into court in the next couple days because you haven't submitted the responses.

A Okay.

Q That being said, we do require a prompt response and our authority in the General Counsel's office to extend your time to respond is limited by the Commission. We do not have plenipotentiary

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

authority in that respect.

To address your explicit concern, this deposition will be supplemental to and in addition to the Commission's subpoena for written answers. It will not be in lieu thereof.

A I understand how it works. Okay.

Q Mr. Bates, my name is Jim Portnoy. I am an attorney with the Federal Election Commission and I will be taking your deposition today. With me and sitting to my left is Ken Kellner, also an attorney with the Federal Election Commission.

This deposition is being taken in connection with an investigation entitled Matter Under Review or MUR 4166 and is authorized by Section 437(g) of Title 2 of the United States Code. Federal law provides that the confidentiality of this proceeding must be maintained until the Commission closes its file on the entire investigation. Do you understand that?

A Yes.

Q Thank you. Are you represented by counsel today, sir?

A No.

Q Are you aware, sir, you may be represented by counsel in this matter if you so

9504372202027
FORM LASER BOND A PENGAD/INDY 1-800-631-6989

desire?

A Yes.

Q Have you ever been deposed before, Mr. Bates?

A Yes.

Q You have. Well, even so, let me explain briefly what will transpire here today. A deposition is essentially just an interview or a discussion, but it's on the record and under oath. I will ask you a series of questions. You should answer my questions completely and truthfully.

Please keep a few things in mind during our discussion. If you don't understand my question or it doesn't seem clear to you, will you please let me know rather than trying to guess what I mean?

A Yes.

Q I would ask you to please wait until I have completed my entire question rather than answering a part of the question.

A I will.

Q If you don't know the answer to a question, please tell me that you don't know the answer rather than trying to guess.

A I will.

Q And will you also make clear, please,

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

whether you don't know the answer now or whether you never knew the answer? In other words, please clarify whether you have forgotten information you used to know or whether it's information that to the best of your knowledge you never had?

A I will do that.

Q Thank you. Also please be sure to answer verbally. The court reporter cannot record shrugs or gestures.

A I will.

Q Please understand, sir, that we will be on the record until I instruct the court reporter to go off the record. If you need to go off the record, please let me know, and I will ask the court reporter.

Before I begin today, is there any reason you can think of why you can't proceed with this deposition?

A There is no reason.

Q Thank you, sir. Please state your address.

A Route 2, Box 85, Homedale, Idaho.

Q How long have you lived there?

A Nine months.

Q Do you have a telephone, sir?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A No.

Q What is your date of birth?

A July 21, 1941.

Q Would you state your social security number, please?

A [redacted]

Q Are you married?

A Yes.

Q Your wife's name is?

A Marilyn.

Q Do you have any children, sir?

A Yes.

Q And how many?

A I have one daughter 19, who is a sophomore at USC, and I have two stepchildren, a daughter and a son, 30 and 33 approximate ages.

Q Where did you attend college, sir?

A I attended the San Diego City College, San Diego Mesa College, University of Colorado, and San Diego State University.

Q Is your degree from San Diego State?

A Yes.

Q Did you attend graduate school?

A I did not.

Q Are you employed, sir?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A Yes.

Q What is your employment?

A I am self-employed. I have a farm on the Oregon border in Idaho.

Q What do you farm? What do you grow?

A Well, last year it was pinto beans. This coming year it will be hay, silage, pinto beans, and I have some cattle and some horses.

Q How long have you been farming, Mr. Bates?

A Nine months.

Q Nine months. And did you own the farm prior to coming out here to farm it?

A Approximately five years ago my grandfather died and left me one-third of the farm, and I purchased the one-third interest from my mother and one-third interest from my brother.

Q Prior to coming out here to farm, what was your employment?

A I was a consultant and -- yeah, consultant, political consultant.

Q Political consultant?

A Yes.

Q Where were you located?

A San Diego, California.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q In San Diego. Did you consult with respect to elections or government affairs? Perhaps you could specify.

A I did some of both. I did -- I represented -- actually created the American Tank Testers Association while I was still in Washington, D.C. I stayed in Washington, D.C., right after my election loss in 1991 because my daughter was completing her senior year at Holton Arms School for Girls, and she had been there six years and I didn't want to change her school or her residence, so I stayed at my current address and created this -- I forget the name of these associations. Washington is full of them. An interest group, I guess, you would say. I did that for about a year, and then I didn't want to pursue lobbying as such, so I didn't really expand that.

I went back to San Diego actually and ran again for the new seat, which was the old seat but newly created with the redistricting. There were six people in the race and I came in third and I spent $50,000. The winner spent $500,000. And I lost a close primary by a couple percentage points.

So after that I continued to do some political consulting but went back and forth between

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

Washington, D.C. and San Diego and then came up here in June of '94.

Q When were you first elected to Congress?

A November, 1982.

Q How long did you serve?

A Eight years.

Q You left office, then, in January of 1990; is that correct?

A January of 1991.

Q Excuse me; 1991. Following the 1990 election?

A Yes.

Q During your time in Congress, I understand you served on the House Administration Committee?

A I was on the House Administration Committee. I eventually chaired a subcommittee on printing and procurement and was working on a rewrite of the legislation that actually authorizes the government printing and trying to move that into a computer-based or, you know, similar to what they did -- some recent changes to try and, you know, put an Internet or those kinds of things in place, but also to move away from ink and paper. And when you

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

recognize that most of government records and reports and files and information is really on computer now and access to that and who can get access to it and what the public interest is and who can then print this information -- and there was commercial printing interests, of course, trying to get a piece of pie. It was an interesting bill, kind of complicated, and I did serve on House Administration.

Q Did you also serve on a subcommittee with jurisdiction over elections?

A I am not sure. I know that the full committee had jurisdiction and that as such we took action on the budget of the Federal Election Commission, and I am not sure if I was one of the years on one of the subcommittees that dealt with that issue or not. I know I was on police and personnel. I know I was on the printing and procurement, and I know I was on the -- I don't recall the names now, but several of the committees. And I don't recall if one of these that I served on was the subcommittee that had jurisdiction of the Federal Election Commission.

Q The names have all changed now anyway. During your time in Congress, though, you, I believe

FORM LASER BOND & PENALTY 1-800-631-6989

have advised us, authored legislation concerning the conduct of elections; is that correct?

A If I might go back to the question on the subcommittee, something just came to mind.

Q Please.

A I believe I served on that committee. I was on the committee that Al Swift chaired that passed the motor voter legislation, and I think that would have been the same committee that had the jurisdiction of the Federal Election Commission. So I believe that I did, though there were no real issues that came before us except for the budget issue. I mean, I don't recall getting into any changes with respect to the Federal Election Commission.

But then to answer the other question, I authored legislation dealing with lobby registration and campaign finance reform as a city councilman with the City of San Diego and also as a county supervisor with the San Diego County. I did introduce -- it wasn't specifically legislation, but what it did do is attempted to deal with the problem of excessive campaign spending and the high cost, and my research showed and I introduced a rule change that in effect would be adopted by the

FORM LASER BOND A PENGADINDY 1-800-631-6989

Democratic caucus and hopefully the Republican caucus as well, but what it would do is because of the court ruling that said that you could not limit the total amount of spending in a campaign, it would impose a rule that members would impose on themselves or that would be imposed by the rules in which they governed the conduct of the House of Representatives and it would simply say that the limit would -- they would adopt that and run by that overall campaign spending limit. And their opponent of course wouldn't be bound by that, but generally he wouldn't raise as much and it would be a campaign issue if he didn't accept to run by it. And if he was to be a member, he would have to accept it, so in effect it was kind of an indirect way of trying to impose overall spending limitations.

It wasn't met with much enthusiasm by the Democratic leadership, though it could have been. It could have been a serious vehicle for reform, I think, to deal with the overall spending limitations, but it never was adopted. That's the extent of my legislative efforts as I recall.

Q Prior to your election to Congress, you were a public official in San Diego County?

A Yes.

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

Q What office did you hold?

A I held the office as chairman of the County Board of Supervisors immediately preceding my election to Congress, and I served on the County Board of Supervisors for eight years. In California, of course, counties handle the health and welfare issues for the state, so they have quite a bit of jurisdiction, and they are also legislative and executive combined. You don't have a county executive. So it was an interesting position. And I was there eight years and prior to that I was four years on the San Diego City Council.

Q Which is the legislative branch of the city government?

A It is, right, the Incorporated City of San Diego. Again, though, we had a -- didn't have a strong mayor form of government. Now Governor Pete Wilson was then mayor and the mayor was really just really another councilman. We had a number of battles over whether to strengthen the mayor or not. But it was in effect legislative and quasi-executive, because there was a city manager who officially was the executive, but unofficially the nine-member council including the mayor, I think, usurped a great deal of that executive power.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q Let's discuss your 1990 reelection campaign. Would you identify for us, please, your campaign manager?

A I am not sure that I can. It changed, and in effect I ran my own campaign usually, which later proved to be a mistake. I think for the record it was Dena Holman who was the paid staff person who organized and implemented most of the campaign activities.

Q Would you spell that name for the record, please?

A D-e-n-a H-o-l-m-a-n.

Q First name Dena?

A Yes.

Q I wasn't sure you said Dean or Dena.

A D-e-n-a.

Q Did you have a fund-raising chairman or a finance committee chairman?

A Again I can't recall who specifically I tried to get to do that. Generally in my 20 years of elective office, I generally had to raise the money myself, and I was not very successful at getting a campaign committee or a functioning finance committee chairman. I generally had a large finance committee but in name only, and generally

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

what I could get out of them was simply the use of their name and a significant contribution that they would make themselves since they didn't raise the money that I asked them to raise. Generally it was kind of a way of trying to get -- to raise money. And I was never very good at the committee or at raising money, though I had spurts where I knew I had to and so I would, you know, literally stay on the phone ten hours, twelve hours a day and call people.

Q Did your committee have a contact person or someone you thought of as the chair for finance purposes, your advisory committee?

A No.

Q Did you have a staffer? Did you have a paid staffer who did fund-raising work?

A In the 1988 race, we had a Washington consultant and I don't recall the name, but it was a fellow that was recommended to me. In 1988 I was supposed to have a serious challenge when the sexual harassment charges surfaced in the general, and I am trying to think of the name of fellow. He is now Congressman Gephardt's chief of staff. But he was the Democratic committee staff person political consultant, and he and my attorney that I was able

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

to afford then, Stanley Brand -- so it was Stanley Brand, Don -- no, Dave King -- Tom King. King and Fenn? Yeah, I think it is Fenn and King Political Consultants, and he was then, though, on the Democratic congressional campaign committee. And this fellow that was chief of staff, they sort of met with me and recommended this fund-raising fellow. And he did okay, I guess, but the problem I found was that I ended up having to raise the money. I had to make the calls. And, you know, he got his percentage, but really what he did really was just organize the names and keep track of who did what, and I was still the one who had to make the calls and raise the money. Other than that, I don't think I had any.

Q Did you use a similar arrangement in your 1990 campaign?

A Well, we had a big debt in '88, about a hundred thousand, that we had to pay off. And so that -- you know, it was just constantly trying to raise money. It started in '88. I mean, it started right after the election in '88. I just, you know, held fund-raisers and made calls and met with people every chance I got, both in Washington and in my district, trying to raise money.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

I paid off the debt and as the 1990 campaign audit shows, there was a lot of money that was earmarked that I started raising that was earmarked for that debt, though the treasurer evidently didn't make the notation on the check or in the reporting because that turned up to be a problem in the audit. But it was constant fund-raising and basically I raised the money myself. I mean, I would make the calls and then sometimes someone would -- you know, volunteers would help with the event or with picking up the money or with following up on the pledges, and I would just, you know, get different people to do that. But essentially I did most of it myself.

Q Who was the treasurer of your 1990 campaign?

A Sandra Kennedy.

Q Was she the treasurer all the way through?

A I am not sure when the change was made. Over the eight years that I was in Congress, I also had trouble recruiting treasurers. No one wanted to do that job because it was such a massive and time-consuming job. I think the way Sandra became treasurer was she was assistant treasurer, and I

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

found if I could get an assistant to help the treasurer, that the treasurer was more likely to be treasurer. I also had trouble with the one fellow that was an attorney -- Tim Fields was treasurer, but sort of only signed the final documents. He didn't do a lot of the work, and so we created this assistant treasurer. And I think Sandra Kennedy was assistant either to him or to a captain, Navy captain retired, named Tom Ryan. But those three were, I believe, the treasurers of my campaign over the eight-year period, though there should be a record that would be more precise. But my recollection is there were three people, and I think Tim Fields was first and then after a few years of not really functioning, Captain Tom Ryan took over.

The issue was always computerizing the list, computerizing the whole system and trying to computerize the thank you's and the records, because this is so overwhelming. Although I don't believe I raised over 300,000 or 400,000 per election and I never had a primary except for '90, a serious primary. In 1990 I had a serious primary and another attorney who spent $300,000 or $400,000 of his own money. So I had -- and I raised and spent the most I had ever raised and spent close to a

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

million dollars when you include the debt from 1988 and then the primary and then the general.

We had that primary challenge, though, that took as fast as we raised it, it was spent. And then we ended up going into the general and that facing -- you know, Republicans never officially targeted me, which in August I had a 20-point lead, but there was 20 percent undecided and all of the decided went against me in November. But because of that 20-point lead in that poll, the Democratic party never put me on any targeted list or priority list or helped raise the money. It wasn't until three weeks, two weeks out in 1990, and a fellow named Ed Rawlins came to me and said we have a poll that shows you're in trouble. He was the Republican congressional campaign director at that time, and I guess he just liked me and as a favor told me. But by then it was too late to try and get back on the targeted list where I could get more money. Anyway, as I recall now, it's just a constant fund-raising thing I detested most about my years in office.

Q Would you outline for us your campaign committee structure and try to identify some of the key people?

A I am not sure that I can clearly recall

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

the '90 campaign because there was one every two years and some of them continued and -- I know in 1990 we had four or five paid staff people. And by 1990 my campaigns had changed. I mean, in 1970 when I started, I walked the city council district door to door myself and I think I had a committee of volunteers of about ten people who actually did any work.

What I found in campaigning over the years is that you usually had a lot of volunteers, but they were reluctant to really work. And so you got their name and I had a name and I had names on the chart and the chairman of the Burlingame precinct organization. Sometimes by making them chairman, I could get them to walk their own precinct.

I created in 1970 an eight-district council advisory committee, which I got 300 or 400 people to serve and advise. And I would meet with them once a month and, you know, only a few would show up, but they had a card they carried with them. I kept that same general operation. In fact, as a county supervisor, I had a lot of official appointments, planning commission and zoning -- board of zoning appeals that were my own

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

appointments. And I found that people would work and help you in your campaign if they were going to get an appointment. So I created advisory groups that helped me, but also gave them an appointment and some status or recognition so they would be motivated to try and get them to help in the reelection, because I found that after a while that in the beginning you have an excitement and interest and support and then these same people over the years get burned out. They get tired of campaigning but you still need them and need their support. So I created some 400 people on my congressional advisory committee with subcommittees in different interested groups that were of quite a bit of help.

In fact a legislation that I passed that was amended to the Clean Air Act, Congressman Dingell opposed it in committee and subcommittee and wouldn't let Henry Waxman put it in the committee I was on, the environmental subcommittee of energy and commerce, which was the house bill that phased out the chemical depleters of the ozone layer, the hole being created in the ozone. And I passed that bill and that sort of started with my environmental subcommittee and then went to Waxman's subcommittee that I served on. And I was on energy and commerce,

FORM LASER BOND & PENGADMNDY 1-800-631-6989

which was my major committee assignment and my most significant.

I also later found that House Administration didn't count -- for some reason didn't count as a second committee, so I was able to get on government operations. The more committees that you're on, the more areas of interest that the special interests would respond to, because most of the money that I raised came from those that gravitated around the committees that I was on.

And also you can move up and gain staff, you know, if you get a subcommittee. So I took this position on government operations after I had been there a few years. Anyway so I was on three committees and six or seven subcommittees.

Q To get back, though, to my original question --

A Yeah, I digressed a little, didn't I?

Q -- would you try to identify some of the people who worked on your campaign staff and tell us what they did?

A Well, in 1990 there was the paid staff, which was Dena Holman, and then she had an assistant named -- Kennedy was his last name. It will come to me later, his first name.

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

Q Any relation to Sandra Kennedy?

A No. And then Sandra Kennedy was the treasurer. And then there was a fellow named Jim Cua, who was a leader with the gay community, who did work with community groups, and a black woman named Geraldine Taylor who worked with the Afro-American community, which was a significant part of the 44th District though the turnout in the '90 election was only 25 percent, and she worked with my -- interphased with my Congressional district staff as well. And they had to, of course, do their efforts after hours or not interfere on Congressional time, though I think the lines sometimes were a little blurred. But I always felt that they ought to campaign, you know, as hard as I did and they didn't always, and they over the years got burned out too, I think.

So all of my Congressional staff worked on the campaign in different areas. My chief of staff, Jim Bartell, he sort of coordinated an area called Lemon Grove and that's where we lost. He really didn't -- I mean, he really became absorbed with his Congressional duties and, you know, I probably should have over the years changed that, you know, arrangement. I don't know. There must

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

have been a hundred campaign volunteers who would walk precincts or help with fund-raisers and we would like have a committee for an event. Let's say I was going to have a dinner or reception at someone's home, then we would form a committee around that event.

Q Who on your staff would coordinate those committees? I am trying to get a sense of who did what?

A Dena Holman was the campaign manager and using the paid staff, she either did it or saw that it was done.

Q Was there any kind of list or chart of campaign staff?

A I am sure there is. I mean, one was made, and whether I can get my hands on it or not -- but, yes, there was the campaign organization manager, the treasurer, and under the treasurer there was a finance committee and most of the major contributors were on there. And there was a precinct operation, and each community had a committee of its own, the national city, for example with, you know, Buella Xander. You know, there must have been 30 or 40 people on each of those committees. It's been five years ago and it was

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

different campaigns and different people. I would say there were 300 or 400 people working on a campaign every election including that one.

Q Who would have those records if they exist?

A I don't know why anybody would want them except me. I have a list, a computerized list, of some 5,000 names that shows that's either -- to get on the list, they are either a contributor or a volunteer. And I have the list, I think, of volunteers, and it may even say what they did: walked the precinct or telephone committee or phone banks and finance, you know.

Q You don't have any boxes of documents from the old campaigns lying around?

A I have some and my wife wanted to throw everything away and I wanted to keep everything, and between us, some things were kept and some things were thrown away. And I don't know whether they are in San Diego or whether they are here in Idaho, but, yes, there are boxes. There are lists. I know I have the computer lists because I use it as a kind of phone directory for addresses. When people have died and I write a letter of condolence or something, I look up their address in my

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

computerized listing.

Q Would you try to track down for us the list of the campaign staff for the 1990 campaign?

A (No audible response.)

Q I need you to answer for the court reporter.

A Yes.

Q Thank you. Let's try and go at this a little differently. Let's try it functionally. When a contribution came into the campaign, who would solicit that contribution? Was it primarily you?

A Well, as I recall, there were like three ways that you would be solicited, either direct mail, which we had a list of previous contributors, which we would type up a letter which I would sign or I would probably draft the letter and sign it, but the staff and volunteers would get the mailing out and that mailing would then solicit the contribution. But usually a good part of it would require a follow-up phone call by myself in which I would call the person and say, "You know, we are in another tough election, we have got to have some money, what can you send, can you send more than that" and that kind of thing.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

And then the money would be mailed to a post office box which was right next to my College Grove Congressional office. It was in -- the post office was right next door. And my administrative assistant would go over and get the mail. When the mail came for the Congressional office, there would also be that post office box and she would look in it and see if there was anything, and when there was, then she would call the treasurer who would come and go through and, you know, take the checks out and set up the thank you note. And then a record would be provided to me of who sent their money in you, you know. And it was usually a case where we needed that money so I usually went over closely the list. You know, did Ken send his thousand dollar check, and if it wasn't there, then I would get back on the phone to Ken and say the money hasn't come yet, what's the story, or whatever. That was one way of soliciting, through direct mail.

Another one was at an event or creating an event that would create a means of trying to solicit. And many times the host or hostess of the event or the finance committee or the event committee -- and I found that if you create a

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

committee around an event, then they would solicit. And sometimes there was someone that they knew or a family member or someone that owed them a favor or whatever that they made the solicitation and got the contribution.

And then there was what I called the direct -- where I made a direct contact to --

Q Let's go back a step.

A -- to an individual.

Q Let's go back a step. If there were an event held --

A Uh-huh.

Q -- say a dinner at someone's home or a cocktail party, I assume staff would come with you to the event to assist you?

A Usually, but we would have a volunteer at the door collecting the checks of people as they came in, and they would be in a little metal box and they would keep a record of it. I had a procedure where I saw all checks. So they came different places. Like sometimes people would want to give it to me directly at the event because they wanted me to know that it was a good amount or whatever, and they would give it to me directly at the event.

Others would pay at the door. Others

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

would not pay and there would have to be a follow-up letter sent, you know, asking for the contribution. But it was usually just a volunteer who was going to be there and I tried to pick someone who was nice looking and pleasant and would make a good impression, and they would ask for the money when they came to the event.

Some of it would come in before the event. When we mailed out the invitations, we would always include a contribution envelope. I would say most of it came through the mail, but at big events, it would come at the door.

Q You said there was a third method of solicitation?

A Well, the three methods that I enumerated was direct mail, event fund-raising, and direct calls by me.

Q And when you made direct calls, would you request that the contributor or potential contributor send you a check?

A Right, and they would send it to the post office box.

Q And your administrative assistant would pick up the mail at the postal box?

A (Witness nods head.)

FORM LASER BOND A PENGADMDY

Q Did anybody else have keys to the postal box?

A The treasurer. The treasurer would sometimes. But the question -- it was right next door and she would get it. If it was empty, she would say it was empty and the treasurer wouldn't need to come. If it had money, then the treasurer would come and pick up the checks.

Q So the first person to actually process checks was the treasurer?

A Yes.

Q Do you know what the treasurer's processes were?

A No.

Q Did they log in checks?

A I always got a copy of the checks. I insisted that a copy be made of the checks for me, and I assume they made copies for their records. I know a copy was always made for the computer person to enter into the computer to do the thank you. You know, there was a series of steps after that and copies were made and they went different places. One copy went to me, one copy, I am sure the treasurer kept. I don't know for a fact because I wasn't -- you know, I wasn't directly involved in

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

it. I know a copy went to the campaign office so that they would know. Sometimes they would have volunteers be making follow-up calls reminding people that -- it wasn't always me. Once I made the commitment or got the commitment, then sometimes I would give a list to a volunteer and say, "Would you call these people and remind them we haven't got their contribution?" So they would need to know if the money came in. I don't know; three or four copies were made and distributed. I don't know who did it or how it was done really except I got my copy.

Q Do you know who, if anyone, reviewed the checks to ensure that they were lawful contributions?

A Well, I think I did and the treasurer should have and I think did, but I looked at them. I saw a copy of every check myself and I reviewed it to see if it had "Inc." on it if it was a corporate check or, you know, I kept in my head whether they went over the amount or that kind of thing, you know, trying to keep track of who had given. It wasn't a problem. Most people didn't give the maximum, so that wasn't usually the problem. But if it was a large check, you know, we would work it

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

out.

Like if somebody sent a check for $2,000, you know, it's obvious that $1,000 has to be assigned to the wife. Now, according to the audit, that wasn't always done properly, but it's the sort of a given that there are limitations and if you get a check for 2,000, it's got to be done that way or you can't keep the check.

Now the pressure was always to try and find a way to keep the check because it is hard to raise the money. So, you know, it was assigned to the primary debt so that if they hadn't maxed out in the '88 race and we had the debt then we would assign it there or it should have been so that we could get -- because our max contributors that we did have usually could give more. In other words, the max contributor can usually give max as many times as legally possible. Whereas somebody who is giving you a couple hundred dollars each time is probably not going to give you very much. In other words, you can raise it quicker and easier by going to someone who has money than trying to get it out of somebody who doesn't have a lot of money.

Q Do you know if the treasurer had a list of prior contributors?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A He should have. I mean, they do a statement every quarter or whenever they are due and they should have all those records. I didn't personally involve myself. I was often accused of involving myself too much. You know, let us handle it. We will take care of it. Stay out of it. I had a habit of trying to get into things and I probably should have asked to see a card file or some way of identifying who had maxed out. But usually with the max contributors, you know, you just knew and it was just sort of obvious on the face of it.

I think any violations in the audit were not someone going over the limit. There were some cases where corporate checks weren't identified and weren't able to be identified. If someone sent you a check -- one that comes to mind was Fiesta Catering or Marketing or something, a little market, they claimed to be the sole owner of this little company and that is their check and the check that they used and it's not a corporation. It turns up that it is a corporation. You know, you just have to refund it or, you know, reimburse and get a personal check.

But, you know, I think if you raise

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

$800,000, $900,000, and there is nine corporate checks that slipped through, I personally don't think that is significant. And I think that it's a mistake in some cases, though, I didn't personally go back on the audit and make sure that each one was, you know -- I don't know how they found out it was a corporate check if it's not on the face of the check. Sometimes maybe you just miss one or something.

Q Who kept the committee's checkbook?

A The treasurer.

Q Did the treasurer make -- well, first who else had authority to sign checks?

A I did and the chief of staff did.

Q And the treasurer?

A And the treasurer. We also had some checks -- I don't know; let me think. Well, the treasurer would keep the official checkbook, so to speak, but we would have checks so that if we are doing something and -- I mean, it becomes a real hassle to try and get -- the campaign manager has to pick up the printing and you have to have the check at the time and the treasurer, you know, writes checks once a week or is unavailable, so you need some checks so that you can -- I could sign it or

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Jim Bartell could sign it.

Q So you each had a cache of checks that you kept with you?

A I wouldn't call it a cache. It's a few checks.

Q Right.

A A few checks, yeah.

Q I didn't intend that to be a loaded word.

A No, I know. It sounded like we stored them. Campaigns are at different points very frenetic and disorganized and chaotic. And, you know, just trying to get the check to the right person as quick as possible when things are on deadline or something, it's a problem.

Q Who made deposits, bank deposits?

A I guess the treasurer. I am sure the treasurer did.

Q Who else, if anybody; do you know?

A Well, I would say from time to time, the campaign staff may have; I am sure did. I mean, it would be a question where you have a system and then you have a situation that has to be dealt with. For example, the treasurer goes out of town for the weekend or for, you know, a few days for whatever

FORM LASER BOND A PENGAD/MNDY 1-800-631-6989

and it's Friday and you're waiting for money and money comes in and it's got to be in the account to cover some things that have to be paid or whatever. I am sure, you know, that someone on the campaign staff, maybe the manager herself, would pick up the checks and make a deposit and get it in the bank and then give the treasurer the records, you know, after the fact.

Q But the treasurer did all the recording?

A Yeah, all the recording. She's supposed to.

Q Who prepared the committee's reports to the Federal Election Commission?

A The treasurer.

Q Did anybody assist her to your knowledge?

A The chief of staff, Jim Bartell. He sometimes -- well, the way it usually would work is the treasurer would do it and then there was always questions of something or other, and so he would review it and see if he knew the answer or get the answer from me. I mean, sometimes it was a question like, well, who was this guy, or who was this person, or what do they do, you know, what's their

FORM LASER BOND ★ PENGAD/INDY • 800-631-6989

occupation, or how did we get this check and that kind of thing for reporting purposes. Nobody knows, you know, and so they will call me and I would probably usually know.

Q Once the reports to the Commission had been drafted, did you review them before they were sent in?

A I had an adamant policy that I was to see them before they went in, but as time went on they were always late and so they wouldn't -- I wouldn't see a copy until after the fact and even sometimes then it started slipping. It was one of my -- it's something I recall I used to raise hell about, that why didn't I see this before it went in, and I would say this is wrong or, you know, this is wrong. Sometimes they wouldn't correct them. Evidently from the audit it appears that they didn't correct some of the things that I said should have been changed or whatever.

It was so hectic, I would say, from '88 to '90, those two years. Even before that, I was so busy flying back and forth, raising money, trying to, trying be a great legislator, you know, going to hearings and going to meetings and going on trips. You know, all of that.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

I used to meet a lot with people too. I would come back to the district and maybe on Saturday morning I would meet with 30, 40 different people; five, ten minutes, you know. It was hectic. It got to the where the staff didn't like me being around, because I was always meeting with someone, and I would always want one of them there to take the notes and follow up. There was always a problem. There was always something that had to be done. Sometimes it wasn't a Congressional problem, but I would want to do it anyway and refer it to the city or county or whoever was supposed to have done it but didn't.

So, you know, it was a really hectic pace. And I recall specifically saying on a number of occasions, why didn't I get a copy before this went in. And in fact, I objected that the treasurer signed it. There is no place for the candidate to sign on the reporting. I think that's a mistake. I think that the candidate should have to sign with the treasurer. I think that's a change that should be made. That would force them to let you review it and see it and know what's going in because they are acting on your behalf. I mean, I am the guy now that's behind the eight ball. The treasurer is gone

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

and I am now the treasurer and everybody else has ended their other careers and their other lives and they really could care less about these infractions or these violations or all these reporting things. If I am the one that's going to be held ultimately responsible, there should be a way -- and I know telling someone to do it should suffice, but it doesn't. And they get a hurry or they are behind and late and they just want to get it off and so they go ahead and then they make a copy for you and it's at the bottom of your pile of stuff you're going through. You know, maybe you see it two weeks later. You know, it's just not a good system. And that is a problem that I allowed to occur.

Q Do you know if anybody else reviewed the committee's reports before they were submitted?

A Huh-uh. Well, the treasurer. The treasurer basically and Jim Bartell, my chief of staff, I am sure he looked at it or should have looked at it and should have gotten a copy to me but didn't always. I don't know who else would know. I mean the treasurer was the person that had to do it.

Q You didn't use any outside accounting firms, did you?

A No -- excuse me. We did try using an

FORM LASER BOND A PENGAD/INDY 1-800-531-9969

outside -- the last -- we had this problem of trying to get everything on the computer and keeping track of our records, and we did employ a Washington-based computer operation, a former member of Congress. I think Anderson, Bill Anderson, might be his name, I am recalling. It's like Political Action Consulting or something, but they did enter in the computer records. And I am not sure whether they just did it for the Washington political action committee, which came to be half of our money that was generated from that source or whether they did everything. But we did employ -- and they charged like 30 cents an entry or something -- and we did employ them. In fact we still owe them $10,000. I forget the name; I don't recall exactly the name of the company. But, yes, we did, say, the last four or five years of my eight-year term, we used them.

Q Who on your committee staff had authority to authorize committee expenditure?

A Nobody. I mean, the small things. But I insisted that, you know, that I finalize any expenditures. I mean, if it was an ongoing bill or something and we had the money. But if it was to commit us to owe something, it was me. Unless it was, like, supplies or petty cash or something under

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

$50 or something like that, but any significant amounts I had to approve.

Q What was the process by which you approved expenditures?

A Get ahold of me and ask me and I would say yes or no. I mean, we had meetings and we had other sources, but generally if something was -- we had a budget, and if it was in the budget, then the approval of that budget authorized that expenditure. But if it wasn't in there or if it changed, then, you know, they needed to see me.

Usually they would see Jim Bartell and he would ask me when he was going over things talking to me about -- you know, he talked to me every day a couple hours on the phone and people would funnel their requests in or whatever.

I think we even had a -- I am trying to recall, but I believe we had a kind of authorization, expense authorization, that I had to sign.

Q Do you recall if that was for specific amounts? In other words, above a certain amount?

A Above $50 or something like that.

Q Assuming that you authorized an expenditure, how would the bill get paid? Somebody

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

would submit an invoice to the committee?

A I would sign it and the treasurer would pay it.

Q So invoices would be collected, say, and --

A And turned in, yeah.

Q Turned in to you?

A No, to the treasurer, I believe, and they would then write up this form with the invoice and submit it for me to sign or sometimes if I wouldn't be available to sign it, they would just get an okay and write per phone conversation or, you know, okay, whatever, but there was a system. There was a process which generally worked.

Q Once you had okayed it or okayed an expenditure, what happened next?

A The treasurer paid the bill. Many times the bill had to be paid in advance in political work. And so the treasurer would make up the check and get an okay and then maybe give it to the person who was doing the work, if it was the printing or signs being made or a consultant getting paid or something like that. I don't know precisely how each one of them was handled, but I mean there was a procedure and the treasurer would disburse the

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

checks. And sometimes she wouldn't pay directly the vendor, but she would give it to someone who would give it to them.

Q Do you know what kind of records were kept of expenditures?

A Could you repeat the question, please?

Q Certainly. Do you know what kind of records were kept of committee expenditures? Let me rephrase that for you.

A Well, there would be this form that was an approval form and there would be the -- checks would be the record that the -- checks that are cleared and are sent back to you, those were all kept in boxes and boxes and boxes. I don't know exactly how the treasurer did her report or kept her reporting or kept her records.

Q Was it the treasurer's responsibility to prepare the portion of reports to the Commission that entailed expenditures?

A Yes. In fact, I noticed on the audit that there were some kind of expenditures that records weren't kept and that was kind of an ongoing argument that I had and why people didn't want to be treasurer, I think, but I wanted a record of every contribution, whether it's $5 or $1,000 and not -- I

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

understand over a certain amount, there is not that requirement, but I said I wanted a record of everything kept and I thought that everything was being reported. I later learned that they were short-circuiting that, that reporting requirements were only over a certain amount or something. But I saw in the audit, there is something to do with that where cumulative expenditures of a smaller amount were supposed to be itemized or weren't, something like that.

My policy was that everything that comes in and everything that goes out, I want a record, a file kept in a box somewhere we could get our hands on it. Now, that wasn't done, I don't believe, in the later years. It just became so overwhelming, the amounts of money raised and the amount of records and one or two people doing it and they didn't really want to do it. You know, I probably should have paid a treasurer maybe would have been a better way of doing it in retrospect.

Q Where did the committee maintain its bank account?

A San Diego National Bank, I believe.

Q Was there one account or more than one account?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A Only one account that I am aware of.

Q Was that a checking account?

A Yes.

Q Did the account have any special features of which you're aware?

A No. I think there were three people, and I think over a certain amount, it required two signatures but I am not sure. That used to be a provision and maybe that changed in later years. But we used to require two signatures on a check.

Q Did you have overdraft protection?

A No. Unlike the house bank, we did not.

Q Who had signature authority on the committee's account?

A The treasurer, Jim Bartell, and myself, I believe. Over the years there may have been another name or something. I am not sure; my wife may have been on it at one time. She might have been assistant treasurer at one time in one of my campaigns or something and other people. But as I recall, myself and Jim Bartell and Sandra Kennedy.

Q Who chose which bank at which the committee would maintain its account?

A I did.

Q Did you have any particular reason for

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

choosing San Diego National Bank?

A The president of the bank was a friend, a former friend and former supporter. He was Jewish and when I came out for a Palestinian homeland, why, I lost his support. But up until that time it was selected because he was the president and I figured that it's got to go somewhere so put it in a bank where someone who is in charge of the bank, you know, it is their bank.

Q Is that Murray Galinson?

A Yes. I first met him in 19- -- the Jimmy Carter race for president, he was an advance man for Jimmy Carter. And he later took a whole year off and worked for Walter Mondale. In later years he helped coordinate efforts for me with the Jewish community, and the banking community had several meetings that he set up, lunches or something, where they could yell at me and say why the glass sea gull or something, you know, banking problems whatever, but . . .

Q Did anyone else at the committee have any connection with the bank?

A Not that I am aware of.

Q Did Sandra Kennedy?

A She worked for a bank, San Diego Trust

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

& Savings.

Q But not San Diego National Bank?

A Right.

Q How did you come to know Ms. Kennedy?

A Her mother was a neighbor in Mission Hills in San Diego. That's a community of San Diego, a neighborhood, Mission Hills, where I lived. Her mother was on my county advisory committee and a supporter and a volunteer, and she got her daughter to volunteer and, you know, become involved and work on the committee. And I don't know whether she volunteered to be treasurer or Jim Bartell said, "Jim Fields isn't doing the job and we have got to get a new treasurer." And she had been the assistant treasurer and so we elevated her. But basically that's how she became involved.

MR. PORTNOY: I think this would be a good time to take the recess that we discussed before we went on the record.

(Recess taken.)

Q BY MR. PORTNOY: Mr. Bates, during your campaign, did your committee ever write a check for which it had insufficient funds?

A Yes.

Q Do you know how often?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A Not very often because the bank wouldn't pay the check without sufficient funds and never did in any case ever pay a check without sufficient funds. If you wrote the check on a Friday and it is not going to clear until Monday and you can get the money in on Monday, you know, that kind of thing where you make the deposit before the check clears or comes in.

Q Do you know about how much money was involved?

A Well, at the end, you know, tens of thousands of dollars.

Q What safeguards, if any, were in place to prevent the committee from writing checks with insufficient funds?

A Me.

Q Meaning?

A Well, it wouldn't be written if I didn't okay it. I mean I am trying to think of an example. But part of our specific problem was that the balance that we had in the account, that we thought we had in the account, was not the actual balance, and we were not made aware -- or the treasurer maybe wasn't aware of the discrepancy. But at the end of a campaign when everything comes

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

due, I recall specifically a postal check, a post office check, and the mail has to go out before the election to be effective, and I think we wrote it thinking that we either had the money or would have the money and found out later that we didn't, that the balance was wrong and, you know, we were short.

I think if the mailing goes on a Friday, it takes the post office a week or two to clear a check. As I recall, I thought that I could raise the money in the interim. But when you lose, it's much more difficult to raise the money. I think it was a gamble, but a conscious decision on my part that I knew that there was a shortage on some of those checks and figured that we could get the money before it cleared.

Q You testified previously that you authorized expenditures?

A Yes, sir.

Q Who would come to you seeking authorization? Would the treasurer?

A Theoretically in an ideal situation, perhaps on the postal account check, probably the campaign manager is trying to get the mailing out and came to me and said they needed the check and I signed it myself or something like that could have

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

occurred. So the treasurer might not have been involved. Theoretically they should have been, but in a last minute, you know --

Q But as a general proposition, people who would come to you to seek approval of expenditures were the campaign manager and the treasurer; is that correct?

A Yes.

Q When they came to you, did they ever say to you, "We lack the funds to pay this bill, but we want authority to write a check anyway"?

A No.

Q Was there ever a time that you authorized a check to be written or wrote a check yourself when you knew the committee did not have the funds on deposit to pay that check?

A As I stated previously, the answer is yes.

Q You previously stated that there was an incident involving a mailing near the end of the campaign?

A Uh-huh.

Q Were there any others?

A At the time that a check might be written or disbursed, the account balance might be

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

insufficient, yes.

Q Do you remember any other specific expenditures?

A I don't remember any of the specifics. There weren't that many large amounts. There was a point -- there was a period of time where we were -- it was going out as fast as it was coming in and sometimes the deposits and the amounts wouldn't coincide, but the bank would never pay a check that we didn't come in with the deposit that day. So the answer is, yes, I would authorize an expenditure where there was insufficient funds with the idea that the funds would be raised and deposited before the check cleared.

Q You have stated that the bank refused to honor such checks?

A Yes, a number of times. And I emphasize that and stated that because the audit showed a whole bunch of times that they allege that were paid and I not only -- I haven't done the audit, but I know that that's never been the case. In fact, it was kind of a sore point. Being a former bank officer with the Bank of America, I know that checks could have been paid without totally sufficient funds. For example, if you get a cheek

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

for $9,000 and you have a deposit for $8,900 and you're $100 short that day, in fact most banks will pay checks. They will charge you for them, but they will pay them even if you're a little short sometimes. They could have done that, I think, but they didn't.

Now, I really don't know what the FEC regulation on that was. It probably was that you couldn't. But I know it was sort of a sticking point because when we found out our balance was off and we were short and we were trying to raise it to cover the check and we would go to the bank and they would say, no, not until the full amount is deposited.

And I looked over the audit and there were cases where they showed the days but not working days. For example a check would come in on Friday and they wouldn't clear it and pay it, and then we would come in -- the record would show that it was overdrawn on the Friday and we might come in on Friday at five o'clock or something and make the deposit, which wouldn't be recorded until the following Monday as far as the bank records. But they would have the deposit and they would pay the check, but the record would show that it wasn't paid

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

-- that it was overdrawn on the Friday that it was paid. Do you see what I am saying?

Q On those occasions where the bank declined to honor a check because the committee had insufficient funds, how did the bank advise the committee that it was not going to honor the check?

A I don't know. I mean, my role besides being congressman and candidate and fund-raiser, I would just be told that we have a check in and there is not enough money and you have got to raise more money. You know, something like that. I didn't get into who told the person or how much or anything like that usually.

Q Do you know whether somebody called the committee?

A I am sure the bank called.

Q Do you have any idea who they would have spoken to at the committee?

A No.

Q Do you have any idea who would have made the call from the bank?

A I don't think I ever knew and if I did I don't recall.

Q Do you know what the bank told the committee needed to be done in order to honor the

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

check?

A No, I didn't personally talk to them. I know that whenever there was a check that wasn't sufficient that it fell to me to go out and get the money.

Q Is it your understanding that the bank required the committee to make a deposit to cover the amount of the check?

A I know that for a fact. That was their policy.

Q How did you come by that knowledge? What's the source of that knowledge?

A When we would be overdrawn and I didn't raise enough money and the check wasn't paid. I mean, I don't recall who told me what, but I know that if the check wasn't paid and I am still trying to raise sufficient funds to cover it, you know, I inquire. I said, "Well, did they pay it or are we clear?"

"No, we are short."

Q With whom would you have the conversations where you learned that the committee's account was short?

A Probably Jim Bartell in most cases, I would think.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q And Mr. Bartell -- would you typically ask Mr. Bartell whether a check had cleared or would he raise the subject with you?

A I don't recall precisely, but I vaguely recollect that when it went something like this: He would come to me and say, "The bank called and said we have got some checks and we are short on our balance. We need a deposit and we have got to raise some money."

And I said, "Okay, I will try to get it. You know, have you checked the post office? Did anything come in today." Something like that.

Q Would you then convey whatever funds you raised to Mr. Bartell? Would you convey them to Ms. Kennedy? What would you do with them?

A Well, I didn't usually personally handle them. I was aware of it and I got the commitment. It could have been a number of ways, but I am sure that it went something like call up John Smith. John, we need some money, we are overdrawn. You know, we need to get some money in our account. Can you -- you know, can you make a contribution of 500 to 1,000, whatever, and he said yes. And then I would say have somebody go get that check from him and get it in the bank. You know, I

FORM LASER BOND A PENGADINDY 1-800-631-6989

really don't know who did that or in most cases wouldn't bother myself with that. My job was to get the commitment and get the check and somebody else could do the paperwork.

Q Do you know what would happen after the bank received the deposit?

A They would pay the check if it was sufficient, I assume. I really don't know exactly in every case. I know that these deposits were made and checks were cleared and were paid, and I don't recall one ever being paid if it wasn't sufficient funds.

Q Do you recall how long it usually took you to raise the funds to cover the check?

A Oh, under pressure I am pretty good; usually a day or two.

Q Was it ever longer than that; do you know?

A Well, it was at the end. I know there was a post office check that was a couple weeks. You know, we lost and nobody would contribute, and I think it went several weeks.

Q To your knowledge, did the bank ever bounce a committee check? Return it to you?

A There were a few, I think so.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q Do you remember any of the details?

A No.

MR. PORTNOY: Off the record for a moment.

(Discussion off the record.)

Q BY MR. PORTNOY: You testified, sir, that the bank's policy with respect to overdraft checks or insufficient funds checks was a sore point for you. Did you ever bring your unhappiness to the attention of anyone at the bank?

A No.

Q Did you ever discuss with anyone at the bank in any way their policy with respect to handling insufficient fund checks from the committee?

A No, I just griped a little bit about it, I am sure. But, no, I never talked to anyone about it.

Q You never spoke to Mr. Galinson about it, for example?

A No.

Q Did you ever either personally or through a staff member or other intermediary seek to convince the bank to change their policy?

A No.

Q Mr. Bates, did you ever make any loans

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

to your committee in connection with the 1990 campaign?

A Several. I think a total of $26,000 of which 2,600 is still owed me.

Q I am sorry, sir, again the total was?

A I think it was $26,000 total. I don't know the exact breakdown. I don't recall the number. I know it was a significant amount, more than I had ever before. For me a significant amount. Maybe it was 30,000.

MR. PORTNOY: I would like to ask the court reporter to mark this document as Exhibit 1, please.

(Deposition Exhibit No. 1 was marked for identification.)

Q BY MR. PORTNOY: I would like the record to reflect that I am now handing Mr. Bates Exhibit 1. Exhibit 1 is a copy of a report to the Federal Election Commission submitted by the Jim Bates for Congress Committee signed by Sandra L. Burton, who I understand later married and took the name Sandra L. Kennedy as assistant treasurer of the committee.

Ms. Burton has dated the report May 31, 1991, and the report is stamped as having been received in the Federal Election Commission mailroom

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

on June 5, 1991.

Mr. Bates, I would ask you to look at this document and tell me if you recall ever seeing it before?

A I am sure I have seen it before. It's one of our disclosure statements, Report of Receipts and Disbursements, and it shows the amounts of loans as 30,300, which I am assuming is correct. I remember the amount. I wasn't repaid better than the amount that I originally loaned.

Q I would note for the record that Mr. Bates is referring to an attachment to the report entitled "Schedule C - FEC Line 13(A) - Loans" with the date stated underneath as being May 17 thru June 30, 1990. According to the report, how many loans did you make, sir?

A Four.

Q To the best of your recollection, is that an accurate statement of the loans you made to the committee?

A Yes.

Q What were the dates and amounts of those loans?

A I am having difficulty reading the form, but according to the form it's 5/23 6,000,

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

5/29/90 10,000, 5/30 4,300, and 6 -- something undecipherable -- 10,000.

Q All those are in the year 1990, sir?

A Yes, sir.

Q According to the committee's report, sir, what was the source of funds for the loans?

A For each of these?

Q That's correct.

A Well, I can't specifically recall each one. I know that --

Q Before you answer, sir, let me ask the question differently. Does the report indicate that these are loans from you to the committee?

A Yes, from me personally, and I was adamant about stating that, that they are personal loans. I remember Sandra Burton Kennedy repeatedly saying what were the loans, were they just from you, or something like that.

Q Mr. Bates, when you refer to Sandra Burton Kennedy, as have I, she was at the time the assistant treasurer to your campaign?

A I thought she was the treasurer. Oh, I guess she was the assistant treasurer. I don't know who the official treasurer was. He wasn't doing anything, I guess.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q She signed the report; is that correct?

A Right.

Q To the best of your knowledge, did she prepare the report?

A Yes.

Q What was the source of the information contained in the report with respect to the loans that are reported as having been made by you to the committee?

A I am sorry; could you rephrase that? I am having trouble understanding the question.

Q Certainly. With respect to the loans that are stated in the report as having been made by you to your committee, what was the source of the information that is contained in the report?

A Where did she get this information?

Q That's correct.

A I believe these were checks that I wrote on my house bank account, which were deposited in the campaign fund in which I wrote the checks to loan the committee. And the source of where I got the funds to write those checks, is that the question?

Q Did you ever discuss the loans with Ms. Kennedy or at the time Ms. Burton?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A No, I just made a statement that they are personal loans and list them that way.

Q Did she ask you how to list them?

A I don't recall whether she asked me or whether she just showed me this and I concurred. I mean, she would have the checks that I wrote and they would have loan written on them, I am sure. I am sure I made a point of saying that I loaned them so I wanted to get paid back. I don't know if I answered the first question much less the second question.

Q You stated earlier that you were -- I believe the word you used was adamant that the loans be reported as personal loans from you. To whom did you express your adamance?

A Jim Bartell, Sandra Kennedy, anyone -- probably just to them.

Q Did anybody suggest that the loans be reported in any other fashion?

A No, but my adamancy -- is there such a word?

Q I took my shot with adamance.

A -- was based on the fact that I loaned the money and I wanted to get paid back and that I was -- well, I had never loaned my campaign this

FORM LASER BOND A PENGAD/NJDY 1-800-631-6989

much before or I don't think; a small amount a few times maybe. And this is not a lot in the overall scheme of things, but it was a lot for me and I wanted to be sure I got paid back and that -- they had to be personal loans from me in order to be legal. I think that was a concern of mine.

Q Was the concern -- was your concern that they had to come from you?

A Right.

Q Or was your concern that they had to be loans?

A No, that they had to come from me. I couldn't receive loans from any other source that would exceed a thousand dollar campaign limit. That was my understanding though I probably hadn't checked the actual law in a long time. I kind of just went by hearsay from what I picked up over the years.

Q Do you recall if you reviewed this report prior to its submission to the Commission?

A I don't think -- I think in the '90 race I didn't review any of them. The statements were all late. When was this due? Excuse me. And when did they receive it? Let's see. They got it on -- they didn't get it until June. I don't know.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Oh, May 31st is when she signed it. It was received on the 1st of June. It must have been overnighted. I don't think I saw it until after the fact, but I don't dispute the amount. It's 30,300. The best of my recollection, that is the date and the amounts and how it was done. I don't have the actual check copies to confirm that, but I have no reason to doubt this. And it was personal loans, money that I -- my erroneous understanding of the law, that as long as I was personally responsible and personally obtained the funds, it was legal to do it that way.

My sources, which I think was one of your previous questions that I didn't get a chance to answer, was a cash reserve with the Bank of Commerce that was up to $12,000 and I think we had $3,000 or $4,000 credit available at that time and we may even have sold some stock. My wife was helping me procure these funds. And then there was a $5,000 loan from Mark Battaglia. The reason $5,000 was chosen instead of ten or twenty or the whole 30,000, which I could have probably borrowed from, was because that was the amount of my salary that I would be using to make the loan. But if I used that to make the loan from my salary I then would be out of funds to meet monthly expenses. So

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

that's why I chose that amount.

I did have some reservations about how close to the line that was coming, and I think in retrospect it crossed the line and that it actually was a violation.

And then San Diego National Bank -- I had forgotten about that -- but evidently records show that I got a $5,000 loan from them. But it was a personal loan and I think if I had disclosed it from the bank instead of myself, we would have been fine. I didn't realize that a personal loan from a bank should have been disclosed, but it could easily have been. It was just my misunderstanding the law.

Q Mr. Bates --

A Then the $4,300, that might have been the cash reserve. The $6,000 maybe is what I am not sure of. The $4,300 might have been the cash reserve. And then the later $10,000, that was a loan -- that was an insufficient funds when I wrote that, knowing that I had to raise the money to pay myself back, and I think that particular 10,000 sat in the house bank as an overdraft for several weeks.

Q Mr. Bates, we will go through these loans one at a time, but I just want to be absolutely clear the report states that these were

2 6 0 4 3 2 2 0 3 9
FORM LASER BOND A PENGAD/INDY 1-800-631-6989

personal loans from you to your committee?

A Yes, and that was my understanding and intent at the time that that's what I did.

Q We will get to that, sir. I am just trying to identify how this information came to be in the report and it's still not clear to me how Ms. Burton, later Ms. Kennedy, derived the information.

A Well, clearly from the checks that I wrote loaning the committee the money, she would have a copy of the check when she made the deposit, and it would say loan and it was a check from me and it was in the amount of 6,000, 10,000, 4,300, and 10,000. It would be obvious that she would have those records. I mean, the check itself that I loaned, she would make the deposit or she would see the deposit if -- or if she didn't, a copy of it. If she didn't actually make it, she would have gotten a copy of the deposit.

Q So it is your testimony, sir, that you did not discuss these loans in any way with Ms. Kennedy or Ms. Burton?

A Right. I discussed the disclosing of them, but not the making of them.

Q Well, the disclosing of them is what we

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

are talking about, sir.

A Oh, the disclosing of them, I discussed with her. I told her that 30,300 or that this is right or whatever, or this is what she has copies of.

Q So either she came to you and asked you how she should report these transactions or she submitted to you a list? How did that occur; do you recall?

A As I previously stated, she made up this form.

Q Right.

A She had copies of the checks that I wrote that were loans to the campaign. She made those deposits. If you write out a check, it goes to the treasurer to be deposited in the account. It has loan written on it. It is signed by me. It's on my checking letterhead or, you know, my name is on the check. It's my check.

Q So there are at least two checks represented in this figure that are not your checks. There is a check from Mr. Battaglia to you and there is a check from the San Diego National Bank to you?

A No, no, no, no; absolutely not. Every one of these loans, personal loans, is a personal

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

check from me to the campaign. The $10,000, $5,000 from San Diego National Bank and from Mark Battaglia, were made out to me personally and were personally deposited in my house personal account. And the audit is incorrect when it states -- and I recall reading that. The audit is incorrect and there is no way that that can be proven. It's wrong and there are checks -- $6,000, $10,000, $4,300 and $10,000 -- checks that I wrote to the campaign that were deposited.

The reason the Battaglia check and the San Diego National Bank check got in the audit and Mr. Costa, Richard Costa or Robert Costa, the fellow who did the audit, is that my administrative assistant, Kerri Tweed, makes copies of everything for me that she does. And sometimes she is doing a personal deposit, making up a personal deposit for me, and sometimes maybe she was doing a campaign one. I am sure I told her, you know, to make a copy of the check from Battaglia and the San Diego National Bank check, and she just put them in the wrong -- she just put them in the record that goes with the campaign erroneously. But I have seen the check from Battaglia. It's made out to me personally. There is no way that I would have

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

endorsed it over. I wrote a check for $10,000 that was overdrawn one day on the house bank account just simply because the deposit wasn't made in a timely manner. It was one day overdrawn of the $10,000 amount of the 5/29/90 loan. So I hope that clarifies that. I would ask the auditor to produce the evidence that allowed him to make that erroneous statement.

Q Okay. Let's discuss the loans individually.

A Uh-huh.

Q You have a personal checking account, I assume, currently? Do you maintain a personal checking account?

A Yes.

Q And you maintained a personal account while you were a member of Congress?

A Yes.

Q Did you maintain that account at the House of Representatives?

A Yes.

Q Was it at the house bank?

A It wasn't really a bank. It was a depository. It wasn't officially chartered as a bank, but that was the account I used. That's where

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

we pooled the resources of all the members and were given overdraft protection like a cash reserve that I do have with the Bank of Commerce where I also had a personal account at that time.

Q The Bank of Commerce is your current bank?

A No, West One. Bank of Commerce is in San Diego. That's the bank that holds the trust deed on the farm.

Q Was your account at the house bank your primary checking account? The house bank being the nomenclature that's become popular rather than house annex?

A No. Bank of Commerce was my primary account. I would take all the money out of my house bank and put it into the Bank of Commerce so my wife could pay the bills every month. And that's why I was on the famous 22. I was No. 22. Why they didn't stop at 20 or why they stopped at 22 or why they didn't take the number of checks but rather the amount of the checks, but however they came to their crazy conclusion -- do you remember the house bank scandal and the famous 22 that were the worst abusers or whatever? Well, I had 89 overdrafts, 89 compared to Henry Waxman's 375 and Duncan Hunter's

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

450 or whatever. I had 89. And the reason I was on there is because I would take -- it was the amount, they used the amount of the check. I would write a check for 5,000 every month and take it out and put it into my personal account, and that's why I got the loan from Battaglia for that amount because I would be taking it out to make the loan and I needed it to take it out to put it in the Bank of Commerce account.

Q I am going to try and do this systematically. I appreciate that there is a great deal you want to say on the subject.

A All right.

Q You maintained an account at the House of Representatives bank?

A Yes, sir.

Q Did you maintain a checkbook or some other register of checks?

A No, I did not, and that was a mistake. But I was told I had overdraft protection and in the three-year period that the audit was done, I overdrew it 89 times and I just didn't really worry about it very much, because if I was short, they would call me and say you need to make a deposit.

Q You did not keep any record of your

FORM LASER BOND A PENGAD/INDY 1-800-631-8969

balance?

A I did not keep an accurate up-to-date, ongoing balance.

Q What did you keep?

A Usually if -- well, the checks weren't in a checkbook the way with most personal accounts. It was in a larger book and I would take out some checks and keep them in my billfold. And when I needed to write a check, I would just sort of guess, you know, do I have enough money or not approximately, and if I was off, they would tell me about it and I would make the deposit and go from there.

Q How then did you keep track of your balance if you did at all?

A I didn't. I mean, it was in my head. You know approximately how much money you have got.

Q After you wrote a check, did you enter in your checkbook?

A No, I didn't have a checkbook.

Q Well, you had some sort of --

A That the checks came out of. You take them out of this book. There is a place for a notation, but it is too big and cumbersome. I am not going to carry that with me. I took two or

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

three checks out. I put them in my billfold. When I needed to write a check, I would write it. Hopefully I would go back and record it at some date, but I got in the habit of -- there were too many other things to do and I would forget and I didn't do it. And then it would be off anyway. So if I was off, I would hear from them and I would make the deposit and clear it and start over again.

Q Did you receive periodic statements?

A Yes.

Q Did those statements list the checks that you had written?

A I don't know; I never looked at them. I saw no need to. I just put them in a drawer or file somewhere.

Q You don't know if they listed the checks that you wrote?

A No.

Q You don't know if they listed the balance?

A No. Well, I am sure they did.

Q Did you ever draw a check on your house bank account to use in your campaign?

A All of these are loans from my house bank account.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q I appreciate that. I am just trying to do this systematically.

A Yes.

Q So the answer is yes?

A Yes.

Q Now, you testified that you did so the four times that are listed on Schedule C to attachment one?

A Yes.

Q That is a check for $6,000 on May 23rd, a check for $10,000 on May 29th, a check for $4,300 on May 30th, and a check for $10,000 sometime in June, which I understand to be June 6th, but this report is illegible. You have testified those are checks you drew on your house back account; is that correct?

A Yes.

Q Did you have sufficient funds in your account to cover those checks when you wrote them?

A No.

Q Did you know at the time that you had insufficient funds?

A Yes.

Q So just to be clear, when you wrote the loan checks to the committee, you knew that you were

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

using funds that you didn't actually have yet?

A I knew I was taking advantage of the bank overdraft protection, yes.

Q Did anyone else know that you were using overdrafts to fund the loans to your committee?

A I doubt it. I didn't tell anyone. I am sure that the House sergeant of arms knew.

Q Did you discuss the matter with anybody?

A No.

Q So after you wrote the checks, your account had a negative balance; is that correct?

A In a couple of instances -- I think there were two instances, the one for May 29th for 10,000 was for one day, and again that was just an error in making the deposit. And I think that the simple yes or no answer needs some qualification that if I am en route from --

Q We will get to that, sir. The question though now is, at the time you wrote those checks and the checks were paid, your account had a negative balance; did it not?

A I assume so. I wasn't probably sure in all cases, but I was aware that it was either short

FORM LASER BOND A PENGAD/NYDY 1-800-631-6989

or close to being short.

Q And did you subsequently make up the shortfalls in your account and bring your account to a positive balance?

A Yes.

Q When did you do that, please, to the extent that you --

A As soon as possible.

Q -- to the extent that you can recall, if you can go through the loans individually? Do you recall specifically?

A I don't recall on the $6,000. The $10,000 stands out because it was a one day, and I was thinking one -- you know, one day. As I recall, that was the one that was comprised of Battaglia and San Diego National Bank funds.

And as I recall it was something like this: The campaign needed the loan the week that I was in San Diego, so the check was written, say, on Friday and cleared on Monday and I didn't get back until Monday morning and didn't make the deposit until Tuesday or something like that. But I was off one day, but I had the funds but didn't have them in the bank so I kind of qualified that. I mean, I didn't feel like I was -- I wasn't too worried about

FORM LASER BOND A PENGAD/NINDY 1-800-631-6989

it because I had the overdraft protection in any event. Had I known in retrospect all that would come out and everything, I would have gone in that day and made the deposit rather than waiting a day.

Q That is the check dated June 1990 that you're speaking of or the check dated May 29th just to clarify?

A May 29th? The 10,000?

Q Right. Those were the checks for which you made the deposits from Mr. Battaglia and San Diego National Bank?

A Right; which the audit shows was made into the campaign account but which was not and which the house bank records would show.

Q Do you have any recollection of when you repaid the $6,000 loan?

A No.

Q Do you have any recollection of the source of funds you used to repay the $6,000 loan?

A No.

Q Do you have any recollection of when you repaid the loan for $4,300?

A No, I -- no.

Q Do you have any recollection of the source of funds that you used to repay that loan?

FORM LASER BOND ▲ FENGADINDY 1-800-631-3669

A As I stated earlier, the source of funds was the cash reserve. I don't recall exactly whether the cash reserve applied to the 6,000 or the 4,300. But at the same time -- I mean, it's like all of this is going on at once. Money is coming in, money is going out, and you know, my own funds.

I also on some of these loans, the source was the campaign paying me back the loan. But I don't have the exact records, but I know that some of this -- I think about half of it was the campaign paying me back in the month, approximately three-week period, that it was going out and coming in. I don't remember the exact dates or how it all worked. I know that the source of funds was a cash reserve personal account at the Bank of Commerce and the Battaglia and the National Bank loan and the campaign paying me back. Those are the sources.

Q Do you recall, sir, when you opened the cash reserve account at Bank of Commerce?

A I have had that like for ten years, 20 years or something. I don't know.

Q It's a drawing account in effect?

A It's a cash reserve on a checking account. It's the same thing like the bank -- well, it's like a loan.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q It's essentially a line of credit then?

A Yes.

Q Is it subject to an interest rate?

A Yes.

Q Is it subject to a definite repayment schedule?

A Yes.

Q And do you recall what the interest rate is approximately?

A Whatever banks are charging.

Q Is it a floating rate?

A Yes, whatever, so much over prime. A competitive rate and reasonable rate, the same as everyone paid.

Q And how was the repayment date established?

A I don't know. At least once a month they take it out of your checking account to pay the account. It's like 600 a month or something and some of it is for interest and principal and some of it then reduces the balance so it is available to use again as you pay it down.

Q Is it a collateralized account in any way or a signature account?

A Signature.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q Is there any kind of formal note that attaches?

A There is some kind of an agreement that was signed that sets it up. I am sure there is some kind of an agreement.

Q Do you have a copy of that document, sir?

A Which document, sir?

Q The agreement establishing the account at the Bank of Commerce?

A No, but I am sure I could get one.

Q We would appreciate it. Did you know an individual named Mark Battaglia?

A Yes.

Q What's the nature of your relationship with Mr. Battaglia? Would you describe him as a friend?

A Very good friend.

Q Would you describe him as a political supporter?

A Yes.

Q Business acquaintance?

A No, I don't do any business. I mean, I didn't do any business.

Q When did you first meet Mr. Battaglia?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A I met Mark Battaglia in approximately 1975. I think it was 1975. He came into my office when I was a member of the County Board of Supervisors regarding a parking lot that the county had owned the land. It was downtown near the Law Library and it was a lucrative piece of property, and it had been on a lease for $200 a month to the Republican parking lot magnate for San Diego who owned all the parking lots and controlled everything and was a big Republican contributor. They had kept it on a rollover. In other words, the lease had expired like five or ten years earlier and they kept rolling it over at $200 a month.

He came in and he said, "Why is this," you know. And I didn't know and I looked into it and that launched me on one of my investigations of government that I was famous for like the $600 ashtray when Weinberger canned the Navy commander and Kennedy tried to say he didn't do anything wrong. He had actually been the base commander before he was fleet commander, so he actually started the problem. That was procurement problems with the Navy.

So I got into this leasing problem with the county and it took me a year, but I finally got

FORM LASER BOND A PENGAD/NNDY 1-800-631-6989

this lease to be terminated and to go out to an open bid. And on the open bid, Battaglia won the bid and it was $10,000 a month that the county received instead of $200 a month. And, of course, my claims that that's what it would be -- I think I said 5,000 a month or something, but everybody said, no, we would lose the $200 and no one would want this and blah-blah-blah, but they were just protecting keeping it with this guy.

Anyway Battaglia got the -- coincidentally ten years later he won the bid for the San Diego stadium where the San Diego chargers and Padres play, you know, baseball and football. He won that bid and they turned around and the then mayor and now talk show host, kind of the Rush Limbaugh of San Diego, turned around and they gave it to this guy at Ace Parking that had had -- the same group that had had the $200 parking lot.

Anyway I went to Mark Battaglia and we were sort of comrades in arms and he had brought this to me and we had done what was right. He bid so much on it just, you know, sort of out of spite. I am sure he made money on it too. But that's how we met.

Q Did Mr. Battaglia ever have any

FORM LASER BOND ▲ PENGAD/INDY 1-800-631-6989

involvement in any of your Congressional campaigns?

A Oh, yeah, he was always -- you know, in the fund raising and contributor. He didn't raise much, but he would contribute, you know, the maximum that he could.

Q Did you ever discuss your 1990 campaign with Mr. Battaglia?

A Well, I don't recall that I did. I am sure I may have if I talked to him. I didn't see him. During the primary, I never even saw him. I think I saw him in the general, but I talked to him on the phone around May, you know, 29th or something. When I got the $5,000 loan from him, I talked to him on the phone. I never saw him, but I just called and asked him if he could raise some money or loan me some money or get me some money. And he said how much, and I said 5,000. And he wrote a check and wrote loan on it and sent it in or probably somebody picked it up; I don't recall.

Q Was this in late May 1990?

A Yes.

Q At the time was Mr. Battaglia to your knowledge aware that you were seeking reelection?

A Yes.

Q Did Mr. Battaglia ask you why you

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

wanted the loan?

A I don't recall, but I am sure that -- I am sure I told him. He probably didn't ask me. I probably told him. I said, "I need the money. You know, I am loaning my campaign some money, but I am going to be short and you know I need some money." I don't even know if I went into that. I may have just said I need a loan. I mean, you know, to -- I have got to loan some money to the campaign. I don't recall exactly how I put it, but he didn't hesitate. It could have been much larger. I mean, he could have afforded much larger and he would have had I asked for more.

Q But Mr. Battaglia understood that you were borrowing money for --

A Personal.

Q -- personal expense?

A Personal loan, yes.

Q And he understood that you needed to borrow money for personal expenses because you were using your personal funds to support the campaign?

A Right.

Q Did he offer to lend you more money?

A No. Oh, he may have said something, is that enough or something like that, but I mean I

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

don't recall that it was ever -- it wasn't an issue. The 5,000 is what I wanted because that's the amount I wanted to cover.

Q To the best of your knowledge, was it Mr. Battaglia's understanding that the purpose of the loan was to allow you to free up your personal funds to lend to the campaign?

A I don't recall the extent that I went into that. I am sure I said I need $5,000 because I am loaning my campaign money and I am going to be short or I won't have any money this month or something like that. But it was almost -- he didn't focus. It was almost like how much do you need? What? Fine. You know, no problem and pay me back when you can. It was a real quick deal. He wasn't concerned about it really. Do you know what I mean? I mean he didn't ask any questions.

Q Where were you when you had this conversation?

A College Grove, my Congressional campaign -- I mean my Congressional office.

Q Did you speak in person or on the telephone?

A As I stated before, on the telephone. I never saw him until I think after the election.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Actually I missed -- there was a fund-raiser at his house that Gephardt was supposed to go to and the budget was held up and it was right before the election and I didn't go back to campaign. And that's one of the reasons, you know, we didn't do so well. And he had the fund-raiser and I had to call him and I got Gephardt to call. And I remember they were doing the budget and Sununu was in the hallway and he made a wisecrack or something about -- oh, I told him that I was voting against the budget, and he made some wisecrack about breaking my leg or something, you know. But so I didn't even saw Battaglia until after the election.

Q You called him, though?

A Yes.

Q And at the time -- I think I am confusing time frames. But this conversation that you're talking that occurred just prior to the election would have been in October or November?

A No, just prior to the primary in June. The first Monday after the first Tuesday -- or the first Tuesday after the first Monday in June, whatever that date is. I think June 3rd or something. And this was like the last weekend TV before the primary. As it turned out, I won 65-35

FORM LASER BOND A PENGAD/MNDY 1-800-631-6989

or something. I didn't need to buy this TV and I should have not. But, you know, I misjudged it. I needed it in the general more than I needed it in the primary. Although all you need to lose is a third of your base and you're in trouble.

Q So you called Mr. Battaglia and you talked about the loans. Did you talk about the campaign at all?

A No.

Q You didn't discuss the upcoming primary or --

A No. I said --

Q -- your surveys or anything?

A I am sure I said I think it's going to be closer than we thought or whatever and I am worried about it. I am sure I said something like that. I don't recall.

Q Did you call Mr. Battaglia at his office?

A Yes.

Q Mr. Bates, did you discuss with Mr. Battaglia any terms for the loan?

A No.

Q Did you discuss when you might repay him?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A No.

Q Did you discuss interest?

A No.

Q Did you discuss collateral?

A No.

Q Did you make any written record of the loan?

A No. I don't understand what you would mean by a written record.

Q Either a note or --

A I mean, I knew I owed it. I mean, it was in my head. I wasn't going to forget it. No.

Q But there is no written record. Did you eventually repay Mr. Battaglia?

A Yes.

Q Would you describe the circumstances?

A I think it was -- I think it was about nine months after I was out of office and I was doing consulting and I was working in San Diego and Washington and looking at whether I would run again for that open seat. And, you know, I was looking for clients and I asked him if he had anything for me to do that, you know, I could make some money to repay him because I hadn't repaid him. He brought up something that we had been involved in in kind of

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

a peripheral matter that later became the subject of a federal grand jury. He had been denied a parking lot lease by Customs on part of the property. It's kind of complicated, but splitting it. And so I said I would take --

Q Part of which property, sir?

A At the border; the property at the border.

Q That's owned by Mr. Battaglia?

A It's owned by the U.S. government, the Customs office. He had owned property right next to it and he had sold that property and -- no, actually it was originally owned by GSA and it came up for bid and he was the high bidder and won the property.

Some Mexican investors weren't paying attention and they wanted the property and they offered him a million dollars more on the spot for the property that he had just purchased. So he entered into an agreement with them for a million dollars more, but with the agreement that he would continue to operate it or -- I don't know if continue or just operate it as a parking lot. And he did that for several years and then they broke the agreement because they wanted to operate it because he was making so much money on that parking

FORM LASER BOND & PENGAD/INDY 1-800-631-6989

lot. And so he settled with them, but the settlement gave him a million dollars more. So he ended up with $3 million off of that one parking lot.

And then that was over and he was out of business on the border. So he wanted to get another parking lot somewhere at the border and so he went to Customs. And they would have had to reconfigure their property. They could have leased it, but there were three different -- there was Tobacco and Firearms, there was Customs and there was Immigration. There were three parties all involved and two of them signed off and then Customs said, no, that their trucks would have to turn around a different way or something and they did not sign off.

So he employed me to try and convince Customs that they should go ahead and make the lease to him. And I met with the new director. That was Rudy Comacho. I wrote a bunch of letters. I talked to a bunch of people and so I went down and I got --

MR. PORTNOY: Let's go off the record.

(Discussion off the record.)

(Noon recess.)

Q BY MR. PORTNOY: When we were so rudely

FORM LASER BOND A PENGAD/NNDY 1-800-631-6989

interrupted we were discussing the loans you made to your committee from your account at the house bank, and we had just begun the subject of the repayment of those overdrafts on your house account. You stated that you did in fact bring your house account into balance; is that correct?

A Yes.

Q And if you could just explain how you did that and when it occurred, that would be helpful.

A I am not sure that I could. I am sure there are records that would show that. But all I know is that they are all -- you know, I have left the house, my account was current and I have a letter that I gave you in the -- I think you have it that says that --

Q I have it.

A -- they have reviewed everything and there is no problems with the account.

Q Just to clarify, when you left Congress your account was current, in balance?

A Yes, sir.

Q Mr. Bates, the loan checks were not the only overdrafts?

A No, sir.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q Published reports are that there were some 89 overdrafts; is that correct?

A Yes, sir.

Q And approximately $170,000 over a 30 month period?

A A misleading figure, yes. As I stated earlier, I took everything out of the account so I had large amounts, large transactions, because I cleared my account at the first of every month.

Q Did you use --

A That's another reason I was overdrawn.

Q Did you use checks drawn on your house account to fund any of your other campaigns at that time?

A No, sir.

Q Have you ever made loans or contributions to your campaign from that account?

A No, sir. I think the record will show I made very few loans to my campaign. I was not a wealthy member of Congress.

Q Also before we left we had begun discussing your transaction with Mr. Battaglia. I think I would like to just clarify if I could the discussion in which Mr. Battaglia agreed to loan you money during May of 1990. Please set the stage for

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

me. You were in your Congressional office in the district; is that correct?

A Yes, sir.

Q And that's located where?

A 3450 College Grove Avenue or College Way, right off of College Grove.

Q That's why you refer to it as the College Grove office?

A Yes, sir. It was a shopping center.

Q You telephoned Mr. Battaglia?

A Yes, sir.

Q Did you telephone him at his office?

A Yes, sir.

Q And he answered the -- he took the call? He didn't call you back?

A His secretary answered and after a long wait, he answered.

Q What did you say to Mr. Battaglia at that point, if you recall?

A I don't recall. Vaguely. I mean, I have been over it several times. Basically I said, you know, we are in a tight race. We need the money. Can you loan me some money? You know, I am transferring some money out of my personal account and I am going to be short and, you know, that's it.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Q And Mr. Battaglia did not ask you for any details, you said?

A He just -- I don't recall specifically. I mean it's the kind of thing you have a conversation and it's over with and that's it. I am sure he said something like, well, how do I -- who do I make it out to and I said to me, Jim Bates, and it's a personal loan. And he wrote loan on it, a notation. And I said as soon as possible or he probably said when do you need it and I said as soon as possible. I don't remember exactly, but it was just a very quick conversation sandwiched in between other calls to other people trying to raise money. I called Robert Price, the son of Saul Price, who has a company called Price Club that just merged with Costco. I asked him if he could loan some money, and he said -- I may have called him first before I called Battaglia. I asked him for 5,000 and he said, no, he would rather raise the money and I said fine and so he did.

Q Mr. Price said he would raise the money in contributions for your campaign?

A Yes, sir.

Q Mr. Battaglia didn't suggest raising the money for your campaign as an alternative too?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A He wasn't good at it. Price Club was -- Robert Price was a network, Jewish community, business community. Battaglia was kind of a loner as an entrepreneur. He came to San Diego by himself and got married and set up shop. You know, he was raising money for me as a matter of fact. I mean -- but I needed more money quickly. He had probably already maxed out anyway and couldn't have given any. Price had not. Price was the guy who would give you 500, but Battaglia would give you a thousand.

Q Mr. Bates, I just want to clarify, is it possible that you had this conversation with Mr. Battaglia in person?

A It's impossible, totally impossible.

Q You stated previously that you considered this to be a personal loan to you; is that correct?

A Yes. The check is made out to me. It is a loan to me. I mean, whatever other things -- I mean there is a check that was written. There is a copy of that check and that check is made out to me.

Q Understood. But the reason you needed the loan was because of the expenses entailed in your campaign; isn't that correct?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A The reason I needed the loan from Mr. Battaglia, the way I rationalized it, was to pay back my living expenses which I was loaning to the campaign. It's by indirection, but ultimately the problem was created by the campaign needing money.

Q And Mr. Battaglia was aware that was what you were thinking, was he not? You explained that to Mr. Battaglia?

A I believe I did. Otherwise he would have made out the check to the campaign.

Q Also before we left, you had began an explanation of the method by which you repaid Mr. Battaglia. Perhaps we could just review that again for a moment. After you left Congress, you began doing consulting work; is that correct?

A Yes, sir.

Q And you did government and political consulting you stated earlier?

A I did some government. I didn't do any political then. I did later.

Q And you contacted among others Mr. Battaglia to determine if he had any work for a government consultant?

A Yes.

Q And Mr. Battaglia brought to your

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

attention a project he was involved with at the United States/Mexican border; is that correct?

A Yes.

Q Were you already aware of that project?

A Yes.

Q And you were already aware that he was involved in negotiations with various agencies of the U.S. government to try and set up a parking lot or make arrangements to conduct business?

A I was aware that he had been denied. Nothing was going on then and he had hoped that changing circumstances -- that there was a new director of Customs that came in, and there were some people with GSA that had changed, and the fact that previously when my office had been involved, it was simply a matter of referring his request to them, and now I was in a position to be a direct advocate on his behalf. So there was a distinction there.

Q And you and Mr. Battaglia agreed that you would perform some consulting services for him?

A Right.

Q In connection with this project?

A Right. That's all a matter of record in a long and lengthy review with Tom Eicher, the

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

U.S. attorney, and I am sure you could get those files and, you know, it would be helpful.

Q Did you discuss with Mr. Battaglia your compensation for this work?

A Yes.

Q What were your discussions?

A Well, we discussed that I would be paid the rate that I was being paid, which is about $100 an hour, but we didn't know how many hours it would take. But in the final analysis, I could have charged more but I just -- because he had made the loan and that's what I owed, I simply just said, you know, that repayment of that would be sufficient.

Q So to be clear, Mr. Battaglia agreed to pay you your usual rate, which was $100 an hour; is that correct?

A Well, it wasn't written out or it wasn't, you know -- this was not an involved -- it was just an agreement. Well, you do the work and, you know, I will pay you. And I said, "I still owe you that money and so I would like to pay that off." It wasn't into -- specifically hourly rates wasn't discussed, but that's what I would have charged.

Q And approximately how many hours if you can recall did you spend working for Mr. Battaglia?

FORM LASER BOND A PENGAD/MINDY 1-800-631-6989

A Probably 50, maybe 80, but a couple weeks at least. It depends on -- you know, you don't work every hour of every day on it.

Q What kinds of things did you do to try and move this project forward?

A Well, I had to go to the border and look at the site and I had to get his files and go over the maps of the plan that had been originally submitted. The reason -- now I recall. I talked to a fellow named Rappaport who was the former director of Customs before Rudy Comacho and Rappaport had recommended approval but -- I am trying to think. Weights and Measures, I believe it was, had done an inspection of commercial trucks there, and they had objected because it would be some inconvenience to them. And Rappaport had said their argument wasn't really valid and he and I had been talking. He had since left and was doing some consulting and we started talking and we got into that, and he told me that he could devise a new plan that would probably be approved.

So I went back to Battaglia and told him that I thought maybe I had a chance of turning this thing around, and I paid Rappaport for his work. He provided me with a new plan because I was

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

not that familiar with the operations of the border and Customs and what their needs really were. He being the director was, so he developed the plan for me. I had to meet with him and get that, and then I had to set up meetings. I met a couple times with him and with people at the border, with the different agencies, went down to the border and looked at the site, went over the plan, wrote some letters to GSA, to Comacho, the new Customs director, set up a meeting for Battaglia to meet with him. And in the end he said, no, he wasn't going to do it. That's all a matter of record and there is a big file on it.

Q Who said no they couldn't do it?

A Comacho, the guy that replaced Rappaport.

Q The director of the Customs Service rejected the devised plan?

A Right, where the previous director had accepted it. In other words, what appeared to be the problem was the commercial truck inspection and not Customs. But there were four or five different agencies all sharing with that drug -- D&A was Drug and --

Q DEA?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A DEA? Yeah. Drug Enforcement Agency, yeah. Excuse me. They were involved too and they had some offices there too and they had to be relocated. So everyone had signed off except -- so I thought we could turn it around, but it took quite a bit of work.

Q Approximately how long was the period that you worked for Mr. Battaglia?

A It was over a month or two. I mean, it was -- I didn't work full-time on it. It was over a period of a couple months, but I didn't work that much on it. I worked, you know, a few hours here, a few hours there.

Q And at the end of this time, did Mr. Battaglia make any payment to you?

A No, I said, "Let's just call it even," and I reported it on the disclosure form where you disclose your income, which I think I mentioned before. You get a copy from the clerk of the House of Representatives. I think it was April of '92 or '91 -- I am not sure of the date -- but it was in the spring and there was some other work I think that I did on that too, but it's disclosed. It's a reporting disclosure requirement which was made and which I told him about that I would do that and he

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

said fine. And that was the end of it.

Q Did you report it on your income tax?

A I think I did. I am sure I did. I mean, I gave it to my accountant and he -- I didn't actually prepare the forms. He did that.

Q Few of us do anymore.

MR. PORTNOY: One moment.

(Discussion off the record.)

Q BY MR. PORTNOY: Have you ever procured a loan from the San Diego National Bank?

A Several.

Q Was one of those a loan in late May 1990?

A I don't recall, but from records and discussions and -- I am assuming that I did. It's a matter of record, but I don't know the exact date. I had a copy of a cashier's check from them made out to me, which was deposited in my house bank account.

MR. PORTNOY: I will ask the court reporter to mark this letter as Exhibit 2.

(Deposition Exhibit No. 2 was marked for identification.)

Q BY MR. PORTNOY: Let the record reflect that I am now handing Mr. Bates Exhibit 2, which is a letter dated May 28, 1993, from Cynthia Velez of

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

the San Diego National Bank to Robert Costa of the Federal Election Commission, and it's on San Diego National Bank stationery and there is a one-page attachment.

A Made out to me personally. So I don't know how the audit showed it went into the campaign account.

Q The record should reflect Mr. Bates is looking at the attachment and referring to a Xerox copy of a cashier's check from the San Diego National Bank made out to him in the amount of $5,000 and dated, I believe, May 25 of 1990.

A Oh, and my signature for deposit in my account. Again Mr. Costa could be made aware of that. Also with respect to paying Battaglia back, the loan was paid and that transaction occurred prior to any audit. I would like the record to reflect that.

Q If you would, perhaps you could give us an indication of the approximate date that you finished.

A I can't recall, but I know it was before the audit. I think the audit was in the summer and that was in the spring.

Q Spring of 199- --

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A When was the audit? It was '93 was the audit. I think it was fully a year before the audit. No, I think the audit was in '92.

MR. PORTNOY: Excuse me one second.

(Brief delay.)

THE WITNESS: I have a good memory but this stuff is all so old. When was the audit? It took two years to complete, I think it was. I think it was the summer of '92. I think it was June or July of '92 or August of '92, and I know the work for Battaglia, I believe it was in '91; April of '91.

Q BY MR. PORTNOY: I am just trying to get a time frame. The audit was conducted in September of 1991 according to --

A Oh, started, I guess, September of '91. So it must have been April of '91.

Q So shortly after you left office, just a matter of months?

A Three months.

Q Let's go back to the San Diego National Bank loan. I would again ask you to look at the attachment to Exhibit 2 and identify the attachment for me if you can.

A Yes, sir. I am looking at an attachment to No. 2, which is a copy of a cashier's

FORM LASER BOND A PENGAD/WNDY 1-800-631-6989

check made out to me personally and then a copy of my signature and the comment for deposit, and then the bank clearing house numbers would show that it went into the house bank account. I would recognize them anywhere.

Q The record should reflect that Mr. Bates is pointing to a series of numbers stamped on the Xerox of the reverse of the check which bears his endorsement and the phrase "for deposit" as well as stamps that appear to be bank deposit stamps. Do you recall applying for that loan, sir?

A No, sir. As I stated earlier, I over the years have had three or four of these loans and I am not sure which one is which. I know I have applied for them and paid them all off.

Q Okay. Do you recall whether $5,000 was the total amount that you sought to borrow from the bank?

A I am sure -- I don't recall, but I am sure it was. I think I borrowed one time 7,000 and if I asked for seven, I probably would have gotten it. I don't know.

Q Do you recall whether you signed any kind of or filled in any kind of application for the loan?

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

A Oh, sure, I did all that. Everything is in order in that regard. But I am sure they would have given me a different amount had I asked for it. It's only since I lost that I am denied loans.

Q Do you recall if the bank charged you interest?

A Yes, I am sure they did.

Q Do you have any recollection of the rate?

A Too much.

Q But no specific recollection?

A I mean, I know it was a standard loan and they were -- you know, they would not have given me a reduced rate; I know that. They would have said we have to charge you because it looks bad, you know, blah-blah-blah. I didn't ask for anything other than whatever their rate was. This is just a standard loan, signature loan, the same terms and rate that anyone would get.

Q Did the bank require any collateral, do you recall?

A No, I think the record that I had with them was -- this wasn't the first loan I had with them. And generally banks once you get a signature

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

loan and if you have a good record repaying it, you can generally do it again.

Q Do you recall if there was any kind of formal documentation such as a promissory note?

A Yes, there was. I don't recall the specific transaction, but I know that this check would not have been made out to me if I hadn't signed a note. And I am sure that's all a matter of record.

Q Do you recall whether the loan had a term, a specific length?

A I don't recall, but I think they generally were 90 days or 180 days, three months, six months, something like that. They weren't very long.

Q Did you subsequently repay the loan?

A Yes, sir.

Q Do you recall when?

A No, sir.

Q Do you recall what funds you used to repay the loan?

A I am sure that either a honorarium or the campaign repaid me. If I had a record of the repayment to me, I think that would mesh with some of this, but I don't. Just as an overview, I think

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

about half of it was repaid to me from the campaign, about $15,000, and like I said, $2,600 is still owed to me. And then Battaglia, I explained that and then the cash reserve just stayed on the amount, you know. So -- I am actually out about $10,000

MR. PORTNOY: Off the record for a minute.

(Discussion off the record.)

Q BY MR. PORTNOY: Mr. Bates, I would like to turn to a matter involving Charles Myers.

A Yes, sir.

Q Is that someone you know?

A Yes, sir.

Q And how do you know him?

A Stepson.

Q For the record, it's Charles E. Myers, II. Myers is spelled M-y-e-r-s, the second being Roman numerals.

A Yes, sir.

Q Do you recall a contribution to your campaign drawn on a trust account?

A Yes, sir.

Q Do you recall that that check was in the amount of $2,000?

A Yes, sir.

Q Do you recall that the check was

FORM LASER BOND & PENGAD/INDY 1-800-631-6989

annotated in the memorandum line?

A I don't recall that, no, sir.

Q I was hoping you would so I wouldn't have to fish it out just because I have to find it.

A Loan?

Q It did say loan. It also -- the check indicated that it was supposed to be a contribution from two people?

A Yes, sir.

Q Do you recall that? That one was Mr. Myers?

A Yes, sir.

MR. PORTNOY: We will go off the record for one second.

(Brief delay.)

MR. PORTNOY: I am handing the court reporter one Xerox page which contains a copy of a check from Paul E. Hall, Trustee for Paul E. Hall 1987 REV. UTD Trust, Charles E. Myers, II, and it is dated 5/28 1990 and payable to Jim Bates for Congress. I would ask you please to mark that as Exhibit 3.

(Deposition Exhibit No. 3 was marked for identification.)

Q BY MR. PORTNOY: I would ask you, Mr. Bates, to take a look at that. Have you seen

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

this document before, sir?

A Yes, sir.

Q And it appears to be a contribution check to your campaign?

A Yes, sir.

Q Do you see a handwritten annotation in the lower left-hand corner?

A Yes, sir.

Q And would you read that for us, please?

A Contributors Hall & Myers.

Q We have established, I believe, that Mr. Myers is your stepson?

A Yes, sir.

Q Do you know Mr. Hall?

A Yes, sir.

Q How do you know Mr. Hall?

A He's a friend of the family and a campaign supporter. He was friends of my wife and her family before I met her. I mean it goes back a long time.

Q Am I correct in interpreting this check to be drawn on a trust held for the benefit of Mr. Myers, a trust of which Mr. Myers is the beneficiary?

A I am not familiar with trusts or how

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

that is drawn. Just from my observation and when I got the check and looked at the check and it said the contributors were Hall and Myers, I figured a thousand dollars for each and that's the way it was listed. And then in the upper left-hand corner of the check it says, "Paul E. Hall Trustee for Paul E. Hall, 1987 REV. UTD Trust."

Q It probably means revokable.

A Pardon?

Q It probably means revokable.

A Oh, okay. And then Charles E. Myers. So both names are on there. My reading is that both of them, you know, control the funds or are eligible to receive the funds or own the funds or however you want to state it.

Q Do you have any information about the control of the funds in this trust other than that which you can discern from the face of the check?

A Well, after your audit we contacted Mr. Hall and Mr. Myers, and Mr. Myers submitted a statement and Mr. Hall said he would and had gone to Mexico and he still hasn't. He was sort of another friend I lost after losing the election. So, you know, I just have to follow up and get a statement from him, but my understanding there isn't a

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

problem. I understood it was just a matter of recordkeeping that you need a statement from both parties.

Q But you don't know anything about the terms of this trust, do you, sir?

A No. I think that would be reaching to --

Q That's fine.

A -- research a trust every time you get a contribution.

Q No need to speculate. Let me ask you, sir, do you know David Bain?

A Yes, sir.

Q How do you know Mr. Bain?

A He was then Mayor Maureen Connors' treasurer. He was a long time Democratic contributor. He was a ship repair -- CEO of a company that did business with the Defense Department. And when I had then chairman Les Aspin to San Diego, I think he was interested in that. I recall there was an incident where he contributed in the primary to my opponent or didn't contribute to me and I came back to him and said, you know, "Why wouldn't you help us?" And he said he was mad at me about some slight or something I did or didn't do.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

I got another one of my famous investigations going and it impacted, I think, on his company, which later he went to prison for some kind of violations. And he is out of prison now, but there was a -- my investigation, it was peripheral to his company, but then there later was some other offenses. That's all.

Q Do you know his wife?

A She was a contributor. I don't know her personally.

Q Is a Della Chavez Bain his wife; do you know?

A Yes. She gave a thousand and he gave a thousand, and he got a couple other people to give a thousand. I think it was $4,000 that he raised and contributed.

Q Did you ever ask Mr. Bain to make a contribution to help repay the debt from your 1988 election?

A Maybe that's what it was. Maybe it was the '88. All I remember is that the contribution came after the fact, so to speak, after the election was over or after the primary or after something. He hadn't helped me when I thought he would or should, and generally I just let it go and figured

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

they are not with you anymore. But with him I made a point because I had done -- you know, made quite an effort to get Aspin out there and to get the shipyards and, you know, he was part of a whole industry that I had tried to make sure that, you know, that they were being considered for work. I think National Steel. He wasn't with National Steel. But for whatever reason, I went back and met with him and we later smoothed things over.

I think maybe a guy named Rudy Murrillo who used to be former congressman Van Deerlin's aide and was a good friend and supporter of mine, he may have set it up and said you guys shouldn't be enemies or you should be friends. But however it came out, the bottom line was he ended up making a contribution. I might be off on the date. It might have been in '88 instead of '90. Again, that's a matter of record. If I had the records, you know, it might refresh my memory.

Q Do you know an individual named Sami, S-a-m-i, Bandak, B-a-n-d-a-k?

A Yeah.

Q How do you know Mr. Bandak, assuming he is a mister?

A He is a wealthy Lebanese American who

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

set up the Kuwait oil operation when it was originally contracted and they discovered the oil. That was some years ago. He came to this country, immigrated and married a Swedish immigrant and they -- I met him going door to door. And he became very wealthy with a Swedish baby buggy that was very popular, a particular brand, the best in the world or something. So he was a long time contributor and supporter.

I mean, after I met him going door to door, he gave me a thousand dollars on the spot when I came to his door, which was -- the only other time a fellow gave me a thousand dollars when he couldn't go precinct walking with me on the street corner. That surprised me.

Yeah, I know him well. He is -- he would always max out. I don't know how it was assigned or whatever, whether it was to the debt or to the actual campaign or to the debt from '88. There was a big debt in '88 because, you know, we went over about a hundred thousand.

MR. PORTNOY: I think what I would like to do is take a few moments and confer with my co-counsel, and then we can come back and wrap this up fairly soon, just a matter of a few minutes. Let's go off

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

the record.

(Recess taken.)

Q BY MR. PORTNOY: Mr. Bates, I have some final questions which are mostly in the nature of cleanup and then I would like to give you the opportunity to make any statement that you wish or put anything on the record that you would like to have on the record.

First we have had some discussions concerning your former chief of staff, Mr. Bartell. Do you have any idea where he is these days, where he can be located?

A Yes, sir. Mr. Bartell is with Nelson Communications, a public relations firm in San Diego, and can be located there. I don't offhand have his address or phone number, but --

Q That will suffice. We can find him.

A Nelson Communications in San Diego.

MR. PORTNOY: Next I would like to hand the court reporter a copy of a letter that Mr. Bates gave me just prior to the deposition dated February 15, 1959, and it's a letter from Mr. Bates to Danny L. McDonald spelled M-c-D-o-n-a-l-d, Chairman of the Federal Election Commission. And I would ask the court reporter to mark it as Exhibit

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

No. 4, I believe.

(Deposition Exhibit No. 4 was marked for identification.)

Q BY MR. PORTNOY: I would like to ask you, Mr. Bates, to look at the second paragraph of the first page of your letter, and if you look at the third sentence, it reads -- I beg your pardon -- yes, the third sentence. "I'm in Idaho and have written for the records." Could you explain to us, please, who you have written to and what records you have requested?

A Yes, sir. My former treasurer was going to send me the campaign records so that I would be in a better position to respond to some of this, and I have asked her for them, but I haven't received them; Sandra Burton Kennedy.

Q And you have asked her to send you whatever committee records she has?

A She has all the records.

Q And that's what you have requested?

A Yes, sir.

Q Next if you will look at the third paragraph on the first page, you have noted that you're unable to afford an attorney?

A Uh-huh. I waive all my rights and I

FORM LASER BOND A PENGADINDY 1-800-631-6989

will take a lie detector test.

Q On occasion, sir, the Commission has taken into consideration in determining how to proceed in a matter the financial circumstances of a respondent. However in order to do so, the Commission routinely requires documentation of financial status. The kinds of materials that are routinely requested are tax returns, bank statements, and lists of assets and liabilities. I would ask you now if you would be prepared in the future if negotiations were to arise in this matter to provide materials documenting your claims with respect to your financial status?

A Yes, sir.

Q Okay. You have also during the course of this deposition if I understand correctly agreed to try and track down a chart or tree or list or similar document concerning the structure of your 1990 campaign?

A Yes, sir.

Q I would like to reiterate that request and in addition we have discussed the need, our need, for documentation of your loan from San Diego National Bank in order that we may -- I am sorry; there are two loans. There was a loan from Commerce

FORM LASER BOND A PENGAGINDY 1-800-631-6989

Bank? First Commerce?

A A cash reserve?

Q Pardon?

A A cash reserve account. It's a loan, but it's a line of credit. And you wanted a copy of the original agreement with them --

Q The application or something.

A -- or something?

Q Right. In addition, sir, if you have --

A I can show you the recent statement that shows the 12,000 that is owed.

Q The statement would certainly be appreciated, but what we need to establish, sir, for the purposes of our review are the terms of loans because loans are subject to analysis under the Commission's regulations based upon the terms on which they are initially granted. So we will need some sort of documentation with respect to that. I would ask you for any similar documentation that you might have with respect to the San Diego National Bank loan.

A Excuse me, sir. That should be forthcoming in the subpoena that was issued.

Q And we anticipate that we can get it

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

from them, and if we do, I would be happy to advise you that we have gotten it. But if you happen to have it in a file --

A I don't happen to. In fact, I had forgotten all about this loan until it was brought up.

Q Okay. We can certainly procure that --

A I may have kept those records. But going back over five years, I don't keep records generally over three years.

Q We will continue to seek to procure those records from the bank, but if you do have any records pertaining to those loans, it would be useful to us and valuable if we could obtain them.

One document that would be helpful to us now if you have it is a copy of your -- and it needn't be a complete return, but just some indication that you reported on your taxes the Battaglia loan. That would be helpful for us to confirm repayment.

And then we have --

A It's not sufficient that I disclosed it on the disclosure form?

Q We have "I's" to dot and T's to cross.

A I was just hoping it was claimed. I am

FORM LASER BOND A PENGAD/NYC 1-800-631-6989

sure it was. I am sure it was because Thomas Eicher made sure it was.

Q It wouldn't surprise me if Mr. Eicher inquired into that. Now I am handing the court reporter a copy of a letter dated June 1, 1993, from Mr. Bates to the Federal Election Commission and ask that she mark it Exhibit 5.

(Deposition Exhibit No. 5 was marked for identification.)

Q BY MR. PORTNOY: I would ask you, Mr. Bates, if you recall this document.

A I do now.

Q And you can confirm this is a letter you sent to the Commission some time ago in response to the audit?

A (No audible response.)

Q We need a verbal response.

A I did sign this letter and I vaguely recall it, but I did not prepare the letter.

Q Do you recall who did?

A The treasurer.

Q Was that Ms. Kennedy?

A Yes, sir.

Q I would ask you, sir, to look at the second page of the letter under Section D-2. Am I

FORM LASER BOND A PENGADWINDY 1-800-631-6989

right? No, that may not be right. I take it back. Excuse me; under section C entitled "Apparent Prohibited contributions."

A Excuse me?

Q I would ask you to direct your attention to Section C.

A To C which says Apparent Prohibited Contributions?

Q T-o, Section C, to Section C which says Apparent Prohibited Contributions.

A Yes, sir.

Q And I would ask you to review that section.

A Yes, sir.

Q In the first sentence of that section, your letter states that with respect to the 15 prohibited contributions listed on attachment 3, items 1, 2, 6 were simply mistakes in processing and are being reconciled. Do you recall what you meant at the time, sir?

A I didn't draft this, sir, and I don't know what was meant by that. And in fact as I read this letter over, I notice it said that I will be ultimately responsible on the cover letter, the first page, and I really -- I am ultimately

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

responsible, but I hadn't done much on this. I had relied that the treasurer was going to follow up on that and that this letter had been reviewed by the audit division before being given to me to sign and that the answers were cleared with them. In other words, that they understood what it purported to mean.

I made frequent references to this audit of Ms. Kennedy and I asked her, have we been following up, how is it coming, you know, are we doing anything on that, and when are we going to finalize it. And in fact, I think a Wanda Thomas who the staff assigned to this, I asked her if she wouldn't call Wanda Thomas and see the status of these things, and I later learned that not much progress had been made. In fact since this letter, I don't think anything had been done over two years ago and her mother did die and, you know, there were some personal problems and all, but probably she should have resigned as treasurer and turned it over to me a long time ago with the records so I could have followed up on this. But I am really at a loss to give you a good explanation.

Q So you don't recall what that meant?

A Well, I know the list I have it's nine

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

and not fifteen, so evidently we have whittled some of them off of this. But basically I don't understand what mistakes in processing -- they were all mistakes in processing. And 3, 4, 5, 7 and 8, we thought they were sole ownership or partnerships. She is saying they appear to be, but the audit found otherwise or did they? I mean, maybe more work needs to be done here. And I have someone in San Diego that is willing to do some of this work for me, but as we discussed on the phone, you indicated hold up on that until you were sure that's the way the Commission wanted to proceed. In other words, any work that I might do to try and correct some of these things, which I can do and it can be corrected.

Q Okay. So you don't recall, then, what was meant by the statement they are also being reversed?

A Being reversed?

Q Yeah.

A No. I should ask her.

Q And just to close the circle, the last sentence in that paragraph states that items 9, 10 and 11 were thought to be political action committees and are also being corrected. Do you

FORM LASER BOND A PENGAD/NDY 1-800-631-6989 946043722148

have any recollection of what was intended by that?

A Well, I know I drafted some letters that should have gone to them and we should have refunded those political action committee contributions. I think that's what she means. But that hasn't been done and I don't think the letters ever went out.

Q Mr. Bates, do you recall what your committee's procedure was for filing 48-hour notices with the Commission?

A It was a good one. I think all the money that came in in the 48-hour threshold that was correctly filed, you know. I mean, I think that there were some mistakes made, but it's not a significant amount and there was no attempt to hide it or not comply with the 48-hour deadline. I mean, that was a big thing, you know, to be sure and -- we were sending telegrams every day, you know. I think that's how it was reported in fact.

Q But do you recall --

A I know Kerri Tweed was involved in that, because when the mail would come in, she would rather than go through Sandra and the treasurer and all that because of the tight time frame, I think she was actually sending in -- I think we were

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

telegramming the last minute contributions that were over a thousand. But everybody was aware of it and everyone complied. And I don't think -- there appears to be one in the audit that one period of time on that election that was simply missed, and I can't -- this doesn't reference it, but it's something to do with more than a 48 hour or a different -- two different types of reporting periods. I know one of them they simply made a mistake and didn't do it or something like that. But seven or eight hundred thousand dollars and there was a few thousand dollars maybe that wasn't -- they made a mistake, but it wasn't significant and it wasn't intentional. I mean . . .

Q Just to be clear, though, you don't have any recollection of the procedures that your committee used; do you?

A The procedure was that it would be filed on time.

Q That's a result rather than a procedure.

A The procedure was that the committee would make a copy of any contributions received and send it in. I mean, that was the responsibility of the treasurer, a serious responsibility. I mean, I

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

don't know exactly how she did it. I mean, she got a copy of the contributions when she made the deposit and she made sure it was filed.

Q At the very beginning of the deposition you indicated that you have been deposed in the past. Could you elaborate?

A Well, when I was on the County Board of Supervisors, the cold trucks had a monopoly and there was a guy trying to do business as the hot truck. The Health Department and the cold truck guys had a strong lobby, and they tried to keep him out and they filed a lawsuit. And because of my outspoken views on free enterprise and the fact that as long as they met the same standards or better that they should be allowed to do business, they deposed me thinking they would trip me up or something, I guess. But that's the only time.

Q That's 20 plus years ago?

A Fifteen.

Q Fifteen years ago. Not since?

A Not recently.

MR. PORTNOY: I am now handing the court reporter a document entitled Statement of Organization captioned FEC Form 1. Mr. Bates handed this document to me earlier today. It's a copy of a

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

Federal Election Commission form signed by Mr. Bates in which Mr. Bates identifies himself as the treasurer of the Jim Bates for Congress Committee and the Bring Back Bates Committee. I will ask the court reporter to mark that.

(Deposition Exhibit No. 6 was marked for identification.)

Q BY MR. PORTNOY: And I simply want to ask you, Mr. Bates, have you had a chance to file that with the Commission yet?

A Yes, I did. I filed it on March 21st or at least mailed it to the people as indicated on the back of the form who should receive a copy. I am not sure it's necessary since I did a letter which is similar. But the attorney for Mrs. Kennedy -- she employed an attorney when she panicked, you know, and jumped ship. And so I thought in deference to them that I would fill this out and send it in and send them a copy and that way he could say he did this for her. There wasn't much else he did.

Q I just wanted to clarify whether it had been filed.

A I just wanted to get that little jab in for the record.

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

Q For our purposes there is no particular relevance whether it's been processed yet or not and the letter that you submitted in the informal substitution of treasurer was sufficient for our purposes. However we do want to keep our files complete.

Mr. Bates, on January 24th the Commission issued a subpoena to you to produce documents and an order to submit written answers. We have previously discussed that you're going to need some more time to complete those. Do you have a proposed date by which you can complete that?

A Could I see the January 24th letter? The letter to me I prepared and have in rough draft here and I just have to do them in a more polished form. So I could do that in a week or so. But the question I have is with respect to the earlier original letter to the committee that I am now handling everything, and that I have not yet begun. So the separate one that was originally to me, I have that completed. But as you noted earlier, I have a tendency to sometimes write incomplete sentences and so I was just going back over it and kind of polishing it up a little and making sure that everything is clear.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

But I haven't begun the work on the original committee letter. In fact I thought that I was home free when I got the letter reconciling the balance, and I thought, oh, this is all over with. And then I got a copy of a later letter that went into all this all over again. So my question is that we are proceeding here. We have two part responses. And the January 24th is the letter to me personally, and that one I have here and I will have it sent in in a week. But when we go to the other letter, that's older. And this is the bank -- the subpoena to the bank. Now how much time does the bank have because they could help out with a lot of this? Were they on a time frame that they had to respond by?

Q Let me try and clarify that, sir. The bank --

A It says they had 30 days.

Q When we seek documents from a bank, sir, we are subject to a federal statute called the Right to Financial Privacy Act, which requires us to give you notice of our intent to seek documents pertaining to your personal finances and also to provide you with an opportunity to object. In complying with our obligations under the Right to

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Financial Privacy Act, there is a time lag and the bank's response to our subpoena has been delayed as a consequence. They are in fact subject to a subpoena and we will be happy to advise you that there are documents provided by the bank that we no longer need from you just as soon as we get them.

But coming back to the question of the subpoena to you, sir, I believe you stated that you will be able to do that within a week?

A Yes, sir. Now the letter to Ms. Kennedy is also January 24th and she will no longer be responding to that; is that correct, sir?

Q That's my understanding, sir.

A So if I am to respond to that, what would be reasonable time frame on that? Two weeks or so?

Q To simplify this, sir, there are two avenues. You're not legally required to respond to a finding of reason to believe. You are permitted to respond. In other words, if there is something you would like -- of which you would like to make the Commission aware, you have the opportunity to respond. But there is no legal compulsion that you submit a response to that document. If you prefer to rest upon your personal response and your answers

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

here today, you have the legal right to do so.

If it is your preference to submit something, that's also very much within your rights and we have authority in our office to give you up to 20 days additional to do it, but that is the limit of our authority and beyond that we would need to seek the Commission's authorization. So if you would like, we can on the record now give you an additional 20 days to respond during which time you can decide upon consideration whether you wish to submit a response.

A Well, I would like to state for the record that I would like to respond to those other matters because I think it would be helpful. And if I understand correctly, the clock starts running as of today?

Q That's the limit of my authority, sir.

A So 20 days from today would be April 19th.

Q Today is March 31st?

A Yes, sir.

Q One doesn't count in legal counting the day that an event occurs, so tomorrow would be the first day which would make it April 20th. Let's figure out what day of the week that is. That's a

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Thursday. That's fine.

A Okay. Yes, sir.

Q If there is some reason why you need additional time, you certainly have the right to request it. However you should know, we will have to seek that additional time from the Commission, and the Commission does not routinely grant extensions.

A Yes, sir.

Q While we are on the subject of the subpoena, are there any documents that you brought with you today that are responsive to our subpoena that you're prepared to provide us at this point?

A I need to think about that a moment, sir. But before I do, might I go back to the response on the treasurer and make sure that what I was referring to is the same thing?

Q Sure.

A I have a Factual and Legal Analysis. It says Respondent Jim Bates for Congress, Incorporated, and Sandra Kennedy as Treasurer, and then it goes through the audit and it's some 17 pages.

Q Yes, that's the same document, sir. The Factual and Legal Analysis is the Commission's

2 0 4 3 0 2 2 1 5 7
FORM LASER BOND A PENGAD/INDY 1-800-631-6989

explanation of the factual and legal --

A And that's what I --

Q -- events.

A That's what I may respond to, that I have a right to respond to?

Q That's correct.

A Okay. I just wanted to clarify that because that's what I had here and mine was a little different. Mine was specific questions to me, whereas this is --

Q You, sir, should have received a Factual and Legal Analysis and in addition a subpoena. Those are separate documents.

A To me personally?

Q That's correct?

A But on the Kennedy response that I am doing, there weren't specific questions to her?

Q That's correct. There was no subpoena to the committee. There was only a Finding of Reason to Believe and an accompanying Factual and Legal Analysis.

A I wanted to make sure I got that right. Very good. The other question was do I have any documents to submit?

Q That is correct. Anything responsive

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

to the subpoena that you're prepared to make available to us today?

A Was there something that I should be submitting?

Q We didn't specifically request that you bring any documents to this deposition. However it may be that you have collected some that you may be prepared to make available to us at this juncture?

A I wish.

Q I take that as a no?

A No.

Q Okay. We are right up to the end, then, sir. There is one last matter.

We will hand the court reporter a copy of a letter dated February 23, 1995, from Mark A. Battaglia to me, Jim S. Portnoy, at the Federal Election Commission. I would ask the court reporter to mark it as exhibit next.

(Deposition Exhibit No. 7 was marked for identification.)

Q BY MR. PORTNOY: I would ask you, sir, to take a look at the letter. Let me know when you have had a chance to look at it.

(Brief delay.)

Q BY MR. PORTNOY: I will ask you, sir,

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

to look at the fourth paragraph. Have you read that, sir?

A Well, it's totally false and the only thing I can say is that I am sure Mark Battaglia's attorney prepared this letter. I am sure he did not personally draft it. And I am sure he doesn't recall the specifics of this transaction because I did not go to his office. I did not see him and Jim Bartell was probably in the office when I made the call to him. I remember it was on the phone that I talked to him. I didn't go by the office and he is mistaken.

And he was mistaken in the FBI investigation, which is what started the whole thing. Why that went on and why they got into that, he told them that I never repaid the loan. And then he later said, well, I had misunderstood or he changed it. But why he said that and when I asked him why he said that, he said, well, I thought they meant something else or he got it confused. But he was wrong about that and that's what set that whole thing off was when he said one thing and I said another.

And he has done it again. And there is no way that I met with him or came by his office.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

And I am sure he didn't draft this. I am sure his attorney -- and he spent $15,000 on that FBI thing with his high priced attorneys, you know. And I am sorry that he had to do that. And they convinced him that he needed to be granted immunity before he would testify and everything. I am sure that they did that, but it's just blatantly -- it's absolutely, totally false. I don't know whether it is a mistake, a misunderstanding, or why he said that. But I never met with him when this loan was discussed. It was over the telephone. I mean, I don't think it makes any difference except it's just two different stories.

Q With the exception of the differences over the location of your conversation, would you say that Mr. Battaglia's summary of the conversation is essentially accurate?

A Yeah, I think it pretty much -- I mean, it's essentially correct.

Q Mr. Battaglia states in the fifth paragraph in the second and third sentences, "I considered this to be a personal loan, not any sort of campaign contribution. The possible use of these funds for campaign purposes was never discussed and certainly not intended on my part."

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

Without asking you to read Mr. Battaglia's mind and know his intentions, is it fair to say that Mr. Battaglia understood that you intended to use the proceeds of the loan to pay personal bills so that you would have the ability to use other personal funds in your campaign?

A What he says here in his letter is essentially correct, that I remember I made clear that it was a personal loan because I knew that if it were a campaign loan, it would violate the statute. So I don't -- as I stated earlier, I don't recall the specifics other than I know it was discussed that it was a personal loan.

Q I understand that, sir, but was it also discussed that the reason you needed a personal loan was because your campaign was consuming --

A Right.

Q -- a lot of your personal funds?

A Because I was loaning the campaign and I needed the money to make personal expenses, which he states in the letter, which actually I am surprised that he recalls that much of it. You know, by and large, it's pretty accurate.

Q So then, sir, to repeat my question, is it fair to say that Mr. Battaglia understood that

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

the reason you were seeking a personal loan from him was because the campaign was consuming your other personal funds?

A Yeah, I think so and I think that's what he says here. I think that's accurate.

MR. PORTNOY: Okay. Sir, that's all I have. I thank you for your time and your patience. I would like to thank our court reporter and I would like to give you the opportunity to make any statement for the record that you would like or introduce into the record any materials that you would like.

THE WITNESS: I have nothing.

MR. PORTNOY: Thank you, Mr. Bates. That will conclude our deposition. We are going to -- now I have lost the terminology. Essentially we are going to stop here. We are not going to formally end the deposition. I have just been advised the word might be we are going to continue the deposition which seems to say exactly the opposite of what we mean. What I mean by that is although we don't anticipate needing to depose you further, the subpoena still remains valid and in effect, and if that need arises, we will certainly tell you. But as far as we can tell you at this point, we are

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

finished and we won't be bothering you further in this respect.

THE WITNESS: Okay. Thank you. I have one final comment if I might.

MR. PORTNOY: Sure.

THE WITNESS: In rereading this letter from Mr. Battaglia just to clarify the point that whoever drafted this letter for him you know was essentially trying to be as accurate as possible. But on the fourth paragraph, the final statement, the final sentence, it states, "He said that he needed a personal loan to help him make his car payment, house payment, et cetera." Well, I didn't have a car payment, never have had a car payment. So that's an example where the gist of it is accurate but the details really are not. You know, it couldn't possibly have said I had to make a car payment. I have never made a car payment. I haven't made a car payment in my life.

MR. PORTNOY: Thank you, sir, and I appreciate that clarification. Is there anything else that you would like to add on the record?

THE WITNESS: No.

MR. PORTNOY: We are off the record and that concludes our deposition for today. Thank you.

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

(Deposition concluded at 3:15 p.m.)

FORM LASER BOND A PENGAD/INDY 1-800-631-6989

SIGNATURE PAGE

I, Jim BATES, have read the foregoing pages and have noted any stenographic errors of my testimony together with their respective corrections and the reasons therefor, on the following Errata Page.

(Signature) _____

(Date) April 24, 1995

****

STATE OF IDAHO)
) ss.
County of _____)

I, Heidi Kilian, a Notary Public in and for the State of Idaho, hereby acknowledge that the above-named deponent personally appeared before me and affixed his/her signature above as his/her own true act and deed.

_____

DATED: April 24, 1995

My Commission Expires: 1-11-99

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
County of Ada)

I, PATRICIA A. FENWICK, CSR, a Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to computer type, and that the foregoing transcript contains a full, true and verbatim record of the said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 11th day of April, 1995.

Patricia A. Fenwick
PATRICIA A. FENWICK
CSR NO. 316
Notary Public in and for
the State of Idaho.

My Commission Expires 4/10/98.

FORM LASER BOND A PENGAD/NDY 1-800-631-6989

1

FEC FORM 3 — RECEIPTS AND DISBURSEMENTS

For An Authorized Committee (Quarterly Report)

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 JUN -5 AM 8:38

1. NAME OF COMMITTEE (In Full)	2. FEC IDENTIFICATION NUMBER
Jim Bates for Congress	C 00197152
ADDRESS (number and street) P.O. Box 152042	3. IS THIS REPORT AN AMENDMENT? ☒ YES ☐ NO
CITY, STATE and ZIP CODE: SAN DIEGO, CA 92115	STATE/DISTRICT: CA/44TH

4. TYPE OF REPORT

- ☐ April 15 Quarterly Report
- ☐ July 15 Quarterly Report
- ☐ October 15 Quarterly Report
- ☐ January 31 Year End Report
- ☐ July 31 Mid-Year Report (Non-election Year Only)
- ☐ Twelfth day report preceding _____ (Type of Election) election on _____ in the State of _____
- ☒ Thirtieth day report following the General Election on 11/6/90 in the State of CA
- ☐ Termination Report

This report contains activity for: ☐ Primary Election ☒ General Election ☐ Special Election ☐ Runoff Election

SUMMARY

		COLUMN A Total Period	COLUMN B Calendar Year-to-Date
5.	Covering Period 10/18/90 through 11/26/90		
6.	Net Contributions (other than loans)		
	(a) Total Contributions (other than loans) (from Line 11(a))	100492.48	583066.51
	(b) Total Contribution Refunds (from Line 20(d))	500.-	5425.-
	(c) Net Contributions (other than loans) (subtract Line 6(b) from 6(a))	99992.48	577641.51
7.	Net Operating Expenditures		
	(a) Total Operating Expenditures (from Line 17)	101720.90	610551.54
	(b) Total Offsets to Operating Expenditures (from Line 14)		
	(c) Net Operating Expenditures (subtract Line 7(b) from 7(a))	101720.90	610551.54
8.	Cash on Hand at Close of Reporting Period (from Line 27)	15114.17	
9.	Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D)		
10.	Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D)	55125.02	

For further information contact:
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Toll Free 800 424-9530
Local 202 376-3120

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

Type or Print Name of Treasurer: Sandra L. Burton, Assistant Treasurer

Signature of Treasurer: Sandra L Burton — Date: 5/31/91

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g

FEC FORM 3 (formerly 4/87)

DEPOSITION EXHIBIT 1 Jim Bates 3-31-95

RECEIVED FEDERAL ELECTION COMMISSION 91 JUN -6 AM 11:20 FEC/MAIL CENTER

91144023123

DETAILED SUMMARY PAGE
of Receipts and Disbursements
(Page 2, FEC FORM 3)

Name of Committee (in full)	Report Covering the Period From	To
I. RECEIPTS	**COLUMN A Total This Period**	**COLUMN B Calendar Year-To-Date**
11 CONTRIBUTIONS (other than loans) PROVIDE:		
(a) Individuals/Persons Other Than Political Committees		
(i) Itemized (use Schedule A)	32809 —	
(ii) Unitemized	13283.48	27397.51
(iii) Total of contributions from individuals	46092.48	260676.00
(b) Political Party Committees	515 —	17187 —
(c) Other Political Committees (such as PACs)	54025. —	291900 —
(d) The Candidate		
(e) TOTAL CONTRIBUTIONS (other than loans) (add 11(a)(iii), (b), (c) and (d))	100492.48	583066.51
12 TRANSFERS FROM OTHER AUTHORIZED COMMITTEES		
13 LOANS		
(a) Made or Guaranteed by the Candidate		32800 —
(b) All Other Loans		3500 —
(c) TOTAL LOANS (add 13(a) and (b))		36300 —
14 OFFSETS TO OPERATING EXPENDITURES (Refunds, Rebates, etc.)		
15 OTHER RECEIPTS (Dividends, Interest, etc.)		46748
16 TOTAL RECEIPTS (add 11(e), 12, 13(c), 14 and 15)	100492.48	670333.99
II. DISBURSEMENTS		
17 OPERATING EXPENDITURES	10720.90	610551.54
18 TRANSFERS TO OTHER AUTHORIZED COMMITTEES		
19 LOAN REPAYMENTS		
(a) Of Loans Made or Guaranteed by the Candidate	[redacted]	27500 —
(b) Of All Other Loans		
(c) TOTAL LOAN REPAYMENTS (add 19(a) and (b))	[redacted]	
20 REFUNDS OF CONTRIBUTIONS TO		
(a) Individuals/Persons Other Than Political Committees	50 —	1500 —
(b) Political Party Committees		
(c) Other Political Committees (such as PACs)		3025
(d) TOTAL CONTRIBUTION REFUNDS (add 20(a) (b) and (c))	50 —	5425
21 OTHER DISBURSEMENTS		700 —
22 TOTAL DISBURSEMENTS (add 17, 18, 19(c), 20(d) and 21)	10220.90	644176.54

III. CASH SUMMARY

23 CASH ON HAND AT BEGINNING OF REPORTING PERIOD	$ 16441.57
24 TOTAL RECEIPTS THIS PERIOD (from Line 16	$ 100492.48
25 SUBTOTAL (add Line 23 and Line 24)	$ [illegible]
26 TOTAL DISBURSEMENTS THIS PERIOD (from Line 22	$ [illegible]
27 CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (subtract Line 26 from 25)	$ 15114.17

C 1 1 4 3 7 2 1 5 9

SCHEDULE C
(Revised 1988)

LOANS

Page ___ of ___ for LINE NUMBER 7A
Use separate schedule for each numbered line

Name of Committee (In Full)
Jim BATES FOR CONGRESS

A. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
PSG GARRISON FUND Election: ☐Primary ☐Runoff ☐Other (specify):	3000 -		3000 -
Terms: Date Incurred _____ Date Due _____ Interest Rate _____% (Mark) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item A			
1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

B. Full Name, Mailing Address and ZIP Code of Loan Source	Original Amount of Loan	Cumulative Payment To Date	Balance Outstanding at Close of This Period
JIM BATES 3246 LAFAYETTE ST NW WASHINGTON DC Election: ☐Primary ☐General ☐Other (specify):	30,300 -	27300 -	3000 -
Terms: Date Incurred _____ Date Due _____ Interest Rate NONE % (Mark) ☐ Secured			
List All Endorsers or Guarantors (if any) to Item B			
1. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
2. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		
3. Full Name, Mailing Address and ZIP Code	Name of Employer Occupation Amount Guaranteed Outstanding $		

SUBTOTALS This Period This Page (optional)	
TOTALS This Period (last page in this line only)	9300 -

Carry outstanding balance only to LINE 8, Schedule B, for this line. If no Schedule D, carry forward to appropriate line of Summary.

911-1918-1127

[redacted]

SCHEDULE A - FEC LINE 11(A) - LOANS
FOR THE THREE MONTHS ENDED JUNE 30, 1990

Any information copied from this report may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes.

NAME/ADDRESS	PURP	DATE	ELECTION	$ THIS PERIOD
Bates, Jim	The Honorable	06-23-90	P 90	6,000.00
United States House		06-29-90	P 90	10,000.00
of Representatives		06-30-90	P 90	4,300.00
Washington, DC 20515		06-[illegible]-90	P 90	10,000.00
EMPLOYER: U. S. House of Representatives				
OCCUPATION: Member of Congress			AGGREGATE YTD: $	..,.....
Loan to Jim Bates for Congress Committee				30,300.00

Totals

30,300.00

[redacted] 12(A) - [redacted]
[redacted] June 30, 1990

It is a criminal offense to use information from this report to solicit contributions for commercial purposes.

NAME/ADDRESS	PREF	DATE	ELECTION	$ THIS PERIOD
Schuster, Harvey M. 3770 Tenny Street San Diego, CA 92121	Mr.	05-14-90	P 90	1,000.00
EMPLOYER: Congregate Care Centers OCCUPATION: President Loan to Jim Bates for Congress Committee			AGGREGATE YTD: $	1,000.00
Schuster, Rhonda 3770 Tenny Street San Diego, CA 92121	Mrs.	05-14-90	P 90	750.00
EMPLOYER: OCCUPATION: Loan to Jim Bates for Congress Committee			AGGREGATE YTD: $	750.00
Svendsen, Robert M. 2253 Ranch View Terrace Oliveahin, CA 92024	Mr.	05-14-90	P 90	750.00
EMPLOYER: Congregate Care Centers of America OCCUPATION: Controller Loan to Jim Bates for Congress Committee			AGGREGATE YTD: $	750.00
			Page Totals -	2,500.00

KAUTH, JEAN 9/10/90 G 50 50-
4571 CLIFFRIDGE AVE
LA JOLLA CA 92037
EMP. CHERRY HILL CLUBS
OCC. SR V.P

[redacted] 3000-

DEBTS AND OBLIGATIONS
Reporting Loans

JIM BATES FOR CONGRESS	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor Public Office Corp 911 Second Street NE Washington, DC 20002	10123.55	2031.64		12155.19
Nature of Debt (Purpose): Data Processing				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor Penn & Ring 1043 Cecil Place Washington, DC 20007	3518.50	~	1000 -	2518.50
Nature of Debt (Purpose): Legal Consul				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor Hotel Del Coronado 1500 Orange Avenue Coronado, CA 92118	2159.52	80.36		2239.88
Nature of Debt (Purpose): Catering/Fundraiser / Interest				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor OTAY MESA CHAMBER 7101 SIEARE VINARD #105 OTAY MESA CA 92173	400 -			400 -
Nature of Debt (Purpose): Dues/PAC				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor CITICORP DINERS CLUB PO BOX 5064 DENVER CO 80217	185.58			185.58
Nature of Debt (Purpose): MEALS NOT APPROVED BY HOUSE FIN				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor JIM BATES 3346 QUESADA ST NW WASHINGTON DC 20015	2616.01			2616.01
Nature of Debt (Purpose):				
1) SUBTOTALS This Period This Page (optional)				22115.24
2) TOTAL This Period (last page this line only)				
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				

SCHEDULE B — [illegible] OBLIGATIONS
Unsecured Loans

Name of Committee (In Full)	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
John Baker for Congress				
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor AMK CONNOR 9489 JACKSON DR #1-B SAN DIEGO CA 92119	145-			145-
Nature of Debt (Purpose): LEGAL SERVICE				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor FAIRBANK, BREGMAN - MAULLIN 5 THIRD ST #525 SAN FRANCISCO CA 94103	250-			250-
Nature of Debt (Purpose): RESEARCH				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor BRAND + LOWELL 923 - 15th ST NW WASHINGTON DC 20005	3276.53 [illegible]	128.71 [illegible]		3405.24
Nature of Debt (Purpose): LEGAL SERVICE				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor PITNEY BOWES P.O. BOX 1427 FULTON CA 92324	100-			100-
Nature of Debt (Purpose): FAX MACHINE				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor PLATINUM CARD AMERICAN EXPRESS BOX 001 LOS ANGELES CA 90096	509347		317847	1915 —
Nature of Debt (Purpose): AIRLINE TRAVEL TICKETS				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor NOBEL PLAZA 4180 LA JOLLA VILLAGE DR LA JOLLA CA 92037	5984.00			5984.00
Nature of Debt (Purpose): RENT				
1) SUBTOTALS This Period This Page (optional)			6413.00	[illegible]
2) TOTAL This Period (last page this line only)				
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				

SCHEDULE C
Period

DEBTS AND OBLIGATIONS
Excluding Loans

Name of Committee (In Full) Spin Cycle for Progress	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor POLITICAL DATA PO BOX 1706 BURBANK CA 91507	1654.19			1654.19
Nature of Debt (Purpose): MAILING SHEETS				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor NORTH SHORES PRINTERY 926 TURQUOISE ST SAN DIEGO CA 92109	1162.11			1162.11
Nature of Debt (Purpose): PRINTING				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor NAACP 2657 IMPERIAL AVE SAN DIEGO CA 92113	175.-			175.-
Nature of Debt (Purpose): AD				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor REK TAYLOR 3445 - 50 AVE #310 SAN DIEGO CA 92101	1000.-	4420.00	5420.00	-
Nature of Debt (Purpose): CONSULTING				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor LARRY REMER, PRIMARY GROUP 3609 FOURTH AVE SAN DIEGO CA 92103	1500.-			1500.-
Nature of Debt (Purpose): CONSULTING				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor PB PRINTING 3609 FOURTH AVE SAN DIEGO CA 92103	1506.-	975.-	96.-	-
Nature of Debt (Purpose): PRINTING				
1) SUBTOTALS This Period This Page (optional)				9191.30
2) TOTAL This Period (last page this line only)				3100.18
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				2500
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				3450.18

SCHEDULE D
(Revised 3/80)

DEBTS AND OBLIGATIONS
Excluding Loans

Page 4 of 4 for Line number ____
(Use separate schedule for each numbered line)

Name of Committee (In Full) Jim Bates for Congress	Outstanding Balance Beginning This Period	Amount Incurred This Period	Payment This Period	Outstanding Balance at Close of This Period
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor VALLARD LITHOGRAPHERS INC 3220 KURTZ ST SAN DIEGO CA 92110		15304.84		15304.
Nature of Debt (Purpose): PRINTING				
B. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
C. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
D. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
E. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose)				
F. Full Name, Mailing Address and Zip Code of Debtor or Creditor				
Nature of Debt (Purpose):				
1) SUBTOTALS This Period This Page (optional)				15304.84
2) TOTAL This Period (last page this line only)				46305.00
3) TOTAL OUTSTANDING LOANS from Schedule C (last page only)				8800 —
4) ADD 2) and 3) and carry forward to appropriate line of Summary Page (last page only)				55105.00

FEC FORM 3 (1977)

San Diego National Bank
220 Kettner Boulevard
Post Office Box 12605
San Diego, California
92112-3605
Phone 619-231-4989
FAX 619-233-7017
An Equal Opportunity Lender. Member FDIC

2 p3

May 28, 1993

Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 East Street N.W.
Washington, DC 20463

Re: Jim Bates for Congress

Dear Mr. Costa:

The offset to cashier check number 54967 dated May 25, 1990 payable to Jim Bates in the amount of $5,00.00 was loan proceeds that was issued to Mr. Bates.

Should you require additional information, please feel free to contact me at (619) 231-4989 extension 260.

Sincerely,

Cynthia Velez
Operations Officer

CV/jga

DEPOSITION EXHIBIT
2
Jim Bates
9-3-95

SAN DIEGO NATIONAL BANK
1420 KETTNER BOULEVARD, SUITE 101
SAN DIEGO, CALIFORNIA 92101

54697

90-3868/1222

May 25 19 90

PAY TO THE ORDER OF * * * * * * * JIM BATES * $5,000.00*

702820325, 05-31-90 0B2 22 0277

SAN DIEGO NATIONAL BANK 5000 DOLS 00 CTS DOLLARS

CASHIER'S CHECK

MEMO

Marcia L. Cavan

⑈054697⑈ ⑆122238682⑆ 01213438⑈90 966 ⑈0000500000⑈

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

3

PAUL E. HALL TRUSTEE FOR
PAUL E. HALL 1987 REV. UTD TRUST
CHARLES E. MYERS, II
[redacted]

5-25 1970

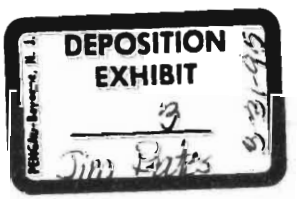
PAY TO THE ORDER OF Jim Bates For Congress $ 2,500 00

Two Thousand and 00/100

Bank of America

FOR Hall & Myers

[redacted]

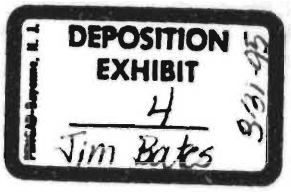


ATTACHMENT 1
Page 8 of 39

4

Feb 15, 1995

Danny K. McDonald
Chairman
Federal Election Commission
Washington DC 20463



Dear Mr. Chairman,

I have received most of the letters from the Commission regarding the 1990 audit.

I must admit it's quite a mess. Most of the items are not violations, though there are some, but poor record keeping + documentation. I'm in Idaho and have written for the records. I'm working on my farm — I didn't want to "Lobby" when I left Congress. As noted on the attached form, I can't afford an attorney, so will handle everything myself.

I just lost my Treasurer

(see attached letter) so I have all that to handle - I thought it was being taken care of —

I'm preparing a response, which I'll mail in a few days, but it will be incomplete — could you consider an extension?

Also I need some advice, or at least explanation, whether I should or can pursue, conciliation +/or pre-probable cause conciliation.

Your consideration would be appreciated — also what are the penalties for these violations?

Sincerely

D. Gut

2503437241

Received on 6/1/93 5

June 1, 1993

Federal Election Commission
Washington D.C. 20463

Attn: Robert J. Costa
Assistant Staff Director
for the Audit Division

Dear Mr. Costa:

In response to the Audit conducted in September 1991 on the Jim Bates for Congress Committee, cover letter dated March 17, 1993, the following report is submittted.

The Audit was not received until April 7, 1993 and the extension was very much appreciated. Because the candidate now lives in Washington D.C. and the Committee members, Treasurer and most of the contributors live in San Diego some of the documentation may be delayed.

The Interim Audit was addressed to the current Treasurer, but since I will be ultimately responsible and because I raised most of the contributions I will coordinate the initial response.

However, I would like to request a meeting to review the Audit and clarify a number of points. I can be reached at [redacted] or 301-652-1919 (work). Your consideration is appreciated.

Sincerely,

Jim Bates



RECOMMENDATION #1:

The Committee Treasurer is filing a comprehensive amendment for calendar year 1990 to correct the irregularities described in the Interim Audit. The amendment should be received be June 1, 1993.

RECOMMENDATION #2:

See Attachment #1 for explanation. On the trust account Paul Hall,Trustee, has been in Mexico for 3 months, but willprovide a statement. Candidate's son, Charles E. Myers, is providing a statement.

C. Apparent Prohibited Contributions

With respect to the 15 prohibited contributions listed on attachment 3; items 1,2,6, were simply mistakes in processing and are being reconciled. Items 3,4,5,7,8 appeared to be sole ownership or partnerships not corporations. They also are being reversed. Items 9,10, and 11 were thought to be Political Action Committees and are also being corrected.

D. Disclosure and Source of Loans Received.

2. Source of Funds.

The Committee received 4 loans from the Candidate totaling $30,300.00. All 4 loans were drawn on the Candidate's United States House of Representatives bank account. The Committee's written statement is accurate. The Audit staff references two checks of $5,000.00 each, of which copies were placed by mistake with the Committee bank records.

The $5,000.00 check from Mark Battalia was a personal loan to the candidate, since the candidates monthly salary deposit of approximately $5,000.00 was loaned to the Committee. The loan has since been personally repaid by the Candidate.

The $5,000.00 cashier's check was purchased by the Candidate or for the Candidate with cash from the Candidate. A check was used because the deposit was made in the United States House of Representatives bank account and did not want to send cash by mail.

E. Required 48 Hour Notices.

The Candidate is at a loss to explain why the 48 Hour notice was not complied with.

RECOMMENDATION #5.

The contribution of $1.925.00 for Glenn Roberts and his wife, Elaine Rodgers, was filed within 48 hours for the $1,000.00 for Glenn Roberts. His wife's contribution of $925.00 was under the $1,000.00 reportable limit.

RECOMMENDATION #6.

The Committee Treasurer is filing the amended Schedule B to correct the irregularities noted.

RECOMMENDATION #7.

The Committee has requested the microfilm (front and back) for those checks itemized on Attachment 7.

H. Checks Paid on Insufficient Funds

RECOMMENDATION #8.

The Committee has requested a statement from the bank which demonstrates that the overdrafts on its operating account should not be considered a prohibited contribution by the bank.

The Committee account was overdrawn because of a greater balance shown on the register than actually existed. That has been reconciled with the assistance of the Audit staff.

The bank would pay only the amount sufficient to cover the amount of the deposit. What may have occured is that NSF checks would be paid when the actual deposit was made, but not shown on the operating account statement until the following day.

6

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

1 (a) NAME OF COMMITTEE IN FULL ☐ (Check if name is changed)	2 DATE
JIM BATES FOR CONGRESS	MARCH 21, 1995
(b) Number and Street Address ☒ (Check if address is changed)	3 FEC Identification Number
Route 2 Box 85	
(c) City, State and ZIP Code	4 Is This Report An Amendment? ☒ YES ☐ NO
HOMEDALE, IDAHO 83628	

DEPOSITION EXHIBIT 6 Jim Bates

5 TYPE OF COMMITTEE (Check one)

☒ (a) This committee is a principal campaign committee. (Complete the candidate information below.)

☐ (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate	Candidate Party Affiliation	Office Sought	State/District
JIM BATES	DEMOCRAT	CONGRESS	44-CAL.

☐ (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee.
(name of candidate)

☐ (d) This committee is a _____ committee of the _____ Party
(National, State or subordinate) (Democratic, Republican, etc.)

☐ (e) This committee is a separate segregated fund.

☐ (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
BRING BACK BATES	Route 2, Box 85 HOMEDALE, IDAHO 83628	Committee to run for a Congressional seat 50TH CAL

Type of Connected Organization
☐ Corporation ☐ Corporation w/o Capital Stock ☐ Labor Organization ☐ Membership Organization ☐ Trade Association ☐ Cooperative

7 **Custodian of Records:** Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records. (Records are being forwarded to me.

Full Name	Mailing Address	Title or Position
JIM BATES	Rt 2, Box 85, HOMEDALE, IDAHO 83628	TREASURER/CANDIDATE

8 **Treasurer:** List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name	Mailing Address	Title or Position
JIM BATES	Rt 2, Box 85, HOMEDALE, IDAHO 83628	TREASURER

9 **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.	Mailing Address and ZIP Code
SAN DIEGO TRUST & SAVINGS	SAN DIEGO, CALIFORNIA 92103

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

TYPE OR PRINT NAME OF TREASURER	SIGNATURE OF TREASURER	DATE
JIM BATES		3-21-95

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.
ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

For further information contact:
Federal Election Commission
Toll-free 800-424-9530
Local 202-219-3420

FE5AN045

FEC FORM 1
(revised 4/87)

PARKING COMPANY OF AMERICA - SAN DIEGO, INC.
P.O. Box 12216 • SAN DIEGO, CALIFORNIA 92112 • (619)234-4222 • FAX (619) 234-1427

February 23, 1995

James S. Portnoy, Esquire
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MUR 4166
Mark A. Battaglia

Dear Mr. Portnoy:

My name is Mark A. Battaglia. I live in San Diego, California. I am in the parking lot business through my company, Parking Company of America - San Diego, Inc.

Please consider this letter as my response to your letter of January 24, 1995, which I received on January 28, 1995, indicating that I "may submit any factual or legal materials that (I) believe are relevant to the Commission's consideration of this matter," as well as my response to your Subpoena to Produce Documents and Order to Submit Written Answers.

I have known Jim Bates since the late 1970's. I have made contributions to various of his local and federal campaigns over the years.

In approximately May of 1990, then-Congressman Bates came to my office at 1446 Front Street in San Diego, California. Bates indicated that he was incurring a lot of personal expenses and that his campaign for Congress was costing him substantial personal money. He said that he needed a personal loan to help him make his car payment, house payment, etc.

I agreed to loan Bates $5,000. I wrote a personal check to him and noted on the check that it was for a "loan" (see enclosed check). I considered this to be a personal loan, not any sort of campaign contribution. The possible use of these funds for campaign purposes was never discussed and certainly not intended on my part.

Bates indicated that he would pay back the loan after the election when his financial situation improved. I accepted his word for this. I fully expected that the loan would be repaid.

DEPOSITION EXHIBIT 7 Jim Bates 3-16-95

PARKING Company of America

Feb 24 1 46 PM '95

Other than the check, there were no documents memorializing this loan, and there were no interest terms attached to the loan. If I had considered this to be a campaign contribution, I would have made the check out to "Bates for Congress Committee" as I did with all my contributions to his campaign. I did not do so, because I considered this to be a personal loan. It was not until 1993 that I learned for the first time from my attorneys that Bates may have deposited this check in a campaign account and not used it for the personal expenses for which he originally told me he needed the money.

After Bates was defeated in his attempt to be re-elected to Congress, he began doing some consulting work. Bates indicated that he had not forgotten the loan and that he would like to render consulting services in an effort to repay the loan. He did some consulting work for me in conjunction with a parking lot matter. In my mind, I considered this work to be in repayment of the personal loan.

In 1993, after he was out of Congress, Bates asked me for another loan. He said that he was in desperate need of $2,000 to pay personal bills and that he was at risk of loosing his home. He said that he was going to ask four friends for loans of $500 each. I again loaned Bates some money. This time is was in the amount of $500.

Your materials also make mention of campaign contributions in 1989 in an amount of $1,000 and in 1990 in the amount of $500. You note that both contributions must be "attributed" to the the 1990 primary election and that this results in an excess contribution.

With respect to these contributions to the Bates campaigns, I always relied upon Bates or his staffers to advise me as to the amount that was proper to give and when to give it. I had no knowledge of federal election laws or rules of "attribution" and always looked to them to advise me as to the propriety of contributions -- amount and timing.

950437221637

I am available to answer any questions that you might have. I have never had any intent to violate the Federal Campaign laws and do not believe I have done so. My actions were taken at the specific direction of Jim Bates or his staff and once my monies were turned over to them I had no control of any wrongful actions they may have taken. I have already spoken fully about these matters with the FBI and counsel for the Justice Department's House Bank Task Force. I am enclosing documents responsive to your request. I respectfully ask that you provide me with the opportunity to offer further explanation to you should you have any remaining questions. I trust that you will conclude that I have not violated any Federal Election Campaign laws.

Sincerely,

Mark A. Battaglia

Enclosures

Certification

I hereby certify that the statements set forth above are true to the best of my knowledge and belief.

Mark A. Battaglia

SUBSCRIBED AND SWORN To before me this 23 Day of February, 1995.

Notary Public

KAREN GIAVASIS
COMM. # 1031095
Notary Public — California
SAN DIEGO COUNTY
My Comm. Expires JUN 26, 1998

My Commission Expires:

960435241390

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4166

DATE FILMED 3-6-96 CAMERA NO. 3

CAMERAMAN JmN

9304372413?

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 4/29/96

✓ Microfilm

_____ Public Records

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4166

9604373270 3

UNITED STATES BANKRUPTCY COURT
Southern District of California

IN RE
Marilyn Bates 567-52-3543
2224 Sunset Blvd
San Diego, CA 92103
Jim D. Bates 523-50-0839
Route 2, Box 85
Homedale, ID 83628
Other names used by debtor(s):
Marilyn B. Bates ,

Jim Bates For Congress ,
Debtor(s)

Case No.: 95 - 14384 - H 7
Chapter: 7
Judge: John J. Hargrove

DISCHARGE OF DEBTOR

CLOSED

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Apr 15 2 39 PM '96

It appears that a petition commencing a case under title 11, United States Code, was filed by or against the person named above on 12/29/95 that an order for relief was entered under Chapter 7, and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court (or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained).

IT IS ORDERED THAT:

1. The above-named debtor is released from all dischargeable debts.
2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to any of the following:
   (a) debts dischargeable under 11 U.S.C. § 523;
   (b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4), (6) or (15) and 11 U.S.C. § 523(a);
   (c) debts determined by this court to be discharged.
3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void in paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: 4/13/96

By order of the court:

Barry Lander
Clerk, U. S. Bankruptcy Court

113084954

96043732704

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 1/23/97

✓ Microfilm

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4166

97043773018

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 22, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jim Bates
Route 2
Box 85
Homedale, Idaho 83628

Re: MUR 4166
Jim Bates
Jim Bates for Congress and
Jim Bates, as treasurer

Dear Mr. Bates:

On February 18, 1996, the Federal Election Commission, Jim Bates, and Jim Bates for Congress ("Committee") entered into a conciliation agreement in settlement of violations of 2 U.S.C. §§ 432(c)(5), 434(a)(6)(A), 434(b)(2) and (3), 434(b)(5)(A), 441a(f), 441b(a) and 11 C.F.R. § 110.9(a). According to the conciliation agreement, you were required to pay a civil penalty of $7,000 in two installments of $3,500. The first installment was received by the Commission on December 14, 1995, prior to the final agreement. The second installment was due on March 18, 1996.

The Office of General Counsel is aware of your financial problems as documented by the bankruptcy trustee's report received by the Commission on March 11, 1996. We remind you that your obligation to pay the civil penalty was not discharged in bankruptcy. Based on our assessment of the trustee's report, we have endeavored to provide you with a reasonable period of time to pay the remaining civil penalty. This Office has spoken with you on numerous occasions concerning your ability to pay the penalty. In several instances, you provided assurances that payment was forthcoming. Despite these assurances, your payment has not been received.

Accordingly, the Office of General Counsel is at this time informing you that the payment of the remaining $3,500 civil penalty is due immediately. If you are unable to make immediate payment of this amount, you must submit a formal written request for an extension of time. Any request for an extension must include documentation of your current financial status and likelihood of future earnings. Acceptable documents would include recent bank statements and tax documents, such as your 1995 tax return and estimated 1996 tax return.

9704377301 2

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

Sincerely,

Matthew J. Tanielian
Attorney

9704377302C