

MAINE STATE LEGISLATURE

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Save Maine Yankee Organizational Memo

APPENDIX A

LEGISLATIVE AUTHORIZATION

D. OF R.

STATE OF MAINE

In Senate September 7, 1983

Whereas, the United States Constitution, Amendment X, reserves to the states the exercise of the police power to protect public health, morals and public safety; and

Whereas, under the Constitution of Maine, the Legislature bears a portion of the responsibility to protect the public health, morals and safety; and

Whereas, the regulation of public utilities is a function of the Legislature; and

Whereas, in 1913 the Legislature delegated to the Public Utilities Commission the regulation of public utilities, including those granted monopoly status by Act of the Legislature and by operation of other laws; and

Whereas, the delegation of power to the Public Utilities Commission is limited, with the residual power and duty to regulate public utilities remaining in the Legislature; and

Whereas, the Legislature maintains constant oversight of the activities of the Public Utilities Commission and its efforts to regulate the public utilities of Maine; and

Whereas, the Legislature has been informed of the following matters:

1. Recently, the Public Utilities Commission has conducted an investigation of matters in connection with the false testimony of a specific utility and has proposed to order it and several of its officers and employees to show cause why it and the officers and employees should not be held in contempt for presenting false information to the commission, engaging in a series of actions designed to continue to impede the commission's authority and for failing to correct that information when its misleading nature became known to the utility;

2. As a result of that investigation, the utility and a senior officer of the utility have pleaded guilty in Maine courts to the crimes of falsification of physical evidence

D. OF R.

the regulation of public utilities;

5. Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;

6. The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and

7. The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities; and be it further

Ordered, that to carry out this investigation, the Legislature grants to this committee all the powers and authority of a legislative investigating committee as provided under the Revised Statutes, Title 3, section 162, subsection 4; section 165, subsection 7; and sections 401, et seq. The committee may hire legal counsel and staff as necessary; and be it further

Ordered, that the committee shall make its final report, including recommended legislation, as well as any interim reports and recommended legislation, not later than the convening of the 112th Legislature.

(Sen. Baldacci)

SPONSORED BY: Sen. Baldacci

643

COUNTY: Penobscot

(Sen. Pray)

SPONSORED BY: Sen. Pray

COUNTY: Penobscot

(Speaker Martin)

SPONSORED BY: Speaker Martin

TOWN: Eagle Lake

(Rep. Vose)

SPONSORED BY: Rep. Vose

TOWN: Eastport

READ AND
IN SENATE CHAMBER
TABLED BY SEN. SEN. PRAY
OF OF PENOBSCOT

SEP 7 1983

PENDING PASSAGE
JOY J. O'BRIEN, Secretary
SPEC. ASSIGN'D AND
LATER IN DAY

IN SENATE

TAKEN FROM TABLE ON MOTION

BY PRESIDENT AND

SEP 7 1983

SENT DOWN FOR CONCURRENCE

PASSED

(13-9)

ordered Sent Forthwith

STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
FIRST REGULAR SESSION
SENATE ADVANCE JOURNAL AND CALENDAR

Wednesday, December 5, 1984

Supplement No. 1

ORDERS

Joint Order

(4-1) On motion by Senator VIOLETTE of Aroostook, the following
Joint Order: S.P.14

WHEREAS, the United States Constitution, Amendment X, reserves to the states the exercise of the police power to protect public health, morals and public safety; and

WHEREAS, under the Constitution of Maine, the Legislature bears a portion of the responsibility to protect the public health, morals and safety; and

WHEREAS, the regulation of public utilities is a function of the Legislature; and

WHEREAS, in 1913 the Legislature delegated to the Public Utilities Commission the regulation of public utilities, including those granted monopoly status by Act of the Legislature and by operation of other laws; and

WHEREAS, the delegation of power to the Public Utilities Commission is limited, with the residual power and duty to regulate public utilities remaining in the Legislature; and

WHEREAS, the Legislature maintains constant oversight of the activities of the Public Utilities Commission and its efforts to regulate the public utilities of Maine; and

WHEREAS, the Legislature has been informed of the following matters:

1. Recently, the Public Utilities Commission has conducted an investigation of matters in connection with the false testimony of a specific utility and has proposed to order it and several of its officers and employees to show cause why it and the officers and employees should not be held in contempt for presenting false information to the commission, engaging in a series of actions designed to continue to impede the commission's authority and for failing to correct that information when its misleading nature became known to the utility;

2. As a result of that investigation, the utility and a senior officer of the utility have pleaded guilty in Maine courts to the crimes of falsification of physical evidence and false swearing, respectively;

3. During the course of that investigation, the commission developed information that at least one utility has become extensively involved in Maine's political process, including the use of utility employees in political campaigns; in the formation and use of political action committees; in the formation and operation of an incorporated subsidiary which conducted political polling for the utility and for presently unnamed political candidates and organizations; and in the retention of consultants for the purpose of directing its political activities;

APPENDIX B

HEARING TRANSCRIPTS

STATE LAW LIBRARY
AUGUSTA, MAINE

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. _____

JOINT SELECT COMMITTEE TO)	APPLICATION TO COMPEL
INVESTIGATE PUBLIC UTILITIES, a)	OBEDIENCE TO SUBPOENA
duly authorized Joint Committee)	OR, IN THE ALTERNATIVE,
of the Maine Legislature)	FOR CONTEMPT
)	3 M.R.S.A. § 165 (7)
v.)	3 M.R.S.A. § 473
)	14 M.R.S.A. § 252
CHRISTIAN P. POTHOLM)	
Town of Harpswell, County of)	
Cumberland, State of Maine)	
)	
and)	
)	
COMMAND RESEARCH, a Maine)	
Corporation with a principal)	
place of business at Brunswick,)	
County of Cumberland,)	
State of Maine)	

The Joint Select Committee to Investigate Public Utilities respectfully represents that:

1. On September 7, 1983, the Maine Senate and House of Representatives, acting pursuant to their authority under 3 M.R.S.A. §§ 162, 165, and 401 et seq., enacted Legislative Joint Order, Senate Paper 643, directing the Legislative Council appoint itself or a joint committee to investigate public utilities, a copy of which order is attached hereto and incorporated by reference herein and marked Exhibit A.

2. The Legislative Council established the Joint Select Committee to Investigate Public Utilities which is charged with investigating and reporting on the nature and extent of participation of public utilities in political processes and activities, whether that political participation has involved violations of Maine statutes, and whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities.

3. Pursuant to said authority, the Joint Select Committee to Investigate Public Utilities issued on June 7, 1984, a written Request for Production of Documents to Mr. Christian P. Potholm, of Brunswick, Maine, in his individual capacity, seeking all documents and writings relating to the polls, opinion surveys, or tracking studies which he conducted or

sponsored for Maine utility companies and non-utility company clients. In addition, the Request sought information explaining his relationship, if any, with federal and state officeholders, federal and state candidates, political parties and political committees. Said Request was formally served on him by registered mail.

4. Mr. Potholm responded through his attorney on August 27, 1984 with several documents, but declined to respond with respect to requests numbered 2, 3, 4, 5, 20, and 39. He alleged therein that he found no documents in response to request number 45, but nevertheless asserted privilege with respect to any such documents. A copy of said response is attached hereto and incorporated by reference herein and marked Exhibit B.

5. On June 8, 1984, the Joint Select Committee to Investigate Public Utilities issued a Request for Production of Documents with specific requests to Command Research, a Maine corporation engaged in the business of research. The first fifty-one requests are identical to the ones contained in the first Request, and the remaining requests seek all documents, if any, relating to the company's contributions to political parties or candidates and also the company's by-laws and related reports. Said Request was formally served on the corporation by registered mail.

6. On August 27, 1984, Mr. Potholm, as president of Command Research, through his attorney, responded to the Request for Production of Documents. The response incorporated by reference the earlier response of Mr. Potholm individually to requests numbered 1 through 20 and 22 through 51. Mr. Potholm declined to provide the documents sought through requests numbered 57 through 60 and asserted that no documents were found on request 56 but that if they existed, they would be privileged. A copy of said response is attached hereto and incorporated by reference herein and marked Exhibit C.

7. In light of the defendants' refusal to comply fully with the Requests for Production of Documents, the Joint Select Committee to Investigate Public Utilities duly met on September 7, 1984, and voted to issue a subpoena duces tecum to Mr. Potholm individually and to Command Research.

8. Because the defendants objected that the Request for Production of Documents are outside the scope of the committee's investigation, the subpoenas duces tecum issued by the committee explained that the purpose of the requests are within the scope of the committee's investigation in that such documents and writings may well inform the committee regarding expenditures and utilization of funds of regulated Maine utilities or lead to such information.

9. On September 19, 1984, Mr. Christian Potholm responded through his attorney to the subpoena duces tecum addressed to him. He refused to produce the documents sought in six of the seven requests. A copy of said response is attached hereto and incorporated by reference herein and marked Exhibit D.

10. On September 19, 1984, Mr. Christian Potholm, as president of Command Research, responded through his attorney to the subpoena duces tecum. He refused to produce the documents in eight of the twelve requests. A copy of said response is attached hereto and incorporated by reference herein and marked Exhibit E.

11. On September 19, 1984, Mr. Christian P. Potholm responded affirmatively to request number 20 in the original Request for Production of Documents and refused to respond to request number 45. A copy of said further response is attached hereto and incorporated by reference herein and marked Exhibit F.


12. On September 19, 1984, Mr. Christian P. Potholm, as president of Command Research, responded through his attorney in an affirmative manner to requests numbered 57, 58, and 59 in the original Request for Production of Documents, but refused to respond affirmatively to request number 45. A copy of said further response is attached hereto and incorporated by reference herein and marked Exhibit G.

13. In light of the failure of defendants to respond fully to the subpoenas duces tecum, the Joint Select Committee to Investigate Public Utilities met on October 10, 1984, and according to the provisions of 3 M.R.S.A. § 423, voted to apply to this Court to compel obedience to the subpoenas.

14. WHEREFORE, the committee respectfully requests that after notice and hearing, that this honorable Court issue such order compelling obedience to said subpoenas and to each of them as required and that it accord the Committee such other and further relief for the premises as it deems appropriate.

DATED at Augusta, Maine, this 10th day of October, 1984.

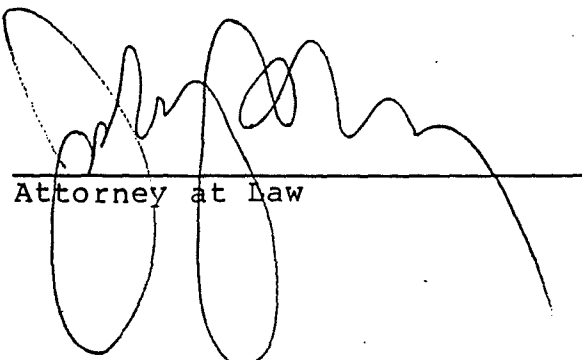
JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

By: 
John E. Baldacci, Chairman
and Committee Member

THEREUNTO duly authorized as Chairman and member of said Joint Select Committee to Investigate Public Utilities to seek this Court's order that defendants be compelled to comply with subpoenas.

Personally appeared before me and made oath to the truth of the foregoing application and under oath affirmed the truth of the statements contained therein.

Before me,



Attorney at Law

2970C/439A

STATE OF MAINE

Kennebec, ss.

SUPERIOR COURT

Civil Action

Docket No. _____

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES, a
duly authorized Joint Committee
of the Maine Legislature

v.

CHRISTIAN P. POTHOLM
Town of Harpswell, County of
Cumberland, State of Maine

and

COMMAND RESEARCH, a Maine
corporation, with a principal
place of business at 11 Bank
Street, Town of Brunswick,
County of Cumberland, State
of Maine

ORDER OF NOTICE

Notice is hereby given that the Joint Select Committee to Investigate Public Utilities, a duly authorized Joint Committee of the Maine Legislature, hereby files an application with the Superior Court of Kennebec County to compel Christian P. Potholm individually and Command Research, a Maine corporation, to obey subpoenas issued by said Committee. Notice is also hereby given that a hearing will occur on said application in said Superior Court on Friday, October 12, 1984, at 9:00 a.m. If you wish to oppose this application, you or your attorney must appear at said time and place.

[Seal of the Court]

Dated this day of October, 1984

Clerk of said Superior Court

Served on _____
date

Deputy Sheriff

Signed: Attorney for Plaintiff

John J. Flaherty, Esq.
Preti, Flaherty & Beliveau
443 Congress Street
Portland, Maine 04103
(207) 775-5831
3153C/490A

D. OF R.

STATE OF MAINE

In Senate September 7, 1983

Whereas, the United States Constitution, Amendment X, reserves to the states the exercise of the police power to protect public health, morals and public safety; and

Whereas, under the Constitution of Maine, the Legislature bears a portion of the responsibility to protect the public health, morals and safety; and

Whereas, the regulation of public utilities is a function of the Legislature; and

Whereas, in 1913 the Legislature delegated to the Public Utilities Commission the regulation of public utilities, including those granted monopoly status by Act of the Legislature and by operation of other laws; and

Whereas, the delegation of power to the Public Utilities Commission is limited, with the residual power and duty to regulate public utilities remaining in the Legislature; and

Whereas, the Legislature maintains constant oversight of the activities of the Public Utilities Commission and its efforts to regulate the public utilities of Maine; and

Whereas, the Legislature has been informed of the following matters:

1. Recently, the Public Utilities Commission has conducted an investigation of matters in connection with the false testimony of a specific utility and has proposed to order it and several of its officers and employees to show cause why it and the officers and employees should not be held in contempt for presenting false information to the commission, engaging in a series of actions designed to continue to impede the commission's authority and for failing to correct that information when its misleading nature became known to the utility;

2. As a result of that investigation, the utility and a senior officer of the utility have pleaded guilty in Maine courts to the crimes of falsification of physical evidence

and false swearing, respectively;

3. During the course of that investigation, the commission developed information that at least one utility has become extensively involved in Maine's political process, including the use of utility employees in political campaigns; in the formation and use of political action committees; in the formation and operation of an incorporated subsidiary which conducted political polling for the utility and for presently unnamed political candidates and organizations; and in the retention of consultants for the purpose of directing its political activities;

4. The commission has indicated that due to a lack of resources it has been unable to satisfactorily complete further examination of that utility's or other utilities' involvement in the political process. This leaves unanswered the critical questions of the scope and purpose of involvement in political activities by large utilities, of the relationship of these political involvements to the regulation of public utilities and of the adequacy of and compliance with election laws applicable to their activities and the beneficiaries of their activities; now, therefore, be it

Ordered, the House concurring, that pursuant to the Constitution of Maine and the Revised Statutes, Title 3, sections 162, 165 and 401, et seq., the Legislative Council shall appoint itself, a joint standing committee or a joint select committee, as a legislative investigating committee to investigate and report on the following matters:

1. The nature of the relationship of public utilities to their subsidiaries, affiliates, officers, employees and persons or organizations providing contract services to them, with particular attention to the larger utilities;

2. The nature and extent of the participation of public utilities, either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employees or contractors, in political processes and activities, including both referenda campaigns and election campaigns;

3. Whether that political participation has involved violations by public utilities or other persons of laws relating to elections, registration of voters, initiatives and referenda, campaign reports or finances, or other political or election activities or practices;

4. The relationship of that political participation and

D. OF R.

the regulation of public utilities;

5. Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;

6. The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and

7. The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities; and be it further

Ordered, that to carry out this investigation, the Legislature grants to this committee all the powers and authority of a legislative investigating committee as provided under the Revised Statutes, Title 3, section 162, subsection 4; section 165, subsection 7; and sections 401, et seq. The committee may hire legal counsel and staff as necessary; and be it further

Ordered, that the committee shall make its final report, including recommended legislation, as well as any interim reports and recommended legislation, not later than the convening of the 112th Legislature.

(Sen. Baldacci)

SPONSORED BY: Sen. Baldacci

643

COUNTY: Penobscot

(Sen. Pray)

SPONSORED BY: Sen. Pray

COUNTY: Penobscot

(Speaker Martin)

SPONSORED BY: Speaker Martin

TOWN: Eagle Lake

(Rep. Vose)

SPONSORED BY: Rep. Vose

TOWN: Eastport

READ AND
IN SENATE CHAMBER
TABLED BY SEN. SEN. PRAY
OF OF PENOBSCOT

SEP 7 1983

PENDING PASSAGE.
JOY J. O'BRIEN, Secretary
SPEC. ASSIGN'D CLO
LATER IN DAY

IN SENATE
TAKEN FROM TABLE ON MOTION

BY SEN. PRAY AND

SEP 7 1983

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Sent Forthwith

HOUSE OF REPRESENTATIVES
READ AND PASSED

SEP 4 1967
IN CONCURRENCE

CLERK

PUC Investigation

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Sponsored by:

~~Sen. Baldacci of Penobscot~~
~~Sen. Pray of Penobscot~~
~~Speaker Martin of Eagle Lake~~
Rep. Vose of Eastport

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

On or about May 31, 1984 the Joint Select Committee to Investigate Public Utilities issued to Christian P. Potholm a Request for Production of Documents (hereinafter "the Request"). The Request contains numbered paragraphs seeking documents in 51 specified categories. The Request further requires (in "Instruction A"): "For each document produced, state the number of the document request to which it is responsive."

In order to comply with the Request, Professor Potholm conducted an exhaustive review of all documents in his possession, segregating those which were called for by the Request. These documents were then numbered sequentially, in order that each document produced could be identified by number with the numbered paragraph or paragraphs of the Request to which it was responsive.

Because of the enormousness of the task, Professor Potholm's attorney requested, by letter dated June 14, 1984, an enlargement of time until August 31, 1984 within which to produce the Response to the Request, and the documents themselves. That request for an enlargement of time was not granted, however, and Professor Potholm was required to deliver the documents themselves (more than 13,000 pages) to the Joint Committee offices on August 16, 1984. Because of this

constraint he was unable to recheck all of the document numbers in this Response. In addition, because he was required to deliver the documents before he had completed his search of the files, it is possible that a limited number of additional documents may come to light as he completes that search. In that event, any such documents will be promptly turned over to the Joint Committee.

RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS

Paragraph No. 1. All documents relating or incident to any questionnaire drafted or prepared in whole or in part by you in connection with any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 1. The following documents fall within the scope of this category:

Nos. 1045-1427

1576

1687-2010

2344-2365

2498

3775-3776

4205-4207

6708

6764

7020-7021

7083-7084

7261

8703-8710

8719-8738

8746-8747

8768-8772

Paragraph No. 2. All documents relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you that contained a question which measured the respondents' approval or disapproval of the performance of President Ronald Reagan.

Response to Paragraph No. 2. With respect to any poll, opinion survey, or tracking study, conducted or sponsored by or for any Maine utility company, please see the Response to Paragraph No. 7.

With respect to any poll, opinion survey, or tracking study conducted or sponsored by or for clients other than Maine utility companies, this Paragraph (as drafted) would purport to seek documents beyond the scope of the Joint Committee's investigation. For that reason, and on the additional ground that they are privileged, Professor Potholm respectfully declines to produce any such documents.

Paragraph No. 3. All documents relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you that contained a question which measured the respondents' voting preferences with respect to the 1982 Maine U.S. Senatorial election.

Response to Paragraph No. 3. With respect to any poll, opinion survey, or tracking study, conducted or sponsored by or for any Maine utility company, please see the Response to Paragraph No. 8.

With respect to any poll, opinion survey, or tracking study conducted or sponsored by or for clients other than Maine utility companies, this Paragraph (as drafted) would purport to seek documents beyond the scope of the Joint Committee's investigation. For that reason, and on the additional ground that they are privileged, Professor Potholm respectfully declines to produce any such documents.

Paragraph No. 4. All documents relating to or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you that contained a question which measured the respondents' approval or disapproval of the performance of Maine Governor Joseph Brennan.

Response to Paragraph No. 4. With respect to any poll, opinion survey, or tracking study, conducted or sponsored by or for any Maine utility company, please see the Response to Paragraph No. 9.

With respect to any poll, opinion survey, or tracking study conducted or sponsored by or for clients other than Maine utility companies, this Paragraph (as drafted) would purport to seek documents beyond the scope of the Joint Committee's investigation. For that reason, and on the additional ground that they are privileged, Professor Potholm respectfully declines to produce any such documents.

Paragraph No. 5. All documents relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you that contained a question

which measured the respondents' voting preferences with respect to the 1982 Maine gubernatorial election.

Response to Paragraph No. 5. With respect to any poll, opinion survey, or tracking study, conducted or sponsored by or for any Maine utility company, please see the Response to Paragraph No. 10.

With respect to any poll, opinion survey, or tracking study conducted or sponsored by or for clients other than Maine utility companies, this Paragraph (as drafted) would purport to seek documents beyond the scope of the Joint Committee's investigation. For that reason, and on the additional ground that they are privileged, Professor Potholm respectfully declines to produce any such documents.

Paragraph No. 6. All documents relating or incident to the analysis or processing of any data collected or the results obtained in connection with any poll, opinion survey or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 6. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2010

2344-2365

2498

3775-3776

4205-4207

5093-5210

6521-6707

8773-9125

10,099-10,397

Paragraph No. 7. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, which question measured the respondents' approval or disapproval of the performance of President Ronald Reagan.

Response to Paragraph No. 7. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2013

2344-2365

2498

2753

3775-3776

3827-3915

4205-4207

5093-5137

5729-6707

7232-7260

8711-8718

8727-8735

8738-8745

8748-8767

8773-9115

10,099-10,397

Paragraph No. 8. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, which question measured the respondents' voting preferences with respect to the 1982 Maine U.S. Senatorial election.

Response to Paragraph No. 8. The following documents fall within the scope of this category:

Nos. 10,099-10,397 especially 10,105, 10,139, 10,172,

10,205, 10,238, 10,271,

10,304, 10,337, 10,370

11,457-11,537 especially 11,461, 11,466, 11,470,

11,474, 11,478, 11,482

Paragraph No. 9. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine

Yankee, Central Maine Power Company, or any other Maine utility company, which question measured the respondents' approval or disapproval of the performance of Maine Governor Joseph Brennan.

Response to Paragraph No. 9. The following documents fall within the scope of this category:

Nos. 3836-3842

6094-6707 especially 6094, 6109, 6138, 6150, 6165,
6194, 6208, 6223, 6252, 6264,
6279, 6308, 6320, 6335, 6364,
6376, 6391, 6420, 6432, 6447,
6476, 6488, 6503, 6532, 6559,
6588, 6600, 6615, 6607-6634,
6644, 6657, 6672, 6701

8773-9115 especially 8780, 8815, 8850, 8885, 8920,
8955, 8990, 9025, 9060, 9094

10,099-10,397 especially 10,104, 10,138, 10,171,
10,204, 10,237, 10,270,
10,303, 10,336, 10,369

11,394-11,537 especially 11,402, 11,417, 11,429,
11,495, 11,510, 11,525

Paragraph No. 10. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other

Maine utility company, which question measured the respondents' voting preferences with respect to the 1982 Maine gubernatorial election.

Response to Paragraph No. 10. The following documents fall within the scope of this category:

Nos. 3836-3842

10,099-10,397 especially 10,106, 10,140, 10,173,
10,206, 10,239, 10,272,
10,305, 10,338, 10,371

11,457-11,537 especially 11,462, 11,467, 11,471,
11,475, 11,479, 11,483

Paragraph No. 11. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, which question measured the respondents' attitudes toward the imposition of restriction on the use of nuclear power.

Response to Paragraph No. 11. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2013

2344-2365

2498

3775-3776

4205-4207

5729-6707 especially 5829, 5864, 5926, 5951, 5988,

6019, 6050, 6101-6103, 6105-6128,

6145, 6157-6164, 6166-6178, 6180-

6186, 6201, 6216-6242, 6259,

6271-6298, 6300, 6315, 6327-6354,

6356, 6371, 6383-6410, 6427,

6439-6466, 6483, 6495-6520,

6521-6522, 6539, 6551-6578, 6595,

6651, 6663-6691

10,099-10,397 especially 10,110-10,132, 10,144-10,166,

10,177-10,199, 10,210-10,232,

10,243-10,265, 10,276-10,298,

10,309-10,331, 10,342-10,364,

10,375-10,397

11,717

11,719

11,262-11,537 especially 11,264-11,279, 11,285-11,300,

11,305-11,320, 11,325-11,340,

11,345-11,360, 11,364,

11,375-11,389, 11,441-11,456

12,561

12,565

Paragraph No. 12. All documents relating or incident to the results of any question contained in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, which question measured the respondents' voting preferences in any local, state, or federal election.

Response to Paragraph No. 12. The following documents fall within the scope of this category:

Nos. 3836-3842

4372-4378

5729-6707 especially 5830, 5767, 5865, 5927, 5958,
5989, 6020, 6051, 6097, 6098,
6123, 6153, 6154, 6179,
6211-6212, 6237, 6267, 6268,
6289, 6323, 6324, 6379, 6380,
6435, 6436, 6491, 6492,
6547-6548, 6603, 6604, 6660-6661

8773-9115 especially 8809, 8844, 8879, 8914, 8949,
9019, 9054, 9089, 9123

10,099-10,397 especially 10,109, 10,143, 10,176,
10,209, 10,242, 10,275,
10,308, 10,341, 10,374

11,262-11,537 especially 11,284, 11,304, 11,324,
11,344, 11,363, 11,374,
11,391, 11,392, 11,437,
11,440

Paragraph No. 13. All documents, not produced pursuant to another document request, relating or incident to any results of a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 13. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2013

2498

3775-3776

3827-3915

4205-4207

5093-5210

5729-6707 especially 5834, 5803, 5900, 5931, 5962,
5993, 6022, 6092, 6148, 6206,
6262, 6318, 6374, 6430, 6486,
6542, 6598, 6655

7232-7260

8711-8718

8727-8735

8738-8745

8748-8767

8773-9115 especially 8779, 8814, 8849, 8884, 8919,
8954, 8989, 9024, 9059, 9093

9677-9680

10,099-10,397 especially 10,102, 10,136, 10,169,
10,202, 10,235, 10,268,
10,301, 10,334, 10,367

11,394-11,537 especially 11,401, 11,416, 11,428,
11,494, 11,509, 11,524

12,738-12,877

Paragraph No. 14. All documents relating or incident to the direct or indirect use or receipt by a federal officeholder, a state officeholder, a state candidate, a federal candidate, or a political party of any results or data of any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 14. See Response to Paragraph No. 15.

Paragraph No. 15. All documents relating or incident to the identity of each and every person who directly or indirectly used or received the results or data of any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 15. The scope of Paragraphs No. 14 and 15 is so broad that it is impossible to respond to

all of the dimensions of these categories of requested documents. For example, some of the exit polling associated with Save Maine Yankee II was broadcast over Maine Information Radio, so that anybody in the listening area could have heard it and the information broadcast could then have been disseminated to any officeholder, candidate, or other interested person in the State.

Even where Professor Potholm gave direct presentations, it is impossible for him to recall exactly who was or was not in each audience. During the course of Save Maine Yankee I and Save Maine Yankee II, for example, he gave briefings to literally hundreds of persons who were invited to Maine Yankee and Central Maine Power Company. While he remembers some of the persons whom he recognized at these meetings, he cannot state with any assurance who was or was not there at a particular meeting, let alone what may have been done with the information by those who were present. Elected officials or candidates may or may not have had representatives there, and anyone in attendance could have passed the information on to anyone else.

Professor Potholm does recall seeing Representative John Chapman at one meeting, as well as Mary Small. On one occasion John Kerry was also present, representing Senator Danton. Representative Sharon Benoit worked for Save Maine Yankee I, so she may well have been present at one or more meetings. Representative Kelleher was on the Save Maine Yankee I committee

and may have attended a meeting or sent a representative, although Professor Potholm does not recall seeing him. In any event, these briefings would have been based on documents numbered 1045-1427, 2011-2013, 5729-6707, 10,099-10,397, and 11,262-11,537.

Material from documents numbered 1045-1427 was, Professor Potholm believes, transmitted to Governor Brennan during the course of Save Maine Yankee I by the head of the Save Maine Yankee I committee, John Menario. This was done at the request of the committee in order to assist the Brennan administration in playing a positive role in that referendum campaign. Because of his position, the Governor was regarded as central to the outcome of this and subsequent referenda during the period under review.

During the course of Save Maine Yankee I and Save Maine Yankee II, Professor Potholm provided Gordon Weil (Director of Energy Resources during much of that period) with numerous updates and insights for Governor Brennan on the progress of these efforts. Material for these briefings would have been drawn from various documents, including numbers 1687-1878, 2,011-2013, 5729-6707, and perhaps others.

In addition, Professor Potholm gave Governor Brennan an extensive personal briefing at the Blaine House during the interim between Save Maine Yankee I and Save Maine Yankee II, based on much of the material in documents number 1687-1878 and 2011-2013.

Pages 3827-3915 were, Professor Potholm believes, transmitted to Governor Brennan, his staff and Thomas LaPointe during the summer of 1982 by New England Telephone Company. This material was, Professor Potholm believes, also transmitted to Charles Cragin by New England Telephone Company.

Pages 5092-5122 were given to Gordon Weil, Governor Brennan's representative to the Coalition for Responsible Government, during the late summer or early fall of 1981. Anthony Buxton also received this material, as did Severin Beliveau. Mr. Beliveau received the material in connection with the Governor's participation in advertising for the Coalition for Responsible Government, during the referendum on the elected Public Utilities Commission.

Some or all of pages 5729-6707 were, Professor Potholm believes, given to Governor Brennan, Commissioner of Public Safety Arthur Stilphen, Commissioner of Manpower Affairs David Bustin, David Flanagan, and other members of the Brennan administration by Ad Media during the 1982 primary, in order to assist the Brennan administration in playing a positive role during the Save Maine Yankee II campaign.

Material from pages 2011-2013, 5766, and 6085-6707 (especially pages 6113, 6227, 6283, 6339, 6451, 6507, 6563, 6619, and 6676) formed the basis for Professor Potholm's briefing -- at his request -- of Peter Bradford, Chairman of the Public Utilities Commission, during the summer or early fall of 1982 in order to facilitate his positive participation in the Save Maine Yankee II effort.

Pages 10,099-10,397, Professor Potholm believes, formed the basis for Elwin Thurlow's telephone briefing of Governor Brennan when the Governor called Mr. Thurlow at home during the late summer or early fall of 1982.

Paragraph No. 16. All diaries, calendars, notes, and all other documents memorializing any oral discussion or relating or incident to any written discussion of the results of any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 16. The following documents fall within the scope of this category:

Nos. 2327 (back)

2328

4372-4378

4656 (back)

5095

5098

Paragraph No. 17. All documents that directly or indirectly incorporated or used any results of a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 17. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2013

2327-2328

2498

3827-3915

4205-4207

5093-5210

5729-6707

8772-8773

10,099-10,397

Paragraph No. 18. All documents, not produced pursuant to another document request, relating or incident to any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 18. The following documents fall within the scope of this category:

Nos. 1045-1427

1520-1521

1687-1879

1884-2013

2498

3775-3776

3827-3915

4205-4207

5093-5210

5729-6707 especially 5834, 5803, 5900, 5931, 5962,
5993, 6022, 6092, 6148, 6206,
6262, 6318, 6374, 6430, 6486,
6542, 6598, 6655

7232-7260

8711-8718

8727-8735

8738-8745

8748-8767

8773-9115 especially 8779, 8814, 8849, 8884, 8919,
8954, 8989, 9024, 9059, 9093

9677-9680

10,099-10,397 especially 10,102, 10,136, 10,169,
10,202, 10,235, 10,268,
10,301, 10,334, 10,367

11,394-11,537 especially 11,401, 11,416, 11,428,
11,494, 11,509, 11,524

12,738-12,877

Paragraph No. 19. All documents relating or incident to
the identity of the employees and agents of the Atlantic Research
Company, Committee to Save Maine Yankee, Central Maine Power
Company, or any other Maine utility company who conducted any

poll, opinion survey, or tracking study, including rosters of such employees and agents, records of compensation paid to such employees and agents, tax records relating to the amount of compensation paid and the withholding of compensation, and tax records relating to employer social security (FICA) payments made.

Response to Paragraph No. 19. The following documents fall within the scope of this category:

Nos. 1507

1880-1883

2368-2369

11,542-11,544

Paragraph No. 20. All checks, account ledgers, check stubs and all other documents relating or incident to your accounts payable and your accounts receivable accruing as a result of your participation in any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 20. Professor Potholm respectfully declines to produce any such documents, on the ground that they contain confidential and proprietary information which is privileged from discovery, and on the further ground that the information sought lies beyond the scope of the Joint Committee's investigation.

Paragraph No. 21. All documents relating or incident to any invoices for services or expenses sent or received by you as a result of your participation in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Reponse to Paragraph No. 21. None.

Paragraph No. 22. All documents relating or incident to your receipt of anything of value from, in whole or in part, the Atlantic Research Company; Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, excluding those documents concerning the provision of utility services to you, such as electricity and telephone service, unless such services were provided to you for less than their fair market value.

Response to Paragraph No. 22. None.

Paragraph No. 23. All correspondence and all other documents transmitted from you to the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, excluding those documents concerning the provision of utility services to you, such as electricity and telephone service, unless such services were provided to you for less than their market value.

Response to Paragraph No. 23. The following documents fall within the scope of this category:

Nos. 1-1878
1880-2010
2014-3262
3484-3826
3916-5030
5211-5728
6708-7352
7483-8702
9126-10,098
10,398-11,261
11,538-12,729

Paragraph No. 24. All correspondence and all other documents received by you from the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, excluding those documents concerning the provision of utility services to you, such as electricity and telephone service, unless such services were provided to you for less than fair market value.

Response to Paragraph No. 24. The following documents fall within the scope of this category:

Nos. 1-1878
1880-2010
2014-3262
3483-3826
3916-5030
5211-5728

6708-7352

7483-8702

9126-10,098

10,398-11,261

11,538-12,729

Paragraph No. 25. All correspondence and all other documents transmitted by Ad-Media to you which mention, relate, or refer to any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 25. The following documents fall within the scope of this category:

Nos. 3263-3483

3997-4000

4005-4010

4013-4016

4663-4673

5514-5519

7353-7482

9627

Paragraph No. 26. All correspondence and all other documents transmitted by you to Ad-Media which mention, relate, or refer to any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 26. The following documents fall within the scope of this category:

Nos. 3263-3483

3997-4000

4005-4010

4013-4016

4663-4673

5514-5519

7353-7482

9627

Paragraph No. 27. All correspondence and all other documents transmitted by you to a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party that mention, relate, or refer to any results of a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 27. None.

Paragraph No. 28. All correspondence and all other documents transmitted by you to a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party that mention, relate or refer to the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 28. None.

Paragraph No. 29. All correspondence and all other documents received by you from a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party that mention, relate, or refer to any results of a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 29. None.

Paragraph No. 30. All correspondence and all other documents received by you from a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party that mention, relate, or refer to the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 30. None.

Paragraph No. 31. All correspondence and all other documents transmitted by you to Erwin W. Thurlow [sic] which mention, relate, or refer to the use or receipt by a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party of any results or data from a poll, opinion survey, or tracking study sponsored or conducted, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 31. None.

Paragraph No. 32. All correspondence and all other documents received by you from Erwin W. Thurlow [sic] which mention, relate, or refer to the use or receipt by a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party of any results or data from a poll, opinion survey, or tracking study sponsored or conducted, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 32. None.

Paragraph No. 33. All correspondence and all other documents, not produced pursuant to another document request, transmitted by you to Erwin W. Thurlow [sic].

Response to Paragraph No. 33. None.

Paragraph No. 34. All correspondence and all other documents, not produced pursuant to another document request, received by you from Erwin W. Thurlow [sic].

Response to Paragraph No. 34. None.

Paragraph No. 35. All correspondence and all other documents transmitted by you to any other person which mention, relate or refer to the use or receipt by a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party of any results or data from a poll, opinion survey, or tracking study sponsored or conducted, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 35. None.

Paragraph No. 36. All correspondence and all other documents received by you from any other person to you which mention, relate, or refer to the use or receipt by a state officeholder, a federal officeholder, a state candidate, a federal candidate, or a political party of any results or data from a poll, opinion survey, or tracking study sponsored or conducted, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 36. None.

Paragraph No. 37. All correspondence and all other documents, not produced pursuant to another document request, relating or incident to the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company, excluding those documents concerning the provision of utility services to you, such as electricity and telephone service, unless such services were provided to you for less than their fair market value.

Response to Paragraph No. 37. The following documents fall within the scope of this category:

Nos. 1045-1427

1687-1879

1884-2013

2498

3775-3776

3827-3915

4205-4207

5093-5210

5729-6707 especially 5834, 5803, 5900, 5931, 5962,
5993, 6022, 6092, 6148, 6206,
6262, 6318, 6374, 6430, 6486,
6542, 6598, 6655

7232-7260

8711-8718

8727-8735

8738-8745

8748-8767

8773-9115 especially 8779, 8814, 8849, 8884, 8919,
8954, 8989, 9024, 9059, 9093

9677-9680

10,099-10,397 especially 10,102, 10,136, 10,169,
10,202, 10,235, 10,268,
10,301, 10,334, 10,367

11,394-11,537 especially 11,401, 11,416, 11,428,
11,494, 11,509, 11,524

12,738-12,877

Paragraph No. 38. All correspondence and all other documents, not produced pursuant to another document request, relating or incident to those individuals who have served or are serving as employees, agents, and directors of the Atlantic

Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 38. None.

Paragraph No. 39. All documents relating or incident to the identity of the clients of your opinion survey activities or political consulting activities.

Response to Paragraph No. 39. This paragraph is, with all due respect, unintelligible. If it seeks the identity of Professor Potholm's utility company clients, that information is already known to the Joint Committee and is directly or indirectly reflected in virtually all of the documents which have been produced. Conversely, to the extent that this paragraph may seek the identity of non-utility company clients, Professor Potholm respectfully declines to produce any such documents, on the ground that the information sought is confidential and privileged, and lies beyond the scope of the Joint Committee's investigation.

Paragraph No. 40. All documents relating or incident to the direct or indirect use by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee of any telephones owned, leased or controlled by you other than any use for which you were paid a fair market price.

Response to Paragraph No. 40. None.

Paragraph No. 41. All documents relating or incident to the direct or indirect use by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee of home or office space owned, leased, or controlled by you other than any use for which you were paid a fair market price.

Response to Paragraph No. 41. None.

Paragraph No. 42. All documents relating or incident to the direct or indirect use by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee of any duplicating or printing equipment owned, leased, or controlled by you other than any use for which you were paid a fair market price.

Response to Paragraph No. 42. None.

Paragraph No. 43. All documents relating or incident to the direct or indirect use by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee of any data processing facilities, word processing facilities, or other equipment owned, leased, or controlled by you other than any use for which you were paid a fair market price.

Response to Paragraph No. 43. None.

Paragraph No. 44. All documents relating or incident to the direct or indirect use by a federal officeholder, a state

officeholder, a state candidate, a federal candidate, of your opinion surveys services or political consulting services other than those services for which you were paid a fair market price.

Response to Paragraph No. 44. None.

Paragraph No. 45. All documents relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

Response to Paragraph No. 45. If any such documents existed, they would be confidential and privileged, and would lie beyond the scope of the Joint Committee's investigation. Without waiving his objection to this paragraph, however, Professor Potholm voluntarily discloses that he has found no such documents.

Paragraph No. 46. All documents relating or incident to any expenditures or in-kind contributions made by you or on behalf of a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine political action committee, or other political committee, including any contributions made to a Maine ballot question campaign and to the Committee to Save Maine Yankee.

Response to Paragraph No. 46. None.

Paragraph No. 47. All documents relating or incident to any contributions made by you to a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine political action committee, or other political committee, including any contributions made to a Maine ballot question campaign and to the Committee to Save Maine Yankee.

Response to Paragraph No. 47. None.

Paragraph No. 48. All documents relating or incident to your involvement in any way whatsoever with registration and get-out-the-vote campaigns, partisan communications, political committees and any other electoral activities sponsored or conducted, in whole or in part, by the Atlantic Research Company, Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 48. None.

Paragraph No. 49. All documents relating or incident to the solicitation, collection, or receipt of contributions to each Maine political action committee established, administered, or sponsored, in whole or in part, by Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 49. None.

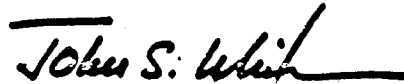
Paragraph No. 50. All documents relating or incident to any expenditures made by any Maine political action committee established, administered, or sponsored, in whole or in part, by Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 50. None.

Paragraph No. 51. All documents relating or incident to any solicitation, collection, or donation of contributions or in-kind contributions by you on behalf of the Committee to Save Maine Yankee.

Response to Paragraph No. 51. None.

DATED at Portland, Maine, this 27th day of August,
1984.



John S. Whitman, Attorney for
Christian P. Potholm

RICHARDSON, TYLER & TROUBH
465 Congress Street
Portland, Maine 04101

JOINT SELECT COMMITTEE TO INVESTIGATE PUBLIC UTILITIES

In mid-June, 1984 the Joint Select Committee to investigate public utilities issued to Command Research a Request for Production of Documents, containing numbered paragraphs seeking documents in 60 specified categories. The first 51 categories are identical to the numbered paragraphs of the earlier Request for Production of Documents addressed to Christian P. Potholm individually; Paragraphs No. 52-60 are new.

The Response of Command Research to Paragraphs No. 1-20 and 22-51 is identical to the Response of Professor Potholm, which is hereby incorporated by reference. The Response of Command Research to Paragraphs No. 21 and 52-60 is as follows.

Paragraph No. 21. All documents relating or incident to any invoices for services or expenses sent or received by you as a result of your participation in a poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 21. The following documents fall within the scope of this category:

Nos. 12,730-12,737

Paragraph No. 52. All documents relating or incident to your involvement in any way whatsoever with registration and get-out-the-vote campaigns, partisan communications, political committees and any other electoral activities sponsored or conducted, in whole or in part, by the Atlantic Research Company, Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 52. None.

Paragraph No. 53. All documents relating or incident to the solicitation, collection, or receipt of contributions to each Maine political action committee established, administered, or sponsored, in whole or in part, by Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 53. None.

Paragraph No. 54. All documents relating or incident to any expenditures made by any Maine political action committee

established, administered, or sponsored, in whole or in part, by Central Maine Power Company or any other Maine utility company.

Response to Paragraph No. 54. None.

Paragraph No. 55. All documents relating or incident to any solicitation, collection, or donation of contributions or in-kind contributions by you on behalf of the Committee to Save Maine Yankee.

Response to Paragraph No. 55. None.

Paragraph No. 56. All documents, not produced pursuant to another document request, relating or incident to any solicitation, collection, or donation of contributions by you on behalf of any political committee, political party, state candidate, or federal candidate.

Response to Paragraph No. 56. If any such documents existed, they would be confidential and privileged, and would lie beyond the scope of the Joint Committee's investigation. Without waiving its objections to this paragraph, however, Command Research voluntarily discloses that no such documents have been found.

Paragraph No. 57. All documents relating or incident to the Articles of Incorporation of Command Research or any amendments thereto.

Response to Paragraph No. 57. Command Research respectfully declines to produce these documents, on the ground that they lie beyond the scope of the Joint Committee's investigation.

Paragraph No. 58. All documents relating or incident to the by-laws of Command Research or any amendments thereto.

Response to Paragraph No. 58. Command Research respectfully declines to produce these documents, on the ground that they lie beyond the scope of the Joint Committee's investigation.

Paragraph No. 59. All documents relating or incident to the minutes of the Board of Directors of Command Research.

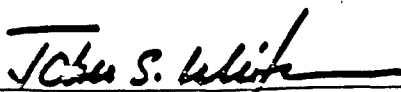
Response to Paragraph No. 59. Command Research respectfully declines to produce these documents, on the ground that they lie beyond the scope of the Joint Committee's investigation, and on the further ground that they are confidential and privileged.

Paragraph No. 60. All documents, not produced pursuant to another document request, relating or incident to the corporate records of Command Research.

Response to Paragraph No. 60. Command Research respectfully declines to produce these documents, on the ground that they lie beyond the scope of the Joint Committee's investigation, and on the further ground that they are confidential and privileged.

DATED at Portland, Maine, this 27th day of August, 1984.

RICHARDSON, TYLER & TROUBH
465 Congress Street
Portland, Maine 04101


John S. Whitman, Attorney for
Command Research, Inc.

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

RESPONSE OF CHRISTIAN POTHOLM TO SUBPOENA DUCES TECUM

NOW COMES Christian Potholm by his attorneys and, in response to the subpoena duces tecum requiring him to produce certain documents at the Legislative Post Office, State House, Augusta, Maine at 1:00 P.M. on September 21, 1984, makes the following responses.

Subpoena - Paragraph No. 1. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' approval or disapproval of the performance of President Ronald Reagan.

Answer to Paragraph No. 1. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the Committee's requests—have specifically objected to the

disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and property rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract. Neither Command Research nor its principal, Christian Potholm, gives away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study. Polls developed for "non-utility clients" have never been shared with "utility clients". Polls generated during the course of working with "non-utility clients" have never been delivered to the utilities which are the subject of this investigation; nor has any survey data produced on behalf of "non-utility clients" been integrated into statistical or data banks maintained by or on behalf of the "utility clients".

The scope of the request within this paragraph of the subpoena duces tecum far exceeds the subject matter or scope of the Committee's authority and is, therefore, in direct violation of Title 3 M.R.S.A. Section 412. And, while the subpoena duces

tecum commands the production of documents rather than the testimony of a witness, we challenge the demands of the subpoena duces tecum as not pertinent to the subject matter and scope of the Committee's investigation. As of the date of this response, no legitimate showing of any relationship between the requested documents (previously requested in Paragraph No. 2 of the request for production addressed to Christian P. Potholm) and the subject matter and scope of this investigation has been made.

The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 2. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' voting preferences with respect to the 1982 Maine U.S. Senatorial election.

Answer to Paragraph No. 2. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and

consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the Committee's requests—have specifically objected to the disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and propriety rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract. Neither Command Research nor its principal, Christian Potholm, has ever given away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study. Polls developed for "non-utility clients" have never been shared with "utility clients". Polls generated during the course of working with "non-utility clients" have never been delivered to the utilities which are the subject

of this investigation; nor have results of any survey data produced on behalf of "non-utility clients" been integrated into statistical or data banks maintained by or on behalf of the "utility clients".

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The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 3. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a

question which measured the respondents' approval or disapproval of the performance of Maine Governor Joseph Brennan.

Answer to Paragraph No. 3. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the Committee's requests—have specifically objected to the disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and property rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract.

Neither Command Research nor its principal, Christian Potholm, has ever given away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study. Polls developed for "non-utility clients" have never been shared with "utility clients". Polls generated during the course of working with "non-utility clients" have never been delivered to the utilities which are the subject of this investigation; nor have results of any survey data produced on behalf of "non-utility clients" been integrated into statistical or data banks maintained by or on behalf of the "utility clients".

The scope of the request within this paragraph of the subpoena duces tecum far exceeds the subject matter and scope of the Committee's authority and is, therefore, in direct violation of Title 3 M.R.S.A. Section 412. And, while the subpoena duces tecum commands the production of documents rather than the testimony of a witness, we challenge the demands of the subpoena duces tecum as not pertinent to the subject matter and scope of the Committee's investigation. As of the date of this response, no showing of a relationship between the requested documents (previously requested in Paragraph No. 4 of the request for production addressed to Christian P. Potholm) and the subject matter and scope of this investigation has been made.

The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 4. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' voting preferences with respect to the 1982 Maine gubernatorial election.

Answer to Paragraph No. 4. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the Committee's requests—have specifically objected to the disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard

within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and property rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract. Neither Command Research nor its principal, Christian Potholm, has ever given away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study.

The scope of the request within this paragraph of the subpoena duces tecum far exceeds the subject matter and scope of the Committee's authority and is, therefore, in direct violation of Title 3 M.R.S.A. Section 412. And, while the subpoena duces tecum commands the production of documents rather than the testimony of a witness, we challenge the demands of the subpoena duces tecum as not pertinent to the subject matter or scope of the Committee's investigation. As of the date of this response, no showing of any relationship between the requested documents (previously requested in Paragraph No. 5 of the request for production addressed to Christian P. Potholm) and the subject matter and scope of this investigation has been made.

The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 5. All checks, account ledgers, check stubs and all other documents relating or incident to your accounts payable and accounts receivable accruing as a result of your participation in any poll, opinion survey or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Answer to Paragraph No. 5. Without waiving our objection to the production of these documents on the grounds that they contain confidential and proprietary information which is privileged from discovery, and on the further ground that the information sought lies beyond the subject matter and scope of the Joint Committee's investigation, we have already provided a further response to Paragraph No. 20 of the request for production of documents addressed to Christian Potholm. In response to Paragraph 5 of the subpoena, we produce a copy of the further response to request for production No. 20 and do so without waiving our objections as previously stated.

Subpoena - Paragraph No. 6. All documents or writings of any kind relating or incident to the identity of the non-utility company clients of your opinion survey activities or political consulting activities.

Answer to Paragraph No. 6. Paragraph 6 of the subpoena duces tecum addressed to Christian Potholm is, apparently, a copy of Paragraph No. 39 of the request for production of documents

addressed to Christian P. Potholm. The request remains unintelligible. To the extent that this paragraph may be interpreted as seeking the identity of non-utility company clients, Christian Potholm respectfully declines to produce any such documents and incorporates by reference his response to Paragraph No. 1 of this subpoena.


Subpoena - Paragraph No. 7. All documents or writings of any kind relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

Answer to Paragraph No. 7. Christian Potholm on behalf of Command Research continues to maintain that if any such documents exist, they are confidential and privileged and lie well beyond the scope of the Joint Committee's authorized investigation. As the result of counsel inadvertence, we failed to identify two documents which arguably fall within the scope of the request but are clearly beyond the subject matter and scope of the investigation and, therefore, in violation of Title 3 M.R.S.A. Section 412. The documents in the possession of Christian Potholm's counsel do not relate to any dealings between Command Research and/or Christian Potholm and Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company. As of the date of this response, no rational connection has been suggested between these

documents and the subject matter and scope of the investigation.
We therefore decline to produce these two documents.

DATED at Portland, Maine, this 19th day of September, 1984.


Harrison L. Richardson


John S. Whitman

Attorneys for
Christian P. Potholm

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

RESPONSE OF CHRISTIAN POTHOLM TO SUBPOENA DUCES TECUM

NOW COMES Christian Potholm, President, Command Research, by his attorneys and, in response to the subpoena duces tecum requiring him to produce certain documents at the Legislative Post Office, State House, Augusta, Maine at 1:00 P.M. on September 21, 1984, makes the following responses.

Subpoena - Paragraph No. 1. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' approval or disapproval of the performance of President Ronald Reagan.

Answer to Paragraph No. 1. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the

Committee's requests—have specifically objected to the disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and property rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract. Neither Command Research nor its principal, Christian Potholm, gives away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study. Polls developed for "non-utility clients" have never been shared with "utility clients". Polls generated during the course of working with "non-utility clients" have never been delivered to the utilities which are the subject of this investigation; nor have results of any survey data produced on behalf of "non-utility clients" been integrated into statistical or data banks maintained by or on behalf of the "utility clients".

The scope of the request within this paragraph of the subpoena duces tecum far exceeds the subject matter or scope of

the Committee's authority and is, therefore, in direct violation of Title 3 M.R.S.A. Section 412. And, while the subpoena duces tecum commands the production of documents rather than the testimony of a witness, we challenge the demands of the subpoena duces tecum as not pertinent to the subject matter or scope of the Committee's investigation. As of the date of this response, no legitimate showing of any relationship between the requested documents (previously requested in Paragraph No. 2 of the request for production addressed to Christian P. Potholm) and the subject matter and scope of this investigation has been made.

The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 2. All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' voting preferences with respect to the 1982 Maine U.S. Senatorial election.

Answer to Paragraph No. 2. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the

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The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 3. All documents or writings of any kind relating or incident to any poll, opinion survey, or

tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' approval or disapproval of the performance of Maine Governor Joseph Brennan.

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The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command

Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

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The requested information is both privileged and proprietary and its unauthorized disclosure would fatally prejudice Command Research; with no showing whatever that the information sought is within the scope or subject matter of the Committee's investigation.

For these reasons, and for the reasons previously assigned, Christian Potholm respectfully declines to produce these documents.

Subpoena - Paragraph No. 5. All checks, account ledgers, check stubs and all other documents relating or incident to your accounts payable and accounts receivable accruing as a result of your participation in any poll, opinion survey or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Answer to Paragraph No. 5. Without waiving our objection to the production of these documents on the grounds that they contain confidential and proprietary information which is privileged from discovery, and on the further ground that the information sought lies beyond the subject matter and scope of the Joint Committee's investigation, we have already provided a further response to Paragraph No. 20 of the request for production of documents addressed to Christian Potholm. In response to Paragraph 5 of the subpoena, we produce a copy of the further response to request for production No. 20 and do so without waiving our objections as previously stated.

Subpoena - Paragraph No. 6. All documents or writings of any kind relating or incident to the identity of the non-utility

company clients of your opinion survey activities or political consulting activities.

Answer to Paragraph No. 6. Paragraph 6 of the subpoena duces tecum addressed to Christian Potholm is, apparently, a copy of Paragraph No. 39 of the request for production of documents addressed to Christian P. Potholm. The request remains unintelligible. To the extent that this paragraph may be interpreted as seeking the identity of non-utility company clients, Christian Potholm respectfully declines to produce any such documents and incorporates by reference his response to Paragraph No. 1 of this subpoena.

Subpoena - Paragraph No. 7. All documents or writings of any kind relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

Answer to Paragraph No. 7. Christian Potholm on behalf of Command Research continues to maintain that if any such documents exist, they are confidential and privileged and lie well beyond the scope of the Joint Committee's authorized investigation. As the result of counsel inadvertence, we failed to identify two documents which arguably fall within the scope of the request but are clearly beyond the subject matter and scope of the investigation and, therefore, in violation of Title 3 M.R.S.A. Section 412. The documents in the possession of Christian Potholm's counsel do not relate to any dealings between Command

Research and/or Christian Potholm and Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company. As of the date of this response, no rational connection has been suggested between these documents and the subject matter and scope of the investigation. We therefore decline to produce these two documents.

Subpoena - Paragraph No. 8. All documents or writings of any kind not produced pursuant to another document request, relating or incident to any soliciation (sic), collection or donation of contributions by you on behalf of any political committee, political party, state candidate, or federal candidate.

Answer to Paragraph No. 8. Paragraph 8 of the subpoena duces tecum addressed to Christian Potholm is, apparently, a copy of Paragraph No. 39 of the request for production of documents addressed to Christian P. Potholm. The request remains unintelligible. To the extent that this paragraph may be interpreted as seeking the identity of non-utility company clients, Christian Potholm respectfully declines to produce any such documents and incorporates by reference his response to Paragraph No. 1 of this subpoena.

Subpoena - Paragraph No. 9. All documents or writings of any kind relating or incident to the Articles of Incorporation of Command Research or any amendments thereto.

Answer to Paragraph No. 9. Command Research has previously produced this information.

Subpoena - Paragraph No. 10. All documents or writings of any kind relating or incident to the by-laws of Command Research or any amendments thereto.

Answer to Paragraph No. 10. Command Research has previously produced this information.

Subpoena - Paragraph No. 11. All documents or writings of any kind relating or incident to the minutes of the Board of Directors of Command Research.

Answer to Paragraph No. 11. This information has previously been produced.

Subpoena - Paragraph No. 12. All documents or writings of any kind not produced pursuant to another document request, relating or incident to the corporate records of Command Research.

Answer to Paragraph No. 12. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. Christian Potholm is the principal officer of the company and directly involved in the business of the Company. The very existence of Command Research depends upon the faith that its clients have that polling and consulting information will be kept confidential, not to be released except with the prior approval of the client to those persons whom the client selects. By contract with its clients, Command Research and its principals are not permitted to release any information without the prior approval of the client. Several clients of Command Research—aware of the scope of the Committee's requests—have specifically objected to the disclosure of information relating to their identity and polling information collected and evaluated by Command Research for their use. They not only disapprove of the requested disclosure but have specifically requested that such information not be

disclosed. Such contract agreements are common within the opinion survey industry and embody a common ethical standard within that industry. The polls are the property of the client and unauthorized identification of the client or release of information concerning polling activities would violate the client's contract and propriety rights. Unauthorized disclosure of the identity of such clients—or the release of information relating to work done for those clients—would expose Command Research and its principals to lawsuits for breach of contract. Neither Command Research nor its principal, Christian Potholm, gives away a client's polling data. Rather—in every instance—Christian Potholm for Command Research has briefed individuals and groups only at the request of the client who commissioned the study.

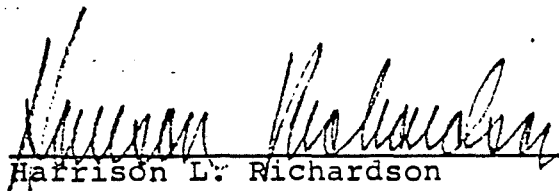
The scope of the request within this paragraph of the subpoena duces tecum far exceeds the subject matter and scope of the Committee's authority and is, therefore, in direct violation of Title 3 M.R.S.A. Section 412.

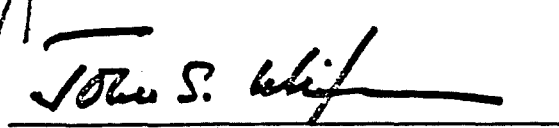
While Paragraph 12 of the subpoena duces tecum calls for the production of documents rather than the testimony of a witness, we challenge the demands of Paragraph No. 12 as being not pertinent to the subject matter and scope of the investigation. As of the date of this response, no showing, of any rational relationship between the requested documents and the subject matter and scope of the investigation has been made.

The requested information is both privileged and proprietary with no showing whatever that the requested information is within the scope or subject matter of the Committee's authorized

investigation. Command Research—a small company which relies on its ability to underbid its large competitors and yet produce reliable information—would be fatally prejudiced by disclosure of confidential materials relating to pricing structure, methods and techniques of polling and other information about the operation of Command Research. The disclosure of such information would serve no legitimate purposes of this investigation.

DATED at Portland, Maine, this 19th day of September, 1984.


Harrison L. Richardson


John S. Whitman

Attorneys for
Christian P. Potholm
President, Command Research

AFFIDAVIT OF CHRISTIAN P. POTHOLM

Christian P. Potholm, after being first duly sworn,
on his oath says:

1. I am President and principal operating officer of Command Research and make the statements in the following Affidavit on the basis of my own personal knowledge.
2. Command Research is a private company which provides polling and consulting services to its clients on a confidential basis. The continued existence of Command Research as a corporation engaged in polling operations depends on the continued and justifiable faith that its clients have that Command Research will treat its findings as confidential. The confidentiality of polling data generated by Command Research is the specific subject of a contractual understanding between Command Research and each of its clients, past and present. For example, document No. 95 produced by Save Maine Yankee is a Memo-randum of Understanding dated August 15, 1982 signed by Christian P. Potholm, President, Command Research and John S. Menario on behalf of Save Maine Yankee Committee. Paragraph 4 of that contract - typical of the contract provisions existing, and which have existed, between Command Research and its clients - obligates Command Research not to "release any data without the prior approval" of the client.

7. Polls developed for "non-utility clients" have never been shared with "utility clients". Polls generated during the course of working with "non-utility clients" have never been delivered to the utilities which are the subject of this investigation.
8. During the course of the development of Atlantic Research, Central Maine Power Company, using its own equipment and personnel, developed its own data base and computer programs for that effort. No information generated by Command Research on behalf of its clients was included within the data base and computer program established at Central Maine Power Company.
9. Command Research is a relatively small company in competition with large polling organizations and survives by virtue of its ability to consistently underbid its large competitors and produce demonstrably reliable polling data. The ability of Command Research to operate in this fashion depends upon its use of techniques and methods which are proprietary and privileged. The interview methods themselves are proprietary and proceed on assurances of confidentiality to the persons conducting the interviews as well as those responding. The integrity of the interviewing process and the confidentiality of the responses are central to the continued successful existence of Command Research.

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

By way of further response to the Request for Production of Documents addressed to Christian P. Potholm we respond:

Paragraph No. 20. All checks, account ledgers, check stubs and all other documents relating or incident to your accounts payable and your accounts receivable accruing as a result of your participation in any poll, opinion survey, or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

Response to Paragraph No. 20. Without waiving our objection to this request as set forth in the initial response to paragraph No. 20, Christian Potholm responds by indicating that the fiscal year of Command Research is May 1 to April 30 of each year. For the years indicated, payments from Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company were as follows:

(a) 1980/1981

Central Maine Power Company - \$5,000 - Document No. 13,037
Save Maine Yankee - \$36,100 - Document No. 13,038

(b) 1981/1982

Central Maine Power Company - \$4,000 - July 30, 1981 - Document No. 13,039

New England Telephone Company - \$8,700 - September 23, 1981 - Document Nos. 13,040 and 13,041
New England Telephone Company - \$8,700 - October 20, 1981 - \$8,700 - Document No. 13,042
Central Maine Power Company - \$18,600 - December 16, 1981 - Document No. 13,043
Central Maine Power Company - \$6,000 - February 8, 1982 - Document No. 13,044

(c) 1982/1983

Central Maine Power Company - \$4,000 - May 26, 1982 - Document No. 13,045
New England Telephone Company - \$8,600 - August 9, 1982 - Document Nos. 13,046 and 13,047
Atlantic Research - \$3,102.20 - August 30, 1982 - Document No. 13,048
Save Maine Yankee - \$9,000 - August 30, 1982 - Document No. 13,049
New England Telephone Company - \$8,600 - September 3, 1982 - Document No. 13,050
Save Maine Yankee - \$6,500 - September 13, 1982 - Document No. 13,051
Save Maine Yankee - \$9,000 - October 4, 1982 - Document No. 13,052
Save Maine Yankee - \$5,000 - October 12, 1982 - Document No. 13,053
Central Maine Power Company - \$6,000 - November 12, 1982 - Document No. 13,054
New England Telephone Company - \$8,600 - January 7, 1983 - Document No. 13,055
Central Maine Power Company - \$3,000 - February 7, 1983 - Document Nos. 13,056 and 13,057

(d) 1983/1984

New England Telephone Company - \$2,195 - May 3, 1983 - Document No. 13,058
Central Maine Power Company - \$7,000 - August 24, 1983 - Document Nos. 13,059 and 13,060
New England Telephone Company (Invoice) - \$2,195 - March 1, 1983 - Document No. 12,731 (previously produced in response to another request)

By way of further information, it should be pointed out that there was a reimbursement from Command

Research to Central Maine Power on account of an alleged overpayment for consulting services.

This reimbursement is reflected in records previously produced as documents numbered 12,730 and 12,732.

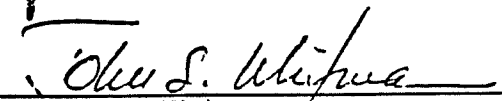
Please see documents numbered 13,061 and 13,062 attached.

Paragraph No. 45. All documents relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officerholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine Ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

Response to Paragraph No. 45. Any such documents which do exist are confidential and privileged and would lie beyond the scope of the Joint Committee's investigation. As the result of counsel inadvertence, the previous response to paragraph No. 45 indicated that there were no such documents. We correct that by indicating that there are two documents totally unrelated to services performed for Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company or any other Maine utility company, and we decline to produce them.

DATED at Portland, Maine, this 19th day of September, 1984.


Harrison L. Richardson


John S. Whitman
Attorneys for Christian
P. Potholm

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

By way of further response to the request for production of documents addressed to Command Research, and as part of a continuing effort to comply with the Committee's legitimate requests for information, we provide further responses to numbered paragraphs numbered 45, 57, 58 and 59.

Paragraph No. 45. All documents relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officerholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

Response to Paragraph No. 45. Any such documents which do exist are confidential and privileged and would lie beyond the scope of the Joint Committee's investigation. As the result of counsel inadvertence, the previous response to paragraph No. 45 indicated that there were no such documents. We correct that by indicating that there are two documents totally unrelated to services performed for Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company or any other Maine utility company, and we decline to produce them.

Paragraph No. 57. All documents relating or incident to the Articles of Incorporation of Command Research or any amendments thereto.

Response to Paragraph No. 57. Without waiving the objections previously noted, we attach hereto documents numbered 13,063 through 13,105 representing: the Certificate of Clerk dated September 13, 1984 (No. 13,063); Corporate Minutes from May 13, 1980 through May 1, 1984 (Nos. 13,064 to 13,094); Annual Reports for the years 1981, 1982 and 1983 (No. 13,095 to 13,100); the Corporate By-Laws (No. 31,101 to 13,104); and a letter to the Secretary of State dated November 14, 1980 concerning the corporate activities at Command Research (No. 13,105).

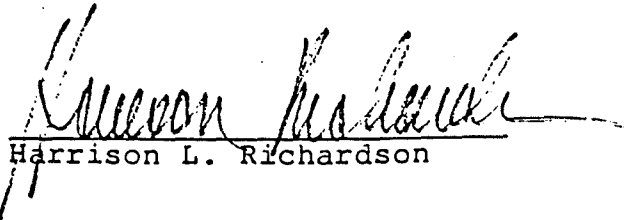
Paragraph No. 58. All documents relating or incident to the by-laws of Command Research or any amendments thereto.

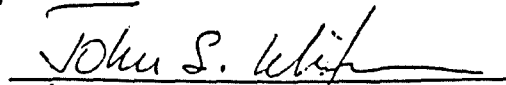
Response to Paragraph No. 58. See the response to Paragraph No. 57.

Paragraph No. 59. All documents relating or incident to the minutes of the Board of Directors of Command Research.

Response to Paragraph No. 59. See the response to Paragraph No. 57.

DATED at Portland, Maine, this 19th day of September, 1984.


Harrison L. Richardson


John S. Whitman
Attorneys for Christian P.
Potholm

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. CV84-43

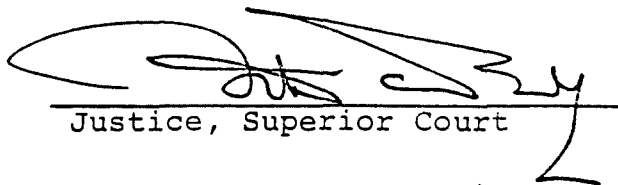
JOINT SELECT COMMITTEE TO)
INVESTIGATE PUBLIC UTILITIES, a)
duly authorized Joint Committee)
of the Maine Legislature)
v.)
CHRISTIAN P. POTHOLM)
Town of Harpswell, County of)
Cumberland, State of Maine)
and)
COMMAND RESEARCH, a Maine)
Corporation with a principal)
place of business at Brunswick,)
County of Cumberland,)
State of Maine)

OCT 13 1984

ORDER

Pursuant to Title 3 § 165 (7) of M.R.S.A., it is hereby ORDERED that Christian P. Potholm individually and in his capacity as a principal of Command Research shall appear before the Joint Select Committee to Investigate Public Utilities in Augusta, County of Kennebec, State of Maine, on October 25, 1984, at 10:00a.m. and bring with him those documents subpoenaed by the Committee not previously provided.

Dated: October 12, 1984


Justice, Superior Court

PRETI, FLAHERTY & BELIVEAU
ATTORNEYS AT LAW

443 CONGRESS STREET
PORTLAND, MAINE 04101
207/775-5831

AUGUSTA OFFICE:
ONE MEMORIAL CIRCLE
AUGUSTA, MAINE 04330
207/623-5167

RUMFORD OFFICE:
150 CONGRESS STREET
RUMFORD, MAINE 04276
207/364-4593

JOHN J. FLAHERTY
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SEVERIN M. BELIVEAU
HAROLD C. PACHIOS
RICHARD H. SPENCER, JR.
CHRISTOPHER D. NYHAN
JONATHAN S. PIPER
JOHN P. DOYLE, JR.
FRANKLIN A. POE
JEFFREY T. EDWARDS
ROBERT CHECKOWAY
RANDALL B. WEILL
GEOFFREY K. CUMMINGS
EVAN M. HANSEN

ROBERT F. PRETI
ALBERT J. BELIVEAU, JR.
MARTIN R. JOHNSON
MICHAEL J. GENTILE
KEITH A. POWERS
ERIC P. STAUFFER
DANIEL RAPAPORT
BRUCE C. GERRITY
ANTHONY W. BUXTON
MICHAEL G. MESSERSCHMIDT
JOHN C. GALL
ESTELLE A. LAVOIE
CAROL A. GUCKERT
EDWARD R. BENJAMIN, JR.

October 26, 1984

The Honorable Morton Brody
Kennebec County Superior Court
95 State Street
Augusta, ME 04330

Dear Justice Brody:

Re: Joint Select Committee to Investigate Public Utilities
vs. Potholm and Command Research, Docket No. CV-84-430

In accordance with our conference call this morning, as counsel for the Joint Select Committee to Investigate Public Utilities ("Committee"), permit me to summarize herein the Committee's position regarding the declared contempt by Mr. Potholm.

On the prior Application of this Committee, this Court issued its Order to Mr. Potholm, directing that he appear before the Committee on October 25, 1984, and bring with him the documents and writings described in the Subpoenas duces tecum previously served upon him by the Committee, - all pursuant to 3 M.R.S.A. §165(7).

On October 25, 1984, the Committee reconvened and Mr. Potholm appeared before it in company with his attorney, Harrison Richardson. He agreed to produce certain writings but steadfastly refused to produce others within the purview of the subpoenas.

The Chairman, Senator Baldacci, proceeded to request that Mr. Potholm produce all of the writings, and in this fashion proceeded, in question and answer form, through the various categories of writings delineated in the subpoenas. The form was essentially as follows:

PRETI, FLAHERTY & BELIVEAU

The Honorable Morton Brody
October 26, 1984
Page 2

Baldacci: Please produce the writings.

Potholm: On advice of counsel, I will not produce them.

Richardson: They will not be produced for the reason that (1) they are privileged by virtue of contracted confidentiality and (2) the request is objected to further for the reason that the materials sought is beyond the scope of the investigation.

Baldacci: I consider that you do not enjoy the privilege claimed under Section 457 of Title 3 and direct that you comply with the request to which your claim of privilege has been made.

Potholm: I refuse to comply.

Baldacci: Having objected that the request is beyond the scope of this investigation, I advise you that in my opinion it is well within the scope of the Joint Order, specifically Paragraphs 2 and 3 of that Order, and further

"because of your contractual relationship, Dr. Potholm, with Central Maine Power Company, New England Telephone Company and Save Maine Yankee for polling services and your contractual relationship with other clients in which political masking questions were included in polls conducted on their behalf, it is this Committee's belief that you had the opportunity and did avail yourself of the opportunity to share political information between and among utility and non-utility clients and thus may have contributed to the utilities unauthorized participation in political processes. The writings sought may well shed light on these activities.

"The committee is of the belief that your relationship with these several clients, many of whom may have been political candidates or committees permitted the transfer of polling information by you to them and vice-versa much of which had been or may have been originally contracted for by a regulated utility." (emphasis ours)

PRETI, FLAHERTY & BELIVEAU

The Honorable Morton Brody
October 26, 1984
Page 3

The foregoing representative colloquy is, of course, in compressed form and designed simply to render more convenient the perusal of the analysis herein contained. For complete exposition the Committee's position and the witness' position, confer transcript of the Committee Hearing of October 25, 1984, Pages 2-79, photocopy of which is enclosed herewith as requested.

Having thus refused seriatim to produce the writings by the Chair on the basis that they are privileged and/or beyond the scope of the investigation, pursuant to 3 M.R.S.A. §§454 and 457, the Chairman directed compliance with the production Order and compliance was rejected.

Thereafter, the Committee voted that Mr. Potholm is in contempt of its directive, said contempt having been committed in its presence as noted. See Page 60 and Pages 77 and 78 of the transcript.

It is the position of the Committee that, pursuant to the unambiguous language of §473, this Honorable Court should punish "for contempt of an investigating committee" (emphasis ours) so long as it makes certain findings. These findings are:

1. That the conduct of the witness amounted to contempt.
2. That the requirements of Sections 424, 430, 453 and 454 have been complied with. The Committee will establish that such compliance has been had.
 - (a) Section 424 requires notice of the subject matter of the investigation and a copy of Title 3, Chapter 21, be given the witness before appearance and presented at the time of service of the subpoena. Exhibits 1 and 2 already in evidence establish compliance with this section.
 - (b) Section 430 requires that the decision to apply to the Superior Court be by investigating committee action (transcript, Pages 60, 77-78).
 - (c) Section 453 accords to the witness or counsel the right to challenge the request as not pertinent to the scope of the investigation, in which case the relation "believed to exist" (emphasis ours) between the request and the subject matter and scope of the investigation shall be explained. This was done. See transcript, Page 15.

PRETI, FLAHERTY & BELIVEAU

The Honorable Morton Brody
October 26, 1984
Page 4

- (d) Section 454 authorizes the Chairman to direct compliance with any request to which objection has been made. This was done (transcript, Page 16).
- 3. That in the case of a citation for failure to comply with the subpoena, the requirement of Section 423 has been complied with.
 - (a) Section 423 provides that the decision to issue a subpoena shall be by investigating committee action. On September 7, 1984, the investigating committee, on motion of Mr. Kelleher and seconded by Mrs. Sewall, voted unanimously to issue the subpoenas duces tecum.

Accordingly, since the Committee will be able to establish complete compliance with Section 473 as noted in pertinent part, it will request that this Honorable Court punish Mr. Potholm and his Company for contempt of the investigating Committee.

The Committee anticipates that, consistently with his position taken at the prior Hearing before this Court, and before the Committee on October 25, 1984, Mr. Potholm will claim privilege pursuant to Section 457, and object pursuant to Section 453. However, it will be the Committee's position that since Section 454 and Section 457 clearly state that, such claims having been presented, the Chairman may nevertheless direct compliance with the request and the Chairman having so directed compliance, the inherent authority of this independent branch of government, i.e., the Legislature, has been exercised and flouted. It is to be emphasized that the Committee does not here assert or suggest that this Court's Order directing the witness to appear before the Committee and bring his documents as noted, be enforced. Rather, it is the Committee's citation which is sought to be enforced through the processes prescribed in Section 453.

Indeed, but for the fact that the Legislature is not now in session, it would be the position of the Committee that the punishment for contempt would be Legislative action without repair to this Honorable Court. Article IV, Pt. 3, §6 of the Maine Constitution provides in pertinent part:

"Each House, during its session, may punish by imprisonment any person, not a member. . . for obstructing any of its proceedings. . . provided, that no imprisonment shall extend beyond the period of the same session."

PRETI, FLAHERTY & BELIVEAU

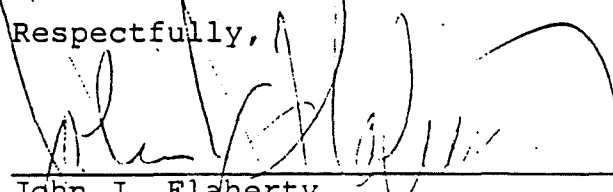
The Honorable Morton Brody
October 26, 1984
Page 5

Plainly, the position of Mr. Potholm taken before this Committee constitutes obstruction of its proceedings. In order that the Committee's efforts not be obstructed during periods when it is not in session, the Legislature has wisely enacted legislation, i.e., 3 M.R.S.A. §473 and/or 3 M.R.S.A. §165(7), by virtue of which this Court is mandated to punish for such contemptuous conduct.

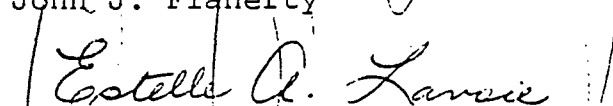
This Court will have to decide whether, as it is anticipated Mr. Potholm will contend, it has the jurisdiction and is required to evaluate the validity of Mr. Potholm's claim of privilege and nonpertinent material as a condition of its declaration of contempt.

Committee counsel stands prepared to elaborate on any and all aspects of the foregoing at the Court's request.

Respectfully,



John J. Flaherty



Estelle A. Lavoie
Attorneys for Committee

JJF/gdh
Enclosure

cc: Harrison Richardson, Esq.

STATE OF MAINE

Kennebec, ss. and were within the purview of
deeming that the materials exceeded the scope
investigation and were protected by privilege

SUPERIOR COURT

Civil Action

Docket No. CV-84-430

JOINT SELECT COMMITTEE TO S.A. § 53, Chapter 103, Maine
INVESTIGATE PUBLIC UTILITIES, a
duly authorized Joint Committee
of the Maine Legislature

v.

CHRISTIAN P. POTHOLM,
Town of Harpswell, County of
Cumberland, State of Maine

APPLICATION FOR CONTEMPT
3 M.R.S.A. § 473

and

COMMAND RESEARCH, a Maine
Corporation with a principal
place of business at Brunswick,
County of Cumberland, State of
Maine

TO: The Honorable Justice of the Superior Court.

The Joint Select Committee to Investigate Public Utilities
respectfully represents that:

1. Pursuant to the Order of this Honorable Court dated
October 12, 1984, commanding Mr. Christian P. Potholm, individ-
ually and in his capacity as principal officer of Command
Research, to appear before the Joint Select Committee to Investi-
gate Public Utilities on October 25, 1984, and to bring with
him those documents subpoenaed by the Committee not previously
provided, the said Potholm did appear before said Joint Committee
which had reconvened on said date.

2. The said Potholm appeared on said date with his attorney,
Harrison L. Richardson, and agreed to produce certain documents
and writings pursuant to the requests set forth in the subpoenas
duces tecum, which requests were repeated during the course
of the hearing by the Committee's Chairman, Senator John E.
Baldacci.

3. During the same appearance on October 25, 1984, Potholm,
while agreeing to produce certain documents, refused to produce

the others which were within the purview of the subpoenas, stating that the materials exceeded the scope of the Committee's investigation and were protected by privilege.

4. Pursuant to 3 M.R.S.A. §453, Chairman Baldacci then explained why the documents and writings requested were believed to be within the scope and subject matter of the Committee's investigation and further stated that the same were not privileged. (see Transcript, pp. 15-16, et seq.).

5. Upon Potholm's continued refusal to produce the same, Chairman Baldacci, acting pursuant to 3 M.R.S.A. §§454 and 457, directed compliance with the subpoenas (see Transcript, pp. 15-16, et seq.).

6. Despite the Chairman's directive that he comply under 3 M.R.S.A. §§454 and 457, Potholm steadfastly refused to turn over the documents.

7. Upon motion by Rep. Kelleher, which was seconded by Rep. Crowley, the members of the Joint Select Committee to Investigate Public Utilities did thereupon vote affirmatively to declare the said Christian P. Potholm in contempt of Committee and to issue a citation for such contempt for appropriate enforcement by a Justice of the Superior Court of the State of Maine (see Transcript, pp. 60 and 77-78). A copy of the contempt citation is attached hereto, incorporated by reference herein and marked Exhibit A.

8. Under Art. IV, Pt. 3, §6 of the Maine Constitution, each House of the Legislature has, during its session, the power to punish by imprisonment any person, not a member, for obstructing any of its proceedings.

9. As the Legislature is not now in session, the Joint Select Committee to Investigate Public Utilities has chosen to repair to this Honorable Court, pursuant to the provisions of 3 M.R.S.A. §473, for its enforcement of the Committee's contempt citation.

10. WHEREFORE, the Committee respectfully requests that, after notice and hearing, this Honorable Court punish the said Potholm and Command Research for contempt of the Committee, said contempt having been committed in its presence, and that it accord the Committee such other and further relief on the premises as it deems appropriate.

DATED at Augusta, Maine, this 29th day of October, 1984.

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

By: John E. Baldacci
John E. Baldacci, Chairman

STATE OF MAINE
Kennebec, ss.

October 29, 1984

Before me, personally appeared John E. Baldacci and made oath to the truth of the foregoing statements contained in this Application.

John J. Flaherty
John J. Flaherty, Attorney at Law

Signed:

John J. Flaherty
Attorney for Plaintiff

John J. Flaherty, Esq.
Preti, Flaherty & Beliveau
443 Congress Street
Portland, ME 04101
(207) 775-5831

STATE OF MAINE
Kennebec, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-84-43

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES,

OCT 30 1984

v.

CHRISTIAN P. POTHOLM,

APPLICATION FOR INTERVENTION
OF DAVID EMERY

and

COMMAND RESEARCH

NOW COMES, David Emery of Washington in the District of Columbia, (hereinafter referred to as "Intervenor"), who respectfully represents as follows:

1. The One Hundred and Eleventh Legislature created a "Joint Select Committee to Investigate Public Utilities" pursuant to a certain Order dated September 7, 1983.

2. Pursuant to said Order the Committee was purportedly granted powers and authority pursuant to 3 M.R.S.A. §§162(4); 165(7) and 401 et. seq.

3. Pursuant to said authority, the Joint Select Committee to Investigate Public Utilities issued on June 7, 1984, a written Request for Production of Documents to Mr. Christian P. Potholm, of Brunswick, Maine, in his individual capacity, seeking all documents and writings relating to the polls, opinion survey, or tracking studies which he conducted or sponsored for Maine utility companies and non-utility company clients. In addition, the Request sought information explaining his relationship, if any, with federal and state officeholders, federal and state candidates, political parties and political committees.

4. Intervenor is a former Maine Congressman and was a candidate of the United States Senate in 1981-1982.

5. Mr. Potholm responded through his attorney on August 27, 1984 with several documents, but declined to respond with respect to certain requests.

*Oct 31, 1984
Document filed
in the
Superior Court*

6. On June 8, 1984, the Joint Select Committee to Investigate Public Utilities issued a Request for Production of Documents with specific requests to Command Research, a Maine corporation engaged in the business of research. The first fifty-one requests are identical to the ones contained in the first Request, and the remaining requests seek all documents, if any, relating to the company's contributions to political parties or candidates and also the company's by-laws and related reports.

7. On August 27, 1984, Mr. Potholm, as president of Command Research, through his attorney, responded to the Request for Production of Documents. The response incorporated by reference the earlier response of Mr. Potholm individually to requests numbered 1 through 20 and 22 through 51. Mr. Potholm declined to provide certain documents sought.

8. Apparently due to the defendants' refusal to comply fully with the Requests for Production of Documents, the Joint Select Committee to Investigate Public Utilities duly met on September 7, 1984, and voted to issue a subpoena duces tecum to Mr. Potholm individually and to Command Research.

9. On September 19, 1984, Mr. Christian Potholm responded through his attorney to the subpoena duces tecum addressed to him. He refused to produce the documents sought in six of the seven requests.

10. On September 19, 1984, Mr. Christian Potholm, as president of Command Research, responded through his attorney to the subpoena duces tecum. He refused to produce the documents in eight of the twelve requests.

11. On September 19, 1984, Mr. Christian P. Potholm responded affirmatively to request number 20 in the original Request for Production of Documents and refused to respond to request number 45.

12. On September 19, 1984, Mr. Christian P. Potholm, as president of Command Research, responded through his attorney in an affirmative manner to requests numbered 57, 58, and 59 in the original Request for Production of Documents, but refused to respond affirmatively to request number 45.

13. Apparently due to the failure of defendants to respond fully to the subpoenas duces tecum, the Joint Select Committee to Investigate Public Utilities met on October 10, 1984, and according to the provisions of 3 M.R.S.A. §423, voted to apply to this Court to compel obedience to the subpoenas.

14. By a document dated October 10, 1984, the Joint Select Committee to Investigate Public Utilities applied to this Court to compel obedience to subpoenas or in the alternative, for contempt and pursuant to such application on October 12, 1984, this Court issued its Order, attached hereto and made a part hereof and marked Exhibit A.

15. Intervenor is the owner of a document or documents arguably within the scope of such Requests for Production; Subpoena or Order known as the "V. Lance Tarrance Poll," ("Poll"), and objects to the production of such document(s).

16. That upon information and belief, the defendants have refused to turn over the Poll to the Committee. Also upon information and belief, the Committee is now before this Court seeking to compel production of documents, including the Poll, by means of the Court's contempt powers.

17. Intervenor is the rightful owner of the Poll. The Poll contains confidential/sensitive information which makes disclosure of same damaging to Intervenor's interests. The Poll is clearly irrelevant and immaterial to any considerations within the Committee's jurisdiction. By compelling disclosure of the Poll the Committee is unlawfully attempting to interfere with lawful contracts to which Intervenor is a party.

18. As such, Intervenor claims an interest in the property or transaction which is or will be, the subject of an action before this Court and Intervenor is so situated that the disposition of this action may as a practical matter impair or impede his ability to protect his interest in said property.

WHEREFORE, Intervenor requests that he be permitted to Intervene in this action.

Dated: October 29, 1984

DOYLE & NELSON

BY:

JON R DOYLE

BY:

MICHAEL J. LATORRE

Attorneys for Intervenor

10/29/84 - Application for Intervention of David Einar
granted without objection.
- [Signature] - 29/84

STATE OF MAINE
Kennebec, ss.

SUPERIOR COURT
Civil Action
Docket No. _____

JOINT SELECT COMMITTEE TO)
INVESTIGATE PUBLIC UTILITIES,)

v.)

CHRISTIAN P. POTHOLM,)

and)

COMMAND RESEARCH)

MOTION FOR PROTECTIVE ORDER

NOW COMES David Emery (Intervenor), who respectfully represents as follows:

1. That all statements in his Motion To Intervene of even date are incorporated herein as though set forth in their entirety.

2. Assuming that the Committee's Requests for Production/Subpoenas are construed to embrace a "V. Lance Tarrance poll," disclosure of same would be injurious to Intervenor's interests. Intervenor is the rightful owner of said poll. The poll contains confidential/sensitive information which makes disclosure of same damaging to Intervenor's interests. The poll is clearly irrelevant and immaterial to any considerations within the Committee's jurisdiction. By compelling disclosure of the poll the Committee's unlawfully attempts to interfere with lawful contracts to which Intervenor is a party.

3. Accordingly, good cause exists within the meaning of M.R.C.P. 26(c) such that this Court should protect Intervenor from annoyance, embarrassment, oppression or undue burden.

WHEREFORE, Intervenor requests without limitation that the Court:

- A. Make inquiry into the relevance of said poll;
- B. Disclare Intervenor's rights in said poll;
- C. Order that discovery not be had;
- D. Order that confidential research or information not be disclosed;
- E. Grant such further relief as may be appropriate under the circumstances.

Dated: October 29, 1984

DOYLE & NELSON

BY: _____

JON R. DOYLE

BY: _____

MICHAEL J. LATORRE
Attorneys for Intervenor

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PORTLAND MAINE 04101

AREA CODE 207
774-5821

October 30, 1984

Morton A. Brody
Justice, Somerset Superior Court
Skowhegan, Maine 04976

RE: Dr. Christian Potholm and the Joint Select Committee to
Investigate Public Utilities

Docket #CV-84-430

Dear Justice Brody:

This letter is meant to be a summary of the facts involved and the legal issues presented by Dr. Potholm's refusal to comply with certain Requests for Production of the Joint Select Committee to Investigate Public Utilities. As you know, as Counsel for Christian Potholm I have been served with a "CITATION FOR CONTEMPT OF COMMITTEE" dated October 29, 1984 which reads, in part: "Christian P. Potholm is herewith cited for contempt of the Joint Select Committee to Investigate Public Utilities and notified that the Committee will forthwith seek enforcement of its process by a Justice of the Superior Court of Maine." It is worth noting that Mr. Flaherty, in his letter to you of October 26, 1984, states that it "is to be emphasized that the Committee does not here assert or suggest that this Court's Order directing the witness to appear before the Committee and bring his documents as noted, be enforced."

By way of background, on September 7, 1983, the Joint Select Committee to Investigate Public Utilities was established by Legislative Joint Order, Senate Paper 643. (Copy attached). Senate Paper 643 basically authorizes the Committee to investigate "the nature and extent of the participation of political utilities, ...in political processes and activities," and to determine whether that political participation has involved violations of the law. Senate Paper 643 also authorizes investigation of the relationship between political participation and the regulation of public utilities as well as investigation of whether rate payers' money has been used directly or indirectly to affect regulation of public utilities.

On June 7, 1984, the Joint Select Committee issued a written Request for Production of Documents to Dr. Christian P. Potholm in his individual capacity, seeking all documents and writings related to his polls of both utility and non-utility clients. On June 8, a similar Request for Production was issued to Command Research, of which Dr. Potholm is and was President. After several hundred hours of work, combing through documents and segregating them by category as he had been directed to do, Dr. Potholm responded to both Requests for Production of Documents by producing more than 13,000 pages of documents on August 27, 1984. In previous statements to the Court, Mr. Flaherty has made disparaging reference to the fact that many of the more than 13,000 documents consisted of photostatic copies of press clippings. It should be pointed out that these were materials that were received by Dr. Potholm and specifically within the scope of the Committee's Requests for Production addressed to both Dr. Potholm and Command Research. If the Committee did not want these documents, perhaps they should not have asked for them.

At the time he responded to the Requests for Production by producing more than 13,000 documents, paginated and classified as he had been asked to do, we as Dr. Potholm's Attorneys filed detailed written objections to a number of the requests. Those responses and objections are a matter of record in this Court and we ask that they be carefully reviewed by the Court since they represent a continuing statement of Dr. Potholm's position.

The Committee subsequently voted—on September 7, 1984—to issue a subpoena duces tecum to Dr. Potholm and to Command Research. On Friday, September 21, 1984 at 10:10 a.m., Dr. Potholm's Attorneys caused to be delivered to the Joint Select Committee at the Legislative Post Office:

- (a) Response of Christian P. Potholm to subpoena duces tecum.
- (b) Response of Christian P. Potholm to subpoena duces tecum as President of Command Research.
- (c) Further responses to Paragraphs Numbered 20 and 45 of the Request for Production of Documents on behalf of Christian P. Potholm.
- (d) Further responses to Paragraphs Numbered 45, 57, 58 and 59 of the Request for Production of Documents on behalf of Christian P. Potholm as President of Command Research.
- (e) The Affidavit of Christian P. Potholm prepared in response to statements by Mr. Flaherty and Mr. Linell (representing the Committee) to Mr. Whitman (representing Dr. Potholm) concerning the pertinency of the requested information to the scope and subject matter of the Committee's investigation.

In addition to filing more than 13,000 pages of documents, together with answers and supplemental responses to Requests for Production of Documents, Dr. Potholm also filed a statement with the Committee in which he attempted to define and correct some of the misperceptions about his role in polling by and for some of Maine's major utilities.

On October 10, 1984, the Democratic members of the Joint Select Committee voted to apply to the Superior Court to compel obedience to the subpoena. On October 12, 1984, counsel for both parties met with the Court. Although there is not currently available a transcript of that hearing before you, it should be pointed out that I, as Counsel for Dr. Potholm, suggested to the Court that the "common sense" way to handle this was for the Court to review the documents and make a determination as to whether or not the documents requested are within the scope and subject matter of the Committee's investigation and, if so, whether or not the documents were to be protected. The Court subsequently indicated, on the record, that it would agree to review these materials if counsel could agree. Mr. Flaherty subsequently indicated that he could not agree to that procedure. At the conclusion of the hearing, the Court entered an order requiring Dr. Potholm to appear before the Committee on October 25, 1984.

On October 25, Dr. Potholm appeared before the Committee. The Court has already had an opportunity to review the transcript of that proceeding. Dr. Potholm filed a sworn statement captioned "STATEMENT OF CHRISTIAN P. POTHOLM". A duplicate copy of that "STATEMENT" is included for your review and the original of that statement should be made part of the record. At that time, Dr. Potholm turned over to the Committee the documents relating to two of his clients, Ad Media and the consulting firm of Weil & Firth. Dr. Potholm explained that he had contacted all of his clients and that both Ad Media and Weil & Firth had given their consent for him to turn over the documents relating to their companies. Each of the other clients had remained steadfastly in opposition to the delivery of these materials to the Committee.

In his letter to you of October 26, 1984, Mr. Flaherty attempts to paraphrase the proceedings before the Committee on October 25, by indicating that the "form was essentially as follows" and then describing the substance of the meeting. Perhaps the best source of information concerning what actually occurred is the transcript itself. Again, the vote was along party lines and I mention this simply to indicate that there is apparently a partisan component at work but, in any event, it is clear that reasonable people in possession of all of the facts can and do disagree on the question of whether or not Dr. Potholm should be required to produce the information he has refused to produce. This refusal has never been presented in a contumacious

or contemptuous manner. Instead, Dr. Potholm has repeatedly stated his willingness to appear before the Committee and testify since he, and we, believe that he has a significant amount of information and insight to present to the Committee. I mention this because Mr. Flaherty, during the course of the meeting with you on Monday, October 29, made specific reference to the fact that Dr. Potholm had not attempted to quash the subpoenae. We find it strange that Dr. Potholm is being criticized for incorrectly assuming that the Committee would want to hear his testimony and then make a decision as to the additional documents. If that decision was in error I take full responsibility. And given Dr. Potholm's pagination, organization and classification of thousands of pages of documents through the devotion of hundreds of hours of effort to the project, and in view of his manifest willingness to testify in response to the Committee's questions, I find it difficult to understand how it can be suggested that he has done anything other than proceed according to the law in order to protect rights which are afforded him by the law.

Using the subpoena duces tecum to Dr. Potholm as President of Command Research and to Dr. Potholm, individually, as an outline of the dispute, may I describe what I believe to be the matters in controversy.

REQUEST: All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' approval or disapproval of the performance of President Ronald Reagan.

RESPONSE: This request is the same request that was made in the Request for Production of Documents addressed to Christian Potholm and the Court should review the response to this Request contained in the filing with the Committee of August 27, 1984. By our filing of September 19, 1984, in response to the subpoenae, we indicated the basis of our objection to the production of this material. These earlier responses should, of course, be reviewed by the Court. To those responses it is important to add that Christian Potholm has never refused to testify in response to such questions as:

1. Were such tracking questions asked in non-utility polls conducted by you?
2. If they were asked, why?
3. What use was made by you of the information developed by such questions?

Thus, while Dr. Potholm has no objection to describing under oath what a tracking question is, why it is used, and what use is made of the information developed, he has properly taken those steps necessary to secure judicial review of the propriety of his refusal to produce poll results from polls totally unrelated to the work of the Committee.

REQUEST: All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' voting preferences with respect to the 1982 Maine U.S. Senatorial election.

RESPONSE: The previous filings on behalf of Dr. Potholm have addressed this in the same fashion in which the request for information with respect to tracking studies measuring the respondents' assessment of President Reagan. Again, Dr. Potholm has never refused to testify concerning the purpose of tracking questions or the circumstances under which they were used in the performance of non-utility polling services.

REQUEST: All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' approval or disapproval of the performance of Maine Governor Joseph Brennan.

RESPONSE: As was the case with respect to tracking studies involving inquiry as to the respondents' perception of President Reagan and their preference in the 1982 Maine U.S. Senate campaign, Dr. Potholm has never refused to testify as to whether or not such tracking questions were included in non-utility polls and, if so, why. And he has specifically denied, under oath, ever having shared polling data with other clients of Command Research except as authorized by the client.

REQUEST: All documents or writings of any kind relating or incident to any poll, opinion survey, or tracking study drafted or prepared, in whole or in part, by you for clients other than Maine utility companies that contained a question which measured the respondents' voting preferences with respect to the Maine 1982 Gubernatorial election.

RESPONSE: As has been previously indicated, the filings in response to this question should be reviewed by the Court. Yet again, it is clear that Dr. Potholm has

never refused to testify concerning tracking questions in polls for non-utility clients. In fact, he presented himself before the Committee on October 25 ready and willing to answer such questions and the Committee majority—for reasons of its own—elected not to ask him any such questions.

REQUEST: All checks, account ledgers, check stubs, and all other documents relating or incident to your accounts payable and accounts receivable accruing as the result of your participation in any poll, opinion survey or tracking study conducted or sponsored, in whole or in part, by or for the Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company.

RESPONSE: This identical request is presented in Paragraph 5 of the subpoena duces tecum issued to Christian Potholm dated September 14, 1984 and Paragraph 5 of the subpoena duces tecum served upon him as President and/or Chief Executive Officer of Command Research. Christian Potholm filed supplemental responses to this request by providing the Committee with 26 pages of documents evidencing the financial transactions between Command Research and Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, and New England Telephone Company. Again, Christian Potholm has never refused to testify concerning this request.

REQUEST: All documents or writings of any kind relating or incident to the identity of the non-utility company clients of your opinion survey activities or political consulting activity.

RESPONSE: This request seeks the identity of non-utility polling and consulting clients of Dr. Potholm. It should be pointed out that the Committee has already served detailed Interrogatories and Requests for Production of Documents on several state and federal officials, as well as candidates for those positions. In addition, they have served Requests for Production of Documents and Interrogatories upon the Democratic State Committee and the Maine Republican State Committee. Former Congressman and U.S. Senate-candidate David Emery has objected to the production of these materials and apparently every other state and federal officeholder/candidate has made, or promised to make, an appropriate response. Mr. Potholm's position is that the identity of his non-utility polling and consulting clients is confidential and privileged, and totally beyond the scope and subject matter of the Committee's investigation.

REQUEST: All documents or writings of any kind relating or incident to any debts or obligations that were or have been outstanding for over thirty (30) days and that were incurred by a federal officeholder, a state officeholder, a state candidate, a federal candidate, a political party, a Maine ballot question campaign, or the Committee to Save Maine Yankee to you as a result of services performed by you.

RESPONSE: In our supplemental response of September 19, 1984 we indicated that there are two documents totally unrelated to services performed for Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company and declined to produce those documents. We understand by his intervention that former-Congressman David Emery joins in this objection. However, in order to facilitate the resolution of this dispute, we have agreed to submit these two documents to the Court for in camera inspection and return to us as Counsel for Dr. Potholm. He has never refused to testify in response to questions concerning his conduct of polling activities on behalf of federal or state officeholders, federal or state candidates, a political party, or the Committee to Save Maine Yankee.

REQUEST: All documents or writings of any kind not produced pursuant to another document request, relating or incident to any soliciation (sic), collection or donation of contributions by you or on behalf of any political committee, political party, state candidate, or federal candidate.

RESPONSE: We are puzzled by the Committee majority's persistence with respect to this request. This request, in the subpoena duces tecum served upon Christian Potholm as President of Command Research, is identical to Request for Production of Documents #56. To that request, we answered on August 27, 1984 that, while if any such documents existed they would be confidential and privileged, and lie beyond the scope of the Joint Committee's investigation, "no such documents have been found" (emphasis added). The Committee Chairman, Senator Baldacci, made the same request at the hearing on October 25, 1984 (Transcript, p. 27) and, as I explained to the Committee (Transcript, pp. 28-29), the answer remains the same.

REQUEST: All documents or writings of any kind not produced pursuant to another document request, relating or incident to the corporate records of Command Research.

RESPONSE: Dr. Potholm, as President of Command Research, has previously produced all financial records of the

company that detail payments by Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company or any other Maine utility company in response to other requests. It is a matter of record that Dr. Potholm has also produced all other corporate records of Command Research. Note specifically the requests contained within Paragraphs Numbered 9, 10, and 11 of the subpoena duces tecum served upon Dr. Potholm as President and/or Chief Executive Officer of Command Research dated September 14, 1984. Dr. Potholm has never refused to testify concerning any aspect of the financial arrangements between himself and Atlantic Research Company, Committee to Save Maine Yankee, Central Maine Power Company, or any other Maine utility company. Those corporate records he refuses to produce are those which include information with respect to the financial dealings between Command Research and its non-utility clients. If the majority of the Committee continues to insist on production of these materials, we will intend to offer testimony concerning these records at the hearing before the Court on November 2, 1984.

The issues, and some of our contentions with respect to those issues, are as follows:

- I. Does this Court have the authority, and responsibility, to proceed as described in Title 3 M.R.S.A. §473? In our opinion, whether the Maine Legislature would have authority under the circumstances of this investigation to proceed against Dr. Potholm under Article 4, Part 3, §6 of the Maine Constitution is not an issue. In fact, the legislation creating this Committee specifically provides that the Committee is to proceed "pursuant to the Constitution of Maine and the Revised Statutes, Title 3, §§162, 165 and 401, et seq." For our part, we view §401 et seq. as the only legitimate jurisdictional basis for this Court's involvement.
- II. Did Christian Potholm refuse to testify?
- III. Does the authorization creating this Committee clearly state, and thereby limit, the subject matter and scope of the investigation?
- IV. Has the Joint Select Committee exceeded the limits set forth in the authorizing legislation?
- V. Did the conduct of Christian Potholm amount to contempt?

Justice Brody
October 30, 1984
Page 9

- VI. Are the materials which Christian Potholm has refused to produce pertinent to the subject matter and scope of the Committee's investigation?
- VII. Was Christian Potholm given the benefit of every privilege which he could have claimed in court as a party to a civil action?
- VIII. Was the relationship believed to exist between the request and the subject matter and scope of the investigation "explained" as required by Title 3 M.R.S.A. §453 and was the request pertinent as explained?

We will be filing a Trial Memorandum in accordance with your instructions and will make every effort to have it delivered to you on Thursday, November 1, together with the documents we have agreed to produce for your in camera inspection.

Sincerely,



Harrison L. Richardson

HLR/kkr

cc: Justice Morton Brody at Kennebec County Courthouse
P. Valerie Page, Clerk of Courts, Kennebec County Courthouse
John J. Flaherty, Esq. (HAND-DELIVERED)
John R. Linnell, Esq.

STATE OF MAINE
Kennebec, ss.

SUPERIOR COURT
Civil Action
Docket No. _____

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES

v.

CHRISTIAN POTHOLM,

and

COMMAND RESERACH

and

v.

DAVID F. EMERY, INTERVENOR

AFFIDAVIT OF
DAVID F. EMERY

I, DAVID F. EMERY, being duly sworn, depose and state as follows:

1. My name is David F. Emery, a legal resident of Rockland, Maine temporarily in Washington, D.C. and I make this affidavit in support of a Motion for Protective Order filed by me with this Court on October 29, 1984.

2. From January 1975 through January 1983 I served as United States Congressman for the 1st District of Maine and was during my last years of service as Congressman the Republican candidate for the United States Senate.

3. In the political campaigns in which I participated or in which I considered participating as a candidate for the United States Senate, I made a judgment that it was necessary to do certain "benchmark" polling. In pursuit of that judgment, my campaign contracted with V. Lance Tarrance of Houston, Texas, a nationally known pollster, to undertake polling on my behalf.

4. Benchmark polls are compiled by posing a series of questions to a statistically reliable sampling of individuals. Such questions are calculated to measure the strengths and weaknesses of candidates and their potential opponents. The polling referred to above followed this methodology of compilation. The questions in such a poll are of such a nature as to produce responses which are sensitive and require confidential treatment. The polling information contains inferences and conclusions of

my own strengths and weaknesses and the strengths and weaknesses of my opponents, potential opponents, and/or persons who may oppose me in the future in the event that I decide again to seek political office. The polling information, among other things, contains an in-depth analysis and commentary on the preferences of various segments of the Maine electorate.

5. As such, such information, if made public, could be used to my detriment in any political endeavor in which I may choose to participate. Should this information fall into the possession of or the constructive control of my political opponents, they would quickly become educated on a number of sensitive topics such as identification of those groups who tend to support me; identification of those groups who tend to oppose me; the reasons for such support and/or opposition, and the political and personal characterizations of me and my opponents and/or those persons who may oppose me in the future in the eyes of the various components of the Maine electorate. Such information could be used by potential political opponents to formulate policy positions and campaign strategies to use against me in the future.

6. Any information generated pursuant to such polling was done pursuant to a contract between my campaign committee and Mr. Tarrance. Neither Christian Potholm nor Command Research was involved in any phase of the polling or statistical analysis. The poll was paid for by my campaign committee. No public utility participated in the preparation, the actual polling, or the results of any such polls. I did not authorize Christian Potholm or Command Research to share the results of any such poll with any public utility.

7. Once the poll was prepared and after it had been reviewed by me, it was presented to Christian Potholm and/or Command Research to be reviewed and analyzed by them for my benefit. Such review and analysis to go with any report thereon was oral in nature and neither Potholm nor Command Research ever wrote a report concerning such poll.

8. The only reason for the information being in the hands of Christian Potholm/Command Research at this time is that, through oversight, it was never returned to me and I maintain that Christian Potholm/Command Research has only bare possession of the poll of which I am the rightful owner.

9. For the reasons stated in this affidavit, I maintain that the poll and polling material does not fall within the jurisdiction of the Committee and I further maintain that the disclosure of information contained therein or disclosure of the poll or polling material itself to be highly detrimental to me personally and to any of my future political endeavors. I maintain that I own the poll and have the right to prevent its publication, release, disclosure

and distribution and I further maintain, in the alternative, that to the extent any of the polling material may contain questions mentioning public utilities, that does not put the material within the purview of the Committee for the reason that the poll was commissioned by me and by my campaign committee(s), and was not, and has not been shared with any Maine public utilities. No one, including Christian Potholm or Command Research, was authorized to share such data.

Dated at New York City, this 31st day of October, 1984.

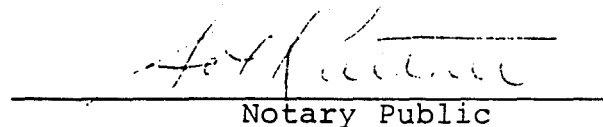

DAVID F. EMERY

STATE OF New York
County of New York, ss.

October 31, 1984

Personally appeared the above-mentioned David F. Emery and made oath that the foregoing Affidavit is based upon personal knowledge, information and belief, he believes it to be true.

Before me,


Notary Public

SO. JOHN ST.
Notary Public, State of New York
No. 7, 12/85
Qualified in Westchester County
Commission Expires March 30, 1987

SUPERIOR COURT
Civil Action
Docket No. CV-84-430

In Maine, each House of Legislature is vested by the Maine Constitution with express power to punish private citizens for contempt. Art. IV, Pt. 3, §6 of the Constitution provides in pertinent part:

"Each House, during its session, may punish by imprisonment any person, not a member. . . for obstructing any of its proceedings. . . provided, that no imprisonment shall extend beyond the period of the same session."

Such power, being of Constitutional derivation, is wholly consistent with the legislative branch's inherent, common law power of contempt which has been upheld in pronouncements of the United States Supreme Court. See, e.g., Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 5 L.Ed. 242 (1821); Marshall v. Gordon, 243 U.S. 521, 37 S.Ct. 448, 61 L.Ed. 881 (1917); Gröppi v. Leslie, 404 U.S. 496, 92 S.Ct. 582, 30 L.Ed.2d 632 (1972).

In the instant case, the Committee, through its enabling resolution, has been granted all of the powers accorded to legislative investigating committees under 3 M.R.S.A. §§162(4), 165(7) and 401 et seq., including the power to issue subpoenas and compel the production of papers, books, accounts and documents (Legislative Joint Order, Senate Paper 643, Exhibit A). The Committee issued its subpoenas duces tecum to the defendant Potholm, who has steadfastly refused to produce all of the documents described both in response to the express directive of the Committee Chairman under the provisions of 3 M.R.S.A. §§454 and 457. Such refusals clearly constitute the contemptuous conduct which has been committed in the Committee's presence.

If the Legislature were now in session, the Committee would report such conduct for punishment to the two Houses which appointed it and request its citation.

3 M.R.S.A. §§165(7) and 473 evidence a clear legislative intent to enlist the authority and assistance of the Superior Court in punishing for such contempts committed during periods of Committee activity between legislative sessions. Thus, it was contemplated that authority for punishment would be available during those times when the Legislature is not in session. However, the Legislature did not in any way relinquish its contempt power. Nor could it do so. It merely provided a different forum to which its duly authorized committees may address themselves at such times for enforcement of their contempt citations.

This Honorable Court is now presented with the question of whether it will simply find contempt as set forth in the contempt citation and enforce compliance pursuant to section 473 until defendant Potholm purges himself or, as a condition precedent to punishment, it will itself undertake to evaluate both the merits of the contempt citation and to test defendant Potholm's claims that the document requests are beyond the scope of the Committee's investigation and protected by the privilege of contractual confidentiality.

The Committee understands and appreciates that this Court, out of considerations of fair play, may feel constrained to apply a balancing test between the rights of the Legislature to collect and gather information during the course of its duly authorized investigation, and the asserted right of an individual to refuse compliance with the Legislature's compulsory process based on the assertion of privilege and on disputed pertinency of questions.

However, the Committee respectfully urges that the Court's objective evaluation of the defendant's claims would (1) exceed the jurisdictional bounds accorded it by legislative enactment, i.e., section 473, or (2) involve itself in structuring and applying standards in a context here present which does not touch upon an individual's private rights or constitutional rights under the First and Fifth Amendments. Resort to such a degree of judicial scrutiny would, in the Committee's opinion, present both a procedural and a substantive intrusion into the express and inherent powers of the Legislature which, as a separate and independent branch of government, has the inherent power to exact information necessary to aid its legislative function [see McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319, 71 L.Ed. 580 (1927)] and which must retain the independence as a separate branch of government, to determine for itself whether the conduct of witnesses coming before it amounts to contempt.

This necessarily leads to an analysis and interpretation of the statute governing legislative investigating committees and the authority vested by the Legislature in such committees. That the Legislature contemplated "investigative committees" is made clear from the rules it enacted for them at 3 M.R.S.A. §§401 et seq. But it is axiomatic that, in the conduct of any investigation, the investigator cannot know in advance all of the information to be sought or the specific context in which it will in all cases be found. For that reason, the Legislature, in enacting the above statutory provisions, vested in the Committee chairman the authority and responsibility to state, upon challenge by a witness or his counsel of the pertinency of requested testimony, the relation which he believes to exist between that request and the scope and subject matter of the investigation, or whether in fact, by any other standards, e.g. in ordinary litigation, such a relation exists. Indeed, as counsel for defendant Potholm has been advised repeatedly by Committee counsel, when the material is produced, the Committee may well find, not that it is beyond the scope of its investigation, but that it is not particularly informative on the issues at hand. See 3 M.R.S.A. §453.

Accordingly, in deciding to give the Chairman responsibility for explaining the pertinency of testimony or documents, the Legislature enacted 3 M.R.S.A. §§454 and 457 giving the Chairman clear authority to direct compliance with

the request, notwithstanding objections of scope or privilege. In fashioning the statute in such a manner, the Legislature evinced an obvious intent to vest the Committee, and not this Honorable Court, with the determination of scope and privilege as it exercises the independent legislative power delegated to it by both Houses. The plain meaning of sections 454, 457 and 473 taken together reserves this deliberative function to the legislative branch, and refutes any argument that it was transferred instead to the judiciary, except for the punishment (enforcement) process.

The Committee respectfully submits that this statutory scheme, and the authority vested by it, must occupy a preeminent position in the determination of a controversy entirely legislative in nature. It is this structure which should be utilized as the standard for review rather than an independent, judicially-created test, one which would intrude upon the concept of separation of powers so fundamental to our system of government.

II. PERTINENCY OF REQUESTED DOCUMENTS

As previously noted, in drafting its rules for State Legislative investigating committees, the Legislature included at 3 M.R.S.A. §453 the

provision allowing the witness or his counsel to challenge any request for testimony as not pertinent to the scope and subject matter of the investigation. This was no doubt intended to ensure that committees stay within some reasonable boundaries in pursuing work in aid of their legislative function. But it is self-evident that, in conducting any investigation, committees require wide latitude in inquiring upon several areas of interest that may with time yield valuable information upon the points at issue. The necessity for this latitude is recognized in sections 453 and 454 which require that, upon the witness's challenge of pertinency, the committee explain its belief of the relation between the request and the scope and subject matter of the investigation. Upon such explanation, the chairman is empowered by section 454 to direct compliance notwithstanding the objection. To the extent, then, that documents or testimony are within the scope of the investigation, the witness must, according to the statute, turn them over. Any other action is contemptuous of the committee.

Moreover, a challenge as to the scope of the investigation is not an assertion of infringement of private or constitutionally protected rights. It is simply contention raised in an adversarial posture. In this case, there has been no pleading or assertion that the request for documents constitutes an invasion of privacy or other fundamental right guaranteed by the Constitution. If such an invasion of rights is believed to exist, the burden is clearly upon the defendant Potholm to demonstrate how the request is transformed into an infringement.

III. ALLEGED PROTECTION OF DOCUMENTS BY PRIVILEGE

To the extent that this Honorable Court feels constrained to rule upon the question of privilege raised by the defendant Potholm, the Committee has several comments.

Pursuant to 3 M.R.S.A. §457, a witness is to be given the benefit of any privilege which could be claimed in court as a party to a civil action. However, as in section 454, the chairman is nonetheless empowered to direct compliance with the request for documents notwithstanding such assertion.

The defendant Potholm has urged that a proprietary privilege protects the subpoenaed documents from the reach of the legislative investigation. However, the Committee is at a loss to uncover any legal authority or basis for such a privilege and knows of no circumstances wherein it could be legitimately claimed in a court of law by a party to a civil action. This,

then, forms not a legitimate basis upon which to base a claim for protection.

Specifically, the defendant asserts that he is bound to retain the documents based upon a contractual agreement of confidentiality with his clients. While private parties are obviously free to contract upon any basis they choose, including the maintenance of confidentiality, such a contractual agreement must yield in the face of compulsory process exercised by an independent branch of government. It cites as authority for this proposition Maine Sugar Industries, Inc. v. Maine Industrial Building Authority, 264 A.2d 1 (Me. 1970), wherein the Supreme Judicial Court of Maine held that a statute dealing with the secrecy of information furnished to the Authority by borrowers must be construed as prohibiting the voluntary disclosure of such information, but not mandatory disclosure when required either by a court of competent jurisdiction or by a special legislative committee. 264 A.2d at 6. More importantly, in construing the agreement entered into between the Authority and its borrower, the Court expressly rejected the contention that the contractual obligation could not be impaired by governmental action. In explaining its reasons, the court stated:

"The quoted language lends itself to the construction that only voluntary disclosures are barred as well as does the language of Sec. 852 which we have so construed. We do not view the reference to 'any other governmental agency' as including the Legislature or a committee acting for it. In any event it would be beyond the power and authority of the Authority to foreclose proper legislative action by any agreement it might seek to make." (Emphasis added.) 264 A.2d at 7-8.

Finally, the Court quoted approvingly from Home Bldg. & Loan Assoc. v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 239, 78 L. Ed. 413 (1934), that existing laws are read into contracts as well as the reservation of essential attributes of sovereign power.

The Committee believes that under this ruling of Maine's Supreme Judicial Court, the assertion of privilege cannot withstand scrutiny in this case.


As for the ethical consideration raised by the defendant, the Committee has not been informed of either its character or scope. However, to the extent it falls within the scope of privilege, the ethical consideration must also yield under the authority of Maine Sugar Industries, supra.

In closing upon the subject of privilege, the Committee observes that once the defendant Potholm has been relieved by his clients of the confidentiality privilege, he has turned over the documents to the Committee, thereby waiving the claim that they are outside the scope of the investigation. It would seem that if the remaining clients also release the defendant of his obligation of confidentiality that he would similarly waive the issue of scope, to the extent he ever had the right to assert it.

IV. CONCLUSION

For the foregoing reasons, the Committee believes that its contempt citation must be enforced by this Honorable Court without an evaluation of its merits and that the subpoenaed documents are both within the scope of the investigation and unprotected by any privilege. Appropriate punishment should be imposed according to the court's best judgment.

DATED at Augusta, Maine, this 1st day of November, 1984.



John J. Flaherty, Counsel to
Joint Select Committee to
Investigate Public Utilities



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SUPERIOR COURT
Civil Action
Docket No.

MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTION ORDER

* * *

6. The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; (Emphasis added).

Although the enabling legislation is broad in scope, the underlined words clearly indicate that the focus intended by the Legislature was on the activities of utilities - not of private persons.

Procedural History. On June 8, 1984, the Committee issued a Request for Production of Documents ("Requests") to each of the Defendants. On August 27, 1984, the Defendants responded to the requests, interposing objections. The objections are two-pronged: first, that the requests seek disclosure of irrelevant matter, second, that the documents are private property, and otherwise privileged.

In response to these objections, the Committee issued a Subpoena to each Defendant, again requesting that the objectionable materials be produced. The Defendants proffered additional documentation by supplementing their earlier responses. These supplementary responses, however, only provided information pertaining to utility clients. Defendants continued to refuse to produce documentation pertaining to non-utility clients for the same reasons.

On October 10, 1984, the Committee resolved to apply to this Court for assistance in obtaining obedience to the subpoenas. This Court ordered, on October 12, 1984, that Defendants appear before the Committee on October 25, 1984, with the documents. The Defendants did appear but continued to refuse to turn over the documentation relative to non-utility clients.

By motion dated October 29, 1984, the Intervenor ("Emery") sought to participate in the action. Emery is the rightful owner of a certain public opinion polling information known as the "V. Lance Tarrance poll" ("poll").

Intervenor stated in his motion and supporting affidavit that he served as United States Congressman for the 1st District of Maine from 1974 through 1983. During that period of time, he caused the poll to be generated by a contract between his campaign committee and V. Lance Tarrance of Houston, Texas. Neither Defendant had any involvement in the poll's production. Rather, they came into possession in the course of subsequent analysis and discussion. Defendants and Intervenor agree that the poll remains the property of Intervenor. The same parties agree that no utility had any involvement with generation of the poll or its use.

The Intervenor's claim is that the poll contains sensitive and confidential information concerning Emery's strengths and weaknesses as a political candidate. He asserts that general distribution of the poll would provide critical political information to opponents about Emery which information could be used to his detriment in his political career.

Emery's motion to intervene was granted without objection. He maintains that the Court must review the Committee's action, that the polling information is not relevant to legitimate legislative inquiry and that he has substantial privacy interests in the poll.

II. THIS COURT MUST EXERCISE INDEPENDENT REVIEW OF THE COMMITTEE'S CONTEMPT CITATION.

The Maine Constitution. Apparently, the Committee takes the position that it has inherent powers under the Maine Constitution to impose contempt sanctions. Because the Legislature is a co-equal branch of government, runs the Committee's argument, this Court's only role is to implement the Committee's citation.

The argument is, at first blush, appealing. Article IV, Section 6 of the Maine Constitution provides:

"Each House, during its Session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either House: provided that no imprisonment shall extend beyond the period of the same session."

(Emphasis added).

The section is directed at forms of direct obstruction of legislative proceedings. This conclusion is compelled by virtue of the fact that the power is temporally limited to the legislative session. The statute in effect punishes offensive behavior.

The section bears an uncanny resemblance to "criminal" contempt as it has been recently explained in Maine decisions. There are vast differences between criminal and civil contempt.

A civil contempt proceeding is a coercive proceeding used to aid a party other than the tribunal issuing the contempt. In civil contempt, the sentence is undeterminate - it lasts as long as necessary to compel compliance with a lawful order. Criminal contempt is characterized by an intent to punish an affront to the dignity and authority of a body. In criminal contempt, a sentence must be a fixed term - there is no requirement of a right to purge. See, generally, State v. Wells, 474 A.2d 846 (Law Court, decided April 9, 1984). Because of its obvious emphasis on direct obstruction or effrontery, the fixed term of imprisonment and emphasis on punishment, the constitutional provision is a special brand of criminal contempt. It has no applicability to a situation where, as here, the purpose of the proceeding is to achieve compliance.

Thus, even though the constitution provides for summary contempt of a legislative body, that limited power is out of context in the context of this proceeding.

Legislatively Imposed Limitations. Even if that analysis fails, it is almost too obvious for discussion that the Committee could never have more power than what it was afforded by its parent body. Even if we concede for purposes of argument that the Maine Constitution affords full contempt power without court intervention, a review of the "Investigating Committee" statute in Title 3 demonstrates that the full constitutional power was never bestowed upon this Committee by its parent body.

Whenever the Legislature delegates to a committee general powers to administer oaths and issue subpoenas, it becomes an "investigating committee" and subject to the provisions of this chapter... (Emphasis added). 3 M.R.S.A. §411. Because of this limitation, chapter 21 of Title 3 M.R.S.A. defines the absolute outer limit of investigating committee powers. A review of the chapter clearly indicates that legislative intent was to afford full judicial oversight contempt proceedings involving investigating committees.

Section 430 is entitled, "Request for Court to Compel Obedience". The vehicle to bring the contempt to the Court's attention is couched in terms of a "request" or an "application". This very wording imports something short of a unilateral demand made upon a co-equal branch of government.

The procedures set forth in Subchapter 5 of the same chapter clearly mandate that an important role be played by this Court. Under Section 473, for example, the Court is required to make specific findings about the process used by a committee. The Court must find that the conduct of the witness amounted to "contempt". No citation is needed for the proposition that before there can be a contempt, there must be a lawful order. See State v. Wells, supra. Since the very nature of contempt assumes a lawful order, the Court must make a threshold that the Committee's action was lawful. Such an inquiry constitutes review in the purest sense of the word.

Similarly, as a precondition to contempt, the Court must find that the Committee's inquiry was relevant 3 M.R.S.A. §473 (2), (3)(B).

Separation of Powers. Also to be considered in analyzing whether the Court has the duty to review Committee action is the fundamental concept of "separation of powers". The judicial function is clearly associated with review of actions of subordinate bodies of government. In most situations, where a public agency exceeds its authority, the Court has the independent power to enjoin enforcement. Small v. Gartley, 363 A.2d 724 (Me. 1976).

The Supreme Court of the United States has already grappled with the separation of powers issue. In Kilbourn v. Thompson, 103 U.S. 168 (1881), Kilbourn was subpoenaed to provide records to a congressional committee and refused. Congress passed a resolution holding Kilbourn in contempt.

The Court resolved the issues of (1) whether Congress had the power to punish Kilbourn and (2) what limitations existed upon that

power. The Supreme Court held that Congress does have power to enforce its requests for information, but also held that courts have the duty to determine the lawfulness of Congressional action:

"If they are proceeding in a matter beyond their legitimate cognizance, we are of the opinion that this can be shown, and we cannot give our assent to the principle that, by the mere fact of asserting a person to be guilty of contempt, they [Congress] thereby establish their right to fine and imprison him, beyond the power of any court or any other tribunal whatever to inquire into the grounds on which the order is made".

Id. at 101 U.S. 389; Watkins v. U.S., 354 U.S. 178 (1957).

Thus in Rumely v. U.S., 197 F.2d 166 (D.C., D.C. 1952), it was held that the House Committee on Lobbying Activities could not consistent with the First Amendment make a general inquiry into all attempts to influence public opinion by authors of books and pamphlets. Congress has no general power to inquire into private affairs, for example, Harriman v. Interstate Commerce Commission, 211 U.S. 407 (1908).

"The purpose of an inquiry seems to be the significant key to its validity. Questioning aimed at inhibiting expression or harassing non-conformity or conducting a legislative trial entails purposes that are unconstitutional. It is certainly possible to ban such questioning without impairing the ability of the congressional committees to discharge their vitally important part of the legislative process." Barth, A., Government by Investigation, p. 30, (1973).

The state courts have also resolved the Kilbourn issue. In State ex rel, Joint Committee of Government and Finance of West Virginia Legislature v. Bonar, 230 S.E.2d 629 (W.Va. 1976), it was held that three areas of inquiry must be made before enforcing a legislative subpoena. First, a proper legislative purpose must exist. Second, the requested documents must be relevant to accomplishment of the purpose and third, the information sought must not be otherwise available. In this case, two of these three requirements are absent. As already noted, the material sought pertains to non-utility clients while the statutory enabling legislation is directed only at utilities. The requested documents are not relevant as will be more thoroughly discussed in the next section. Similarly, the Committee can tailor its inquiry in a narrower fashion to discharge its investigative function.

Due Process Considerations. Due process mandates that the Court have a role in whether contempt should issue. The issues before the Court at this time have a profound impact on Emery who has had no opportunity for prior participation at the Committee level. As has

been noted, Emery is the only owner of the poll. The Defendants in this action have bare possession. The Committee suggests that it can obtain possession without further court intervention. If one can bring himself to accept the Committee's proposition, the effect is to deprive a non-party of property without due process and in fact, without any process. The most fundamental dictates of due process require that there be notice and opportunity to be heard before property can be taken. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950); Ingraham v. Wright, 430 U.S. 651 (1977).

III. THE REQUESTS ARE IRRELEVANT TO THE PURPOSES CONTAINED IN THE ENABLING LEGISLATION.

It might be argued that the enabling legislation is directed at investigation of not only utilities but also of all "officers, employees, or contractors" of such utilities. To follow such a broad construction would mean in a hypothetical sense that the Committee could investigate each employee or independent contractor of utilities concerning their participation as individuals in the political process, whether or not the utility was implicated. Hundreds of persons would be affected by such a broad construction.

The sensible reading of the enabling legislation is that advocated at the outset of this memorandum. The statute is only directed to activities of utilities.

A review of the discovery requests clearly reveals that the Committee seeks documents pertinent to persons "other than Maine utility companies". Plainly then, the discovery directly contravenes the legislative purpose.

The Committee's position appears to be that it can clear the relevance hurdle by its bald statement that, "such documents and writings may well inform the Committee regarding expenditures and utilization of funds of regulated Maine utilities". (Emphasis added).

How the Committee's inquiry can be calculated to reach a legislatively permissible result is impossible to imagine. Virtually, any document, appearing to be one thing "may well" actually be its opposite. If that is to be the only of relevance, then anything could be reached by this Committee. Emery urges that the legislative means must be narrowly drawn to reach a legitimate end.

In Gibson vs. Florida Investigation Committee, 372 U.S. 539 (1963), a committee was charged with identifying Communists. The committee sought member names from a member of the NAACP and attempted to sanction him with contempt when he refused to provide the information. The Supreme Court held that though the general scope of the inquiry is authorized and permissible, it does not compel the conclusion that the investigating body is free to inquire into everything. In making a determination as to whether or not a compelling state interest warranted intrusion, the Court determined that none of the evidence showed that either the witness was a Communist or that the NAACP was predominantly a Communist organization.

In this case, Defendants and Intervenor have stated that the poll was neither prepared by nor shared with a utility. Thus, there has not even been a threshold showing a relevance. To believe that the contents of a poll will reveal the opposite is bald speculation and blind optimism on the Committee's part.

IV. PRIVILEGE: THE COURT MUST BALANCE THE RESPECTIVE INTERESTS OF THE PARTIES.

Emery's final assertion is that even if, by some stretch of imagination, the requests are relevant to legitimate Committee inquiry, the documents are protected by privilege. This is because the information is privileged and potentially damaging if revealed.

Multiple Sources of Privacy. As noted, Emery is the owner of the poll. His affidavit makes clear, as do the various statements of Defendants, that contractually the property may not be distributed without Emery's consent.

Postured as such, the Committee seeks to take private property and impair contractual relations.

In Waterville Realty Corp. v. City of Eastport, 136 Me. 309, 8 A.2d 898 (Me. 1939), it was held that a legislative body may not impair a contractual right of a party except when some exigency exists and where legislative means are adopted to a rationally-related end.

It cannot be disputed that where there is a legitimate exercise of the police power, the Legislature may inject itself into contractual relationships between private parties. In re Guilford Water Company, 118 Me. 367, 108 A. 446 (1919); Maine Sugar Industries, Inc. v. Maine Industrial Authority, 264 A.2d 1 (Me. 1970). Yet, the latter two cases do not begin to apply since the inquiry here is not even remotely related to a legitimate legislative concern.

In addition to proprietary and contractual privileges, a host of other privacy interests are at stake. Emery's affidavit is clear that the poll contains highly sensitive information about the former candidate's strengths and his appeal among various segments of voters. Such sensitive information could be employed to Emery's detriment by political opponents in future electoral contests.

Zones of privacy, although not explicitly mentioned in State or Federal Constitutions, are found by implication in the First, Third, and Fourth Amendments of the United States Constitution. Griswold v. Connecticut, 381 U.S. 479 (1965); Cf., Nixon v. Administrator of General Services, 433 U.S. 425 (1977).

In the Nixon matter, supra, it was recognized that one element of privacy is the individual's interest in the disclosure of his personal matters. Whalen v. Roe, 429 U.S. 589 (1977). The test is whether or not the individual has a legitimate expectation of privacy. Katz v. U.S., 389 U.S. 347 (1967).

The Supreme Court in the Nixon matter stated that the appropriate test is whether or not the public's interest outweighs the privacy expectation. Camara v. Municipal Court, 387 U.S. 523 (1967).

In the Nixon matter, turnover of former President Nixon's records and recordings to the Administrator of General Services could be justified under a balancing approach. The bulk of the material was related to Nixon's public function. Most of the materials had already been seen by other parties and thus no "legitimate expectation" could be said to exist. Statutory procedures were in place to assure protection from intrusion into those portions of the materials that were truly private. Minimal intrusion was warranted by virtue of the enormous public interest and the historical value of the materials. Finally, disclosure of private materials could not occur until a prior court determination on questions of privilege.

In this case, the balancing approach achieves the opposite of the Nixon matter. This poll is strictly private in nature. It was never designed for public consumption. There are no assurances that the poll will not be disseminated. The poll has no historical importance. As noted, any relevance is minimal, and more aptly, non-existent.

CONCLUSION:

This Court has the obligation to provide oversight of Committee action both because of the legislative mandates contained in Title 3 and as a requirement of separation of powers.

The poll is irrelevant to a subject of legitimate state concern. There is simply no connection between the poll and utility-related activities.

The poll is privileged. Emery owns the poll. Contractual relations between Emery and the Defendants assure against disclosure. More importantly, the poll is private under the 'penumbra' protections found in the Bill of Rights. Balancing the risk of harm to Emery against the usefulness of the poll to the Committee, the document should not be provided to the Committee.

As such, the Motion for Protective Order should be granted.

Dated: November 1, 1984

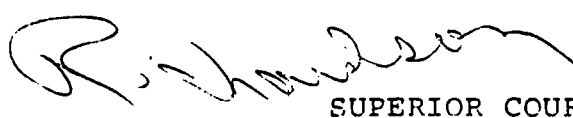
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STATE OF MAINE
KENNEBEC, SS.


SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-84-450

JOINT SELECT COMMITTEE TO)
INVESTIGATE PUBLIC UTILITIES,)

Plaintiff)

v.)

CHRISTIAN P. POTHOLM and)
COMMAND RESEARCH,)

Defendants)

MEMORANDUM IN OPPOSITION
TO MOTION TO HOLD
DR. POTHOLM IN CONTEMPT

FACTS

An extensive discussion of the events which led to this hearing is contained in the letter from Attorney Richardson to Justice Brody dated October 30, 1984. A brief summary of those events may be helpful to the Court.

During the course of its investigation of "the nature and extent of the participation of political utilities,...in political processes and activities," the Joint Select Committee to Investigate Public Utilities (the "Committee") issued written requests for the production of documents to both Dr. Christian P. Potholm and Command Research, of which Dr. Potholm is President. The requests were issued on June 7 and 8, 1984 and sought all documents and writings related to Command Research polls of both utility and non-utility clients.

In response to the subpoenas, Dr. Potholm produced more than 13,000 pages of documents on August 27, 1984. He provided the Committee with all the polls taken for public utilities as well as all of Command Research's receipts and

disbursements from these clients. The documents were paginated and classified as the Committee had requested.

Out of the 51 requests addressed to Dr. Potholm and the 60 requests to Command Research, Dr. Potholm has complied with all but eight of the Committee's requests.

Instead of reviewing the voluminous documents already produced or calling Dr. Potholm in to testify before the Committee, the members of the Committee immediately voted to issue a subpoena duces tecum to compel production of the remaining documents. After receiving Dr. Potholm's responses, the Committee majority voted to apply to the Superior Court to enforce the subpoenas.

In the hearing before the Court on October 12, 1984, the Court offered to determine the same issues which are now before it. Counsel for the Committee majority would not agree. The Court issued an order directing Dr. Potholm to appear at the Joint Select Committee meeting on October 25, 1984. Dr. Potholm never refused to appear and, in fact, had indicated his willingness to appear before the Committee.

At the October 25 hearing, Dr. Potholm, and his attorney, stated again his objections to certain requests and indicated his willingness to discuss public utilities with the Committee. Instead, the Committee majority voted to come back to this Court to find Dr. Potholm in contempt of the Committee.

ARGUMENT

I. THE COURT'S ROLE IS TO REVIEW THE COMMITTEE'S ACTION TO DETERMINE WHETHER THE COMMITTEE ACTED IN ACCORD WITH ALL THE PROVISIONS OF 3 M.R.S.A. §401, ET SEQ., AND WHETHER DR. POTHOLM SHOULD BE HELD IN CONTEMPT.

Counsel for the Committee has pointed out that Article IV, Pt. 3, §6 of the Maine Constitution provides that each House may punish any person by imprisonment for misconduct during Legislative proceedings. While one of the forms of misconduct specified in Section 6 is "obstructing any of [the Committee's] proceedings," the provision is primarily addressed to actions which are disrespectful to the House or harmful to its members. According to Section 6, non-members may be punished "for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members." Dr. Potholm has never exhibited any behavior which is disrespectful to the Committee and his attitude toward the Committee has never been of the nature described in Article IV, Pt. 3, §6.

In addition, while Section 6 provides that the House has some power to imprison non-members for disorderly and disrespectful behavior, it does not provide the mechanics by which the punishment can issue. The Legislature has specifically provided these mechanics by statute, 3 M.R.S.A. §401, et seq. These provisions, particularly Section 473, require a more searching examination by the Court than a finding that the Committee has complied with the normal procedural requirements. Under Section 473, the Court must determine:

1. That Dr. Potholm's conduct amounted to contempt;
2. That the requirements of notice (§424), application to Court by Committee action (§430), pertinency and an explanation of pertinency (§453), and direction of compliance (§454), have been met;
3. That the subpoena was a Committee action;
4. That if the Committee requests were challenged as not pertinent, the Court must find that they were and that the pertinency was explained (§453), that the scope of the investigation was clearly stated in the Committee's authorization and that the Committee did not exceed that scope (§412);
5. If the requests were challenged on grounds of privilege, the Court must find that Dr. Potholm was given the benefit of any privilege which he could have claimed in a civil action (§457).

Counsel for the Committee argues that Section 473(3)(B) and (C) do not apply in this proceeding because the citation was not for failure to testify but for failure to produce documents. This is too narrow a construction. Section 402(8) defines testimony as "any form of evidence received by an investigating committee." The other statutory provisions reflect this definition and speak primarily of "testimony" rather than "testimony, production of documents and other evidence." Dr. Potholm has challenged the requests as privileged and not pertinent; these assertions should be reviewed by the Court.

Counsel for the Committee has also argued that the power to punish for contempt is inherent in the Legislature, through both the Maine Constitution and the Maine Statutes. The short response to this contention is a question: why

did the Legislature explicitly provide that application to the Court must be made for contempt regardless of whether the Legislature is in session or not?

The more detailed response to the Committee's argument is that while there is authority to support a Legislative contempt power, the parameters of this power are unclear. There is conflict, for example, over whether a legislative committee has contempt powers. Compare In re Davis, 53 Kan. 368, 49 P. 160 (1897) with Sullivan v. Hill, 73 W.Va. 49, 79 S.E. 670 (1913).

At the federal level, 2 U.S.C. §192 specifically makes it a misdemeanor for a Congressional witness to refuse to testify and provides for a fine and imprisonment. Even under this seemingly automatic provision, however, Congress does not punish its witnesses. Under Section 194, a statement of fact must be filed with the Speaker of the House or the President of the Senate who is to certify the statement and give it to a United States Attorney. Even under §194, the certification has been held not to be automatic, but to require some discussion and reflection by the Legislature and Speaker. Wilson v. United States, 369 F.2d 198 (D.C. Cir. 1966).

The federal statutes contemplate a two step process: citation by Congress and review by the Court. Admittedly, the cases construing federal provisions require an exacting scrutiny of Legislative action because the witness is to be found guilty of a crime and each element of the offense must be proved beyond a reasonable doubt. Nonetheless, the federal cases do support Court review of a Legislative

citation for contempt before punishment by either a fine or imprisonment is invoked. See, e.g., Gojack v. U.S., 384 U.S. 702 (1966); Yellin v. U.S., 374 U.S. 109 (1963); Russell v. U.S., 369 U.S. 749 (1962).

This Court review should determine whether the requested information was within the scope of the authority granted to the Committee. United States v. Orman, 207 F.2d 148, 153 (3d Cir. 1953). In determining whether the offense of contempt has been proved, the Court must find that the requested evidence was pertinent to the subject matter of the investigation. Russell, 369 U.S. at 757. If a privilege is asserted, the public's need for the information should be balanced against the dangers of disclosure.

As the Wilson court stated, this kind of judicial review is not an invasion of legislative prerogative. 369 F.2d at 200. Instead, determining whether a statute allows or requires the discretion exercised by a public official requires an interpretation of statutes which is exclusively a judicial function. Id. In the instant case, it is the function of the Court to determine whether the Committee has exceeded the scope of its authorization, rather than to accept the Committee's unilateral decision that it has not. Similarly, the statutory requirements of pertinency and privilege must be interpreted by this Court.

II. THE REQUESTS FOR DOCUMENTS RELATING TO NON-UTILITY CLIENTS ARE OUTSIDE THE SCOPE OF THE COMMITTEE'S AUTHORIZATION.

Senate Paper 643 created this investigating committee. A copy of S.P. 643 is attached as Exhibit A. S.P. 643 basically authorized the Committee to investigate the nature and extent of the participation of public utilities in the political process. Specifically, the Committee is authorized to investigate and report on the following matters:

1. The nature of the relationship of public utilities to their subsidiaries, affiliates, officers, employees and persons or organizations providing contract services to them, with particular attention to the larger utilities;
2. The nature and extent of the participation of public utilities, either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employees or contractors, in political processes and activities, including both referenda campaigns and election campaigns;
3. Whether that political participation has involved violations by public utilities or other persons of laws relating to elections, registration of voters, initiatives and referenda, campaign reports or finances, or other political or election activities or practices;
4. The relationship of that political participation and the regulation of public utilities;
5. Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;
6. The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and
7. The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities;...

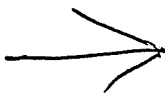
At this point, Dr. Potholm has not given complete responses to requests 1, 2, 3, 4, 6, 7, 8 and 12 of the subpoena duces tecum to Command Research. Requests 1-4 seek documents and writings related to any poll for non-utility clients which contained questions about President Reagan, Governor Brennan or the Maine senatorial and gubernatorial elections.

Request #6 seeks the identity of non-utility clients. Request #7 asks for documents which record debts of political officeholders and Request #8 asks for records of contributions to political candidates and committees. Finally, Request #12 seeks all other documents related to Command Research records.

All these requests relate to Dr. Potholm's work for non-utility clients or to the business affairs of Command Research. None of these documents are within the scope of the investigation authorized by the Legislature.

Certainly the legislative authorization to study public utilities and politics does not encompass review of the internal and financial records of Command Research. In Tobin v. United States, 306 F.2d 270 (D.C. Cir. 1962), the Court of Appeals examined a legislative committee's authorization "to conduct full and complete investigations and studies relating to...the activities and operations of interstate compacts," like the Port Authority in New York. Id. at 275. The Court determined that internal memoranda and other intra-Authority documents were outside the scope of the authority to investigate. Id. at 276. The legislative mandate at issue in the instant case is not

broad enough to cover the internal financial records of Command Research.



The requests relating to questions about political candidates and elections appear to be within the ambit of the investigation. However, as Dr. Potholm will testify to the Court and has been prepared to testify to the Committee, he routinely includes such questions on polls and surveys which have nothing to do with politics. Dr. Potholm feels that questions which determine whether respondents have an opinion about well-known political figures provide invaluable information about both the validity of that respondent's answers and the validity of the survey as a whole. These questions are commonly referred to as "tracking questions" and Dr. Potholm includes some form of tracking question on all of his polls.

The polls taken for some non-utility clients contain tracking questions. However, as the Court will see in its in camera inspection, the rest of the questions on the surveys have nothing to do with either utilities or politics. Therefore, the documents relating to these polls are not within the scope of the Committee's investigation.

Similarly, the identity and debts of non-utility clients are outside the scope of the investigation. Dr. Potholm has already provided the Committee with the receipts from utilities. If the Committee wants verification of these figures, Dr. Potholm will be happy to provide it in some form short of disclosing all the financial records of Command Research. These records are clearly outside of the

scope of the Committee's investigation since they largely relate to work done for non-utility clients.

Dr. Potholm suggests that the Committee specify the reasons that they are interested in Command Research's books. The Court can then determine whether these requests are within the scope of Committee review. If the Court determines that the requests are within the scope, the Court or some objective third party can then review the books to determine whether they contain information pertinent to the inquiries.

Nothing in Dr. Potholm's professional association with the utilities leads to the conclusion that all the financial records of his company should be open to Committee perusal or to public scrutiny. The broad powers given to the Legislature do not mean that investigating committees possess the power "to examine private citizens indiscriminately in the hope of stumbling on valuable information." Orman, 207 F.2d at 154-55. In the Orman case, the Court determined that there was adequate evidence of pertinence of business records to a Congressional study to sustain a jury finding of pertinence. Id. As in Orman, Dr. Potholm is entitled to have a judicial determination of the scope of these proceedings and the pertinence of his company's private records.

III. THE CHALLENGED REQUESTS ARE NOT PERTINENT TO THE
COMMITTEE'S INVESTIGATION AS REQUIRED BY 3 M.R.S.A.
§§453 and 473.

Pertinency is related to the issue of scope and has been discussed to some extent in the preceding section. The books of Command Research are simply not relevant to the Committee investigation of public utilities, except for the entries in those books which relate to public utilities. The pertinent information has been given to the Committee without protest. Before Dr. Potholm can be held in contempt for not producing requested documents, the request must be found to be pertinent to the investigation. On the federal level, pertinency must be proved beyond a reasonable doubt. Tobin, 195 F.Supp. at 602. While there may be a reasonable doubt standard in Dr. Potholm's case, at a minimum pertinency should be shown to the satisfaction of the Court before Dr. Potholm is imprisoned or fined.

Section 453 contains a requirement that "the relation believed to exist between the request and the subject matter and scope of the investigation shall be explained." Under §473, the Court must then find that the documents were pertinent as explained. At the October 25 hearing, Chairman Baldacci merely reiterated the authority of the Committee and did not clarify how Command Research's financial records were pertinent to the investigation.

IV. DR. POTHOLM'S POLLS, RESULTS AND THE OTHER DOCUMENTS
RELATING TO POLLS UNDERTAKEN FOR PRIVATE CLIENTS ARE
CONFIDENTIAL.

Whenever Command Research undertakes a public opinion research survey, Dr. Potholm and the client sign a Memorandum of Understanding which sets forth the services Command Research will provide and the cost to the client. Each Memorandum of Understanding contains a standard clause which says:

[Client] acquires the right to release the results of the survey as long as said disclosures do not violate the confidentiality of the interviewing process. Command Research will not release any data without the prior approval of [the client].

The Code of Professional Ethics and Practices issued by the American Association for Public Opinion Research in Washington, D.C. stresses that all information about the client's business affairs and findings of research shall be held confidential. See Exhibit B.

This view is widely held among public opinion research firms and others in the business of processing data by computer. V. Lance Tarrance, Jr., President of the Texas public opinion research firm of V. Lance Tarrance and Associates, expressed the confidentiality policies both at his firm and industry-wide in a letter to Dr. Potholm, dated October 5, 1984. See Exhibit C.

This standard of confidentiality is also stressed by professionals at the local level. The President of the Computing Center at Bowdoin Collège, Myron W. Curtis, has filed an Affidavit which states that data residing on the computer system of the Computing Center is the property of

the customer who commissioned it. See Curtis Affidavit, Exhibit D. Both Mr. Curtis and Mr. John S. Marr, President of the Computer Center in Falmouth, Maine, agree that confidentiality of customer data and results is an industry-wide standard. See Marr Affidavit, Exhibit E.

Dr. Potholm has no authority to release the polls and results of his clients' surveys. His non-utility clients have been asked and they refuse to consent to the release.

The Court should balance the public's need for disclosure of the non-utility clients of Command Research against Dr. Potholm's interest in preserving the confidentiality of those communications. This type of balancing approach was used by a Federal District Court in determining that a claim of privilege was outweighed by a Congressional investigating committee's need for certain documents. Tobin v. United States, 195 F.Supp. 588, 612 (D.C. 1961), rev'd on other grounds 306 F.2d 270 (1962). On appeal in Tobin, the Court of Appeals did not reach the balancing question and determined simply that the investigating committee had exceeded the scope of its authority in requesting certain documents relating to internal corporate affairs. Tobin, 306 F.2d at 276.

At least one court has determined that the identities of survey respondents and the substance of their replies should be kept confidential. Richards of Rockford, Inc. v. Pacific Gas & Electric Co., 71 F.R.D. 388 (N.D. Cal. 1976). In the Richards case, the Court employed a balancing test to determine whether to compel production of the identities of

survey respondents to aid discovery in a civil action. Id. at 389. The Court determined that confidentiality was important to public policy research and the public interest in promoting the research was great. Id. at 390. The need for confidentiality thus outweighed the litigant's need for disclosure since much of the information was available through other sources. Id.

The Statement of Fact found after 3 M.R.S.A. §401, et seq., also indicates that the Legislature intended a balancing approach under the statutes. This Statement says:

The widespread use of legislative investigations have emphasized their usefulness in informing legislative bodies, but has also emphasized the damage which they may cause to individuals. This Act attempts to reconcile these interests by setting forth rules of procedure to govern legislative investigating committees and by granting certain rights to interested parties.

Maine Legislative Documents, 107th Legislature Regular Session January 1 to July 2, 1975, Volume 2, L.D. 1085 at 5.

In Maine Sugar Industries, Inc. v. Maine Industrial Building Authority, 264 A.2d 1 (1970), the Law Court suggested a balancing of injuries and benefits was appropriate where a claim of confidentiality was asserted before a Legislative investigating committee. In Maine Sugar Industries, the plaintiffs had loans guaranteed by the defendant. Plaintiffs claimed that a state statute which provided that information relating to the loans would not be divulged by any of Defendant's employees was a bar to inquiries by the investigating committee. Id. at 4. The Law Court concluded that the risk of injury to the Plaintiffs was outweighed by the public interest in having the Legislature fully informed about the use of public funds

and the credit of the state. Id. at 6. The Court then construed the statute to prohibit only voluntary disclosures. Id.

The facts in Maine Sugar Industries weighed much more heavily in favor of disclosure than those at issue in the instant case. In Maine Sugar Industries, the Plaintiffs took advantage of a government program to secure Plaintiff's loans. When the program ran into problems and a committee was appointed to investigate those problems, Plaintiffs then sought to keep records of their loans confidential. Having participated in the benefits of the guarantee program, Plaintiffs should have been subject to the investigation. Moreover, the Committee authorization specifically directed investigation of the guarantees. Id. at 3. By contrast, Dr. Potholm's non-utility clients are not even part of the investigation, much less the central focus. A final distinguishing feature of the Maine Sugar Industries case is that the Legislature subsequently made its intent clear by amending the statute to provide for disclosure to an investigating committee. Id. at 4.

In the instant case, the Court should balance the interests involved. The information regarding the non-utility clients of Command Research is not even collaterally related to the Committee's investigation. On the other side, Dr. Potholm has a substantial interest in protecting his clients' confidential business and his own professional credibility. The future of Command Research could be jeopardized by the release of client information in direct violation of the client's agreement with the company.

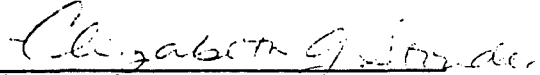
V. DR. POTHOLM'S ACTIONS DO NOT AMOUNT TO CONTEMPT.

All of the records of proceedings before this Court demonstrate that Christian Potholm respects the Legislative process and is ready and willing to aid the Committee. His only disagreement with the Committee is over documents which are unrelated to the Committee's work. He was prepared to discuss this disagreement with the members of the Committee and to resolve the disagreement without recourse to the Court.

Very simply, Dr. Potholm's actions in these proceedings do not amount to contempt.

It is respectfully requested that the Court deny the Committee's Motion to find Christian Potholm in contempt.


Harrison L. Richardson


Elizabeth G. Stouder
Attorneys for
Christian Potholm

RICHARDSON, TYLER & TROUBH
465 Congress Street
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Portland, ME 04101
(207) 774-5821

STATE OF MAINE
SENATE
111th LEGISLATURE
FIRST SPECIAL SESSION
SENATE ADVANCE JOURNAL AND CALENDAR
Tuesday, September 6, 1983

SUPPLEMENT NO. 21

ORDERS

Joint Order

(4-1) On Motion by Senator BALDACCI of Penobscot, the following Joint Order: (S.P. 643) (Cosponsors: Senator PRAY of Penobscot, Representative MARTIN of Eagle Lake, Representative VOSE of Eastport)

Whereas, the United States Constitution, Amendment X, reserves to the states the exercise of the police power to protect public health, morals and public safety; and

Whereas, under the Constitution of Maine, the Legislature bears a portion of the responsibility to protect the public health, morals and safety; and

Whereas, the regulation of public utilities is a function of the Legislature; and

Whereas, in 1913 the Legislature delegated to the Public Utilities Commission the regulation of public utilities, including those granted monopoly status by Act of the Legislature and by operation of other laws; and

Whereas, the delegation of power to the Public Utilities Commission is limited, with the residual power and duty to regulate public utilities remaining in the Legislature; and

Whereas, the Legislature maintains constant oversight of the activities of the Public Utilities Commission and its efforts to regulate the public utilities of Maine; and

Whereas, the Legislature has been informed of the following matters:

1. Recently, the Public Utilities Commission has conducted an investigation of matters in connection with the false testimony of a specific utility and has proposed to order it and several of its officers and employees to show cause why it and the officers and employees should not be held in contempt for presenting false information to the commission, engaging in a series of actions designed to continue to impede the commission's authority and for failing to correct that information when its misleading nature became known to the utility;

2. As a result of that investigation, the utility and a senior officer of the utility have pleaded guilty in Maine courts to the crimes of falsification of physical evidence

and false swearing, respectively;

3. During the course of that investigation, the commission developed information that at least one utility has become extensively involved in Maine's political process, including the use of utility employees in political campaigns; in the formation and use of political action committees; in the formation and operation of an incorporated subsidiary which conducted political polling for the utility and for presently unnamed political candidates and organizations; and in the retention of consultants for the purpose of directing its political activities;

4. The commission has indicated that due to a lack of resources it has been unable to satisfactorily complete further examination of that utility's or other utilities' involvement in the political process. This leaves unanswered the critical questions of the scope and purpose of involvement in political activities by large utilities, of the relationship of these political involvements to the regulation of public utilities and of the adequacy of and compliance with election laws applicable to their activities and the beneficiaries of their activities; now, therefore, be it

Ordered, the House concurring, that pursuant to the Constitution of Maine and the Revised Statutes, Title 3, sections 162, 165 and 401, et seq., the Legislative Council shall appoint itself, a joint standing committee or a joint select committee, as a legislative investigating committee to investigate and report on the following matters:

1. The nature of the relationship of public utilities to their subsidiaries, affiliates, officers, employees and persons or organizations providing contract services to them, with particular attention to the larger utilities;

2. The nature and extent of the participation of public utilities, either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employees or contractors, in political processes and activities, including both referenda campaigns and election campaigns;

3. Whether that political participation has involved violations by public utilities or other persons of laws relating to elections, registration of voters, initiatives and referenda, campaign reports or finances, or other political or election activities or practices;

4. The relationship of that political participation and the regulation of public utilities;

5. Whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities;

6. The ability of the commission to properly and thoroughly investigate, monitor and report on the matters set forth above; and

7. The adequacy of the present laws governing public utility regulation and elections to properly reveal and regulate the political participation of utilities; and be it further

Ordered, that to carry out this investigation, the Legislature grants to this committee all the powers and authority of a legislative investigating committee as provided under the Revised Statutes, Title 3, section 162, subsection 4; section 165, subsection 7; and sections 401, et seq. The committee may hire legal counsel and staff as necessary; and be it further

Ordered, that the committee shall make its final report, including recommended legislation, as well as any other

WASHINGTON
D.C.

CODE OF PROFESSIONAL ETHICS AND PRACTICES

We, the members of the American Association for Public Opinion Research, subscribe to the principles expressed in the following code. Our goal is to support sound practice in the profession of public opinion research. (By public opinion research we mean studies in which the principal source of information about individual beliefs, preferences, and behavior is a report given by the individual himself or herself).

We pledge ourselves to maintain high standards of scientific competence and integrity in our work, and in our relations both with our clients and with the general public. We further pledge ourselves to reject all tasks or assignments which would be inconsistent with the principles of this code.

THE CODE

I. Principles of Professional Practice in the Conduct of Our Work

- A. We shall exercise due care in gathering and processing data, taking all reasonable steps to assure the accuracy of results.
- B. We shall exercise due care in the development of research designs and in the analysis of data.
 - 1. We shall employ only research tools and methods of analysis which, in our professional judgment, are well suited to the research problem at hand.
 - 2. We shall not select research tools and methods of analysis because of their special capacity to yield a desired conclusion.
 - 3. We shall not knowingly make interpretations of research results, nor shall we tacitly permit interpretations, which are inconsistent with the data available.
 - 4. We shall not knowingly imply that interpretations should be accorded greater confidence than the data actually warrant.
- C. We shall describe our findings and methods accurately and in appropriate detail in all research reports.

II. Principles of Professional Responsibility in Our Dealings with People

- A. The Public:
 - 1. We shall cooperate with legally authorized representatives of the public by describing the methods used in our studies.
 - 2. We shall maintain the right to approve the release of our findings, whether or not ascribed to us. When misinterpretation appears, we shall publicly disclose what is required to correct it, notwithstanding our obligation for client confidentiality in all other respects.
- B. Clients or Sponsors:
 - 1. We shall hold confidential all information obtained about the client's general business affairs and about the findings of research conducted for the client, except when the dissemination of such information is expressly authorized.
 - 2. We shall be mindful of the limitations of our techniques and facilities and shall accept only those research assignments which can be accomplished within these limitations.
- C. The Profession:
 - 1. We shall not cite our membership in the Association as evidence of professional competence, since the Association does not so certify any persons or organizations.
 - 2. We recognize our responsibility to contribute to the science of public opinion research and to disseminate as freely as possible the ideas and findings which emerge from our research.
- D. The Respondent:
 - 1. We shall not lie to survey respondents or use practices and methods which abuse, coerce, or humiliate them.
 - 2. We shall protect the anonymity of every respondent, unless the respondent waives such anonymity for specified uses. In addition, we shall hold as privileged and confidential all information which tends to identify the respondent.

TARRANCE

VANCE TARRANCE & ASSOCIATES

October 5, 1984

Dr. Christian Potholm
Department of Government
Campus Drive
Bowdoin College
Brunswick, Maine 04011

Dear Chris:

I have enclosed a copy of the Code of Professional Ethics and Practices of the American Association of Public Opinion Research, which is the leading professional organization for the public opinion research industry. Please note II-B, in which the code of ethics states, "We shall hold confidential all information about the client's general business affairs and about the findings of research conducted for the client, except when the dissemination of such information is expressly authorized." Our firm is a member of AAPOR, and we honor the following business and ethical practices:

- The data that our firm collects is expressly the property of the client, and not of the research firm. We maintain the interview schedules for a research study for up to six months, and they are destroyed. We maintain a copy of the published report in our library, but only as a service to the client in case other copies are necessary.
- The client authorizes us to release data, and no one else. If the client does release data, we are obligated in the public interest to elaborate only to the extent of the time the study was fielded, the size of the sample, the tolerance level, etc. In effect, only methodological parameters are ever discussed when confirming data released by the client to others, for example, to the press.
- The respondent's name and address are never revealed to anyone, including the client. This is the most honored ethical standard in the industry and would never be violated by any reputable firm. In effect, the standards here are the same ones that are held by the U.S. Census Bureau in terms of strict confidentiality of individual records. In reference to the U.S. Census Bureau again, it must be kept in mind that many organizations, including the U.S. Congress, have tried to get ahold of the individual responses in the U.S. Census Bureau, and the federal courts have always upheld the strict confidentiality standards of the U.S. Census Bureau.

TARRANCE

Dr. Potholm - page 2

I hope this helps in terms of clarifying not only our company's policies, but policies that are in effect industrywide.

Sincerely,



Y. Lance Tarrance, Jr.
President

Encl.
VLT/smh

AFFIDAVIT

I, Myron W. Curtis, having first been duly sworn, do depose and say as follows:

1. I am the Director of the Computing Center at Bowdoin College.
2. I have been the Director of the Computing Center for twenty (20) years.
3. The Computing Center provides computing services to members of the college community, state government agencies and some other non-college users.
4. I consider data residing on the computing system the property of the organization or person that contracts with the college to use computer services rather than the property of Bowdoin College or any of its employees.
5. This data and the results it generates are not disclosed to anyone except the customer who contracts with the College for computing services, unless the customer authorizes disclosure.
6. It is a commonly held opinion among professionals in the computer processing field that both the data and results of computer services are private and confidential and the property of the user who contracted for the services.

DATED at _____, Maine, this _____ day of _____, 1984.

Myron W. Curtis

STATE OF MAINE
CUMBERLAND, SS.

Personally appeared the above-named MYRON W. CURTIS and made oath as to the truth of the foregoing statements by him.

Before me,

Notary Public

AFFIDAVIT

I, John S. Marr, having first been duly sworn, do depose and say as follows:

1. I am President of the Computer Center in Falmouth, Maine.
2. The Computer Center processes and tabulates survey and poll results for private firms.
3. I have been President of the Computer Center for twenty-two (22) years.
4. I consider the data and the results of my work on surveys and polls confidential and private and only for the use of the client who employs the Center.
5. I feel that I have a professional and ethical obligation not to disclose the results of my work to anyone except the client who hired me to perform the services.
6. In the field of processing survey information it is common practice to treat work done for a client as confidential and only for the use of the particular client.

DATED at *Falmouth*, Maine this *1st* day of *Nov.*, 1984.

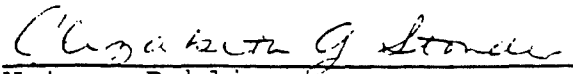


John S. Marr

STATE OF MAINE
CUMBERLAND, SS.

Personally appeared the above-named JOHN S. MARR and made oath as to the truth of the foregoing statements by him.

Before me,



~~Notary Public~~ *Attorney*

STATE OF MAINE
Kennebec, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-84-430

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES,
duly authorized Joint Committee
of the Maine Legislature

v.

CHRISTIAN P. POTHOLM
Town of Harpswell, County of
Cumberland, State of Maine

and

COMMAND RESEARCH, a Maine
Corporation with a principal
place of business at Brunswick,
County of Cumberland, State of
Maine

DAVID F. EMERY, INTERVENOR

SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF APPLICATION
FOR CONTEMPT;

MEMORANDUM IN OPPOSITION
TO MOTION FOR PROTECTIVE
ORDER

TO: The Honorable Justice of the Superior Court

A. JUDICIAL AUTHORITY TO REVIEW CONTEMPT CITATION

Mr. Potholm has been given fully three directives and/or opportunities to comply with the Committee's request for documents: first, upon issuance of the Requests for Production of Documents; second, upon issuance of the subpoenas duces tecum; and third, upon the Committee chairman's specific directive to turn over the documents under the provisions of 3 M.R.S.A. §§454 and 457. Despite his suggestions to the contrary, he has steadfastly refused to comply. Such conduct is contemptuous of the Committee's proceedings.

Mr. Potholm's willingness to testify before the Committee is not the issue. Indeed, that is and has never been an issue. Rather, the issue is whether Mr. Potholm will turn over the subpoenaed documents as requested. So long as he fails to do so, his actions are contemptuous of the Committee and of the two Houses of the Legislature which appointed it.

The provisions of 3 M.R.S.A. §§165(7) and 473, calling for application to the Superior Court, were clearly meant by the

Legislature to provide an enforcement mechanism. These statutory provisions do not, in any way, derogate from the Legislature's inherent and constitutional power of contempt. Nor could they do so. Indeed, if the Legislature were now in session and chose to punish the defendants for contempt, it need not resort to this Honorable Court for aid and assistance. It might well utilize the contempt power with which it is vested and over which it has exclusive control as a separate and independent branch of government.

At page 5 of Defendants' second memorandum to this Court, reference is made to 2 U.S.C. §192 as arguably pertinent regarding the procedure to be followed in finding contempt of the Congress. As admitted in the memo, this is clearly a criminal statute which carries its own essential elements of proof. It is not direct legislative action as here prescribed. However, this federal statute has been interpreted by the Supreme Court of the United States in a manner which is extremely apposite to and supportive of the contention of the Committee in this case. Even that criminal statute which purported to empower another branch of government, i.e., the executive branch, to pursue the remedy in yet another branch of government, i.e., the judiciary, was declared by the Court not to divest the Congress of its inherent contempt power in any manner.

Commenting upon this statute, the United States Supreme Court stated in Re Chapman, 166 U.S. 661, 17 S.Ct. 677, 41 L.Ed. 1154 (1897):

"The history of congressional investigations demonstrates the difficulties under which the two houses have labored, respectively, in compelling unwilling witnesses to disclose facts deemed essential to taking definitive action, and we quite agree with Chief Justice Alvey, delivering the opinion of the court of appeals, 'that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions;' and that it was to effect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof. We grant that Congress could not divest (sic) itself, or either of its Houses, of the essential and inherent power to punish for contempt, in cases to which the power of either House properly extended; but, because Congress, by the act of 1857 sought to aid each of the Houses in the discharge of

its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved; and the statute is not open to objection on that account." 166 U.S. at 671-672; 41 L.Ed. at 1159. (Underscoring ours)

Thus, in choosing to employ a criminal remedy, Congress does not thereby divest itself of its inherent powers.

While Maine's Rules for Legislative Investigations at 3 M.R.S.A. §§401 et seq. are different from the federal statute recited above, they similarly must be interpreted as not preempting the field of punishment for contempt.

The federal cases cited in defendant's Memorandum at pages 5 and 6 interpret 2 U.S.C. §192 which provides for prosecution of individuals who obstruct legislative proceedings. As is true with any criminal case, all elements of the offense must be pleaded and proved by the government. Thus, judicial review of the pertinence of questions are held as essential in Russell v. U.S., 369 U.S. 749 (1962) because it is specifically made a part of the offense.

Further, 2 U.S.C. §194 contemplates filing of a statement of fact with either the President of the Senate or Speaker of the House when a witness fails to appear or produce books and papers before a committee and certification of such statement to the United States Attorney for further action. While the Court of Appeals for the D.C. Circuit held in Wilson v. United States, 369 F.2d 198 (D.C.Cir. 1966), that the certification was not automatic, as corrected stated in defendant's Memorandum at page 5, it provided that the additional consideration should be done by the Speaker, and not necessarily by Congress, when the House is in adjournment.

"What we do hold is that there should have been an opportunity for consideration of the issues following the Committee's action and prior to certification-consideration by the Speaker, as the cognizant officer of the House, in view of the unavailability after adjournment of the normal consideration by the House itself." 369 F.2d at 204-205.

While the federal cases remain a valid interpretation of the Congressional contempt statute, they are not apposite here because the statute under construction, 3 M.R.S.A. §§401 et seq., does not make contumacious conduct before a legislative committee a criminal offense to be prosecuted by the state's attorney. Rather, the statute contemplates direct assistance

by the Superior Court in making certain findings and punishing for contempt of an investigating committee.

B. SCOPE OF COMMITTEE'S INVESTIGATION

The Committee has sought to adhere strictly to the terms of its enabling resolution requiring it to investigate the political activities of regulated utilities. Christian Potholm and Command Research come within the ambit of the investigation because of their contractual relationship with regulated utilities and their ability to exchange polling data or information obtained at ratepayers' expense to political candidates in possible contravention of federal and state election laws.

Thus, the Committee has narrowed its Requests for Production of Documents and its subpoenas to those documents which will shed light upon the specific subject of investigation.

With respect to the first four questions in the subpoenas, the Committee requested documents relating to polls measuring respondents' preferences on the Presidential, U.S. Senatorial, and gubernatorial elections. Mr. Potholm concedes in his Memorandum at page 9 that he includes such tracking questions routinely in polls and surveys having nothing to do with politics and he further concedes, and significantly so, that the requests relating to questions about political candidates and elections appear to be within the ambit of the investigation.

Indeed, on cross-examination, Mr. Potholm agreed, reluctantly, to be sure, that his ability to make continual comparisons of candidates' standings, and the acceptance or rejection of given political issues by the community, was dependent on the accumulated and developed polling data base which was paid for by regulated utilities. Thus, the nexus is complete, and this methodology in all its aspects is most appropriately within the purview of this Committee's investigation. For, as testified by Representative Kelleher, unless the Committee is fully conversant with the methodology, it is not in a position to make recommendations to the Legislature regarding change of existing legislation or the introduction of new legislation.

In short, distilled for these purposes, Mr. Potholm's testimony establishes beyond question that (a) he was engaged by regulated utilities to do polling; (b) he was paid by those utilities for his polling and consulting with respect thereto; (c) he was authorized and did in fact communicate facts and

opinions regarding this polling to political candidates; (d) he utilized the data base paid for by the utilities to remain informed on the current status of the political scene and to advise political candidates including David Emery with respect to the validity and implications of his poll as viewed by Mr. Potholm.

All of Mr. Potholm's testimony in this regard is consistent with and corroborative of the testimony given by Messrs. Temple and Thurlow, pertinent portions of which are before this Court as admitted exhibits.

The Committee believes that the identity and debts of non-utility clients and Command Research's books are within the scope of the committee's investigation because they may shed light on whom the political information, prepared in part at ratepayers' expense, was being funnelled and whether such information may have been given, either at no cost or at a reduced cost, to non-utility clients, including political candidates, thereby conferring a benefit upon them. Testimony elicited revealed that the executive summary of Command Research's books and records could not verify all of the entries of receipts and disbursements in the company's history, thereby raising serious questions about the summary's validity.

While counsel for Mr. Potholm stressed certain contents of the latter's affidavit to the Committee that Potholm had not shared data with regulated utilities, it became obvious on examination that Mr. Potholm excluded from this term his summaries and opinions which, of course, are the important connections between monies paid by regulated utilities and communicated results to political candidates. Mr. Potholm's submission of unsolicited affidavits suffers from the flaw that such affidavits contain only what Mr. Potholm chooses to include in same, and are carefully worded to distinguish implicitly between such significant concepts as data sharing and opinion sharing. This is precisely why the Committee must be permitted to continue with its consistent practice of (a) obtaining answers to interrogatories and/or responses to production requests; (b) internal review of same; (c) provision of opportunity for witness interview; and (d) receipt of sworn testimony from witness if deemed appropriate.

C. PRIVILEGE

At page 15 of defendants' brief, attempt was made to distinguish the Maine Sugar Industries case on the basis "that the Legislature subsequently made its intent clear by amending the statute to provide for disclosure to an investigating committee." This assertion is simply erroneous. The Court

expressly stated that the statute, in its unamended form, must be interpreted strictly as prohibiting only voluntary disclosure and not mandatory disclosure. The projected amendment to exclude from its prohibitory provisions information sought by a legislative investigating committee was declared by the Court to be merely explanatory of the original language which did not include that exclusion. As indicated in the Committee's prior brief, the Court also addressed the contractual arrangement between MIBA and MSI which also precluded the former from disclosing materials filed with it by the latter. Again, the Court clearly asserted that the contractual undertaking not to disclose could have reference only to voluntary activity but would not withstand mandatory action at the hands of the legislative body. Indeed, nothing seems more clear that in Maine, the privilege asserted by Mr. Potholm and the intervenor here does not exist. A fortiori, any asserted privilege based on some nebulous ethical considerations must also fail.

(Incidentally, Mr. Potholm's testimony that he considered himself bound by certain ethical standards must be taken in conjunction with the testimony that he was not a member of the body which purportedly promulgated these standards, even if they were applicable here. Thus, they were totally unenforceable against him.)

D. INTERVENOR STATUS

All that has been written regarding Mr. Potholm's position in this proceeding bears equally on Mr. Emery's position as an intervenor and movant in this proceeding. There is no question that he was a political figure and a political candidate in the period under investigation. There is no question that he consulted with and received advices from Mr. Potholm which, as noted earlier, subsumed all of his utility-paid accumulated data as the basis for his collation and opinion activities. There is no question that Maine does not honor the privilege of contractual confidentiality as demonstrated hereinabove. To the extent that ethical considerations have any materiality in Mr. Emery's case, they too must fall, as noted.

With respect to Mr. Emery's asserted claim of privacy, suffice it to say that Mr. Potholm's testimony establishes beyond question that the privacy to which reference is being made has to do with voter acceptance or rejection of Mr. Emery based upon his appearance, demeanor, speech and publicly discernible characteristics of any kind. These are hardly the kinds of private matters which are designed to be protected by the Constitution. They are indeed in the public domain, having been elicited precisely from that quarter.

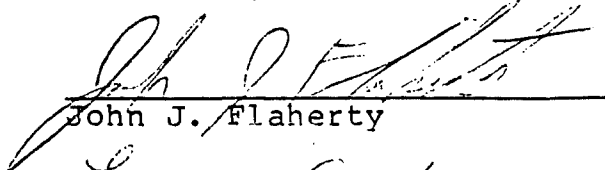
E. CONCLUSION

Accordingly, in light of the foregoing, the Committee respectfully maintains its contention that this Honorable Court is charged with responsibility for implementing the legislative contempt power through direct application of section 473, all of the elements of which have been carefully complied with. So far as the finding of contempt requirement is concerned, the transcript of proceedings before the Committee as it discloses Mr. Potholm's continued refusals to deliver the writings over the compliance directives of the chairman pursuant to the statute establishes beyond question the fact of contempt. All that remains is a punishment mechanism at the hands of this Court until the witness purges himself.

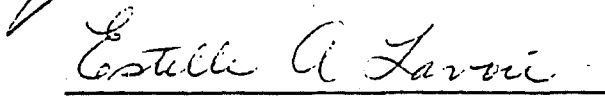
If the Court is disposed to review and evaluate the material itself to determine its pertinency, and to evaluate the existence or non-existence of any personal privileges, acting in these respects as the judicial branch of government, the Committee respectfully contends that the record before the Court fully demonstrates that (a) the material sought is clearly within the scope of its investigative power and authority under the Joint Order enacted by the Legislature; and (b) is not subject to any of the privileges claimed in this proceeding by the defendants or the intervenor.

Respectfully submitted.

DATED at Portland, Maine, this sixth day of November, 1984.



John J. Flaherty



Estelle A. Lavoie

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Public Utilities

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STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-84-450

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES,)

Plaintiff)

v.)

CHRISTIAN P. POTHOLM and
COMMAND RESEARCH,)

Defendants)

SUPPLEMENTAL MEMORANDUM
OF DEFENDANTS CHRISTIAN
POTHOLM AND COMMAND RESEARCH

Defendants would like to make the following points in response to the hearing on November 2, 1984 and to the Plaintiff's Memorandum of Law.

Much of the testimony and the argument heard by the Court in relation to this matter has involved alleged swapping of polling information. In fact, Dr. Potholm did not trade this information. He did make authorized disclosures in some cases and he has reported these to the Committee. The significant point about all these swapping discussions, however, is that the Committee cannot expect to find the answer to its questions in the polls or financial records of Command Research. The polls merely contain survey responses to questions; the records merely list amounts of receipts and disbursements and the parties involved. To determine what Dr. Potholm did with information and whether it was traded between clients, the Committee will have to ask Dr. Potholm. The answers to those questions are not in the books and polls of Command Research.

Next, Defendants respectfully submit that the Court should not consider any of the events which occurred after Dr. Potholm decided not to produce some of the documents. Under 3 M.R.S.A. §473, it is the Court's obligation to determine that the

requested documents were "pertinent as explained" at the hearing held on October 25, 1984. Testimony given by other witnesses to the Committee after October 25th is clearly irrelevant to the issue of whether or not the documents were pertinent to the Committee's investigation on that date. The testimony is therefore irrelevant to the question of whether Defendant Potholm's behavior amounted to contempt. At the hearing before the Court held on November 2, 1984, testimony concerning these subsequent events was permitted over the continuing objection of counsel for Defendants.

In addition, the references made at the November 2, 1984 hearing to subsequent Committee testimony revealed no new evidence as to the pertinence of non-utility polls and the financial records. Committee Chairman Baldacci and Representative Kelleher stated that witnesses had testified to the Committee about Dr. Potholm disclosing client information after he was authorized to do so. Dr. Potholm himself told the Committee in his responses to its requests for production that he did disclose information when authorized. The response to Request 15 specifically lists these disclosures.

The opinions of two members of the Committee concerning the pertinence of the requested documents are also irrelevant to the Court's review. The four minority members clearly disagree with that opinion as shown by their vote on October 25, 1984 and by the November 2, 1984 testimony of John Linnell, counsel for the minority members of the Committee.

Defendants would also like to point out that the identity of non-utility clients, the types of questions asked on

non-utility polls and the price structure for polls done by Command Research are all trade secrets. This information is, therefore, privileged under Rule 507 of the Maine Rules of Evidence. Although trade secrets are not defined under Rule 507, M.R.Civ.P. 26(c) provides some guidance and includes protection of confidential research. Field and Murray, Maine Evidence (1976) §507.1 at 112. The privilege protects "information which improves competitive position and the value of which is substantially enhanced by secrecy." Id. If the party seeking disclosure claims that non-disclosure would conceal fraud or work an injustice, the judge is required to balance the competing interests. Id. at 113.

As the Court is no doubt aware, the Committee's inquiries into the political associations of Dr. Potholm and Command Research carry significant First Amendment implications. Specifically, Request #8 which asks for records of political contributions impinges on the right of freedom of association by, in effect, questioning Dr. Potholm on the political causes he supports through contributions by Command Research support. Questions raised by majority Committee members at the November 2, 1984 hearing regarding who Dr. Potholm spoke with about his political views also violate this First Amendment right. As the Supreme Court said in DeGregory v. New Hampshire, 383 U.S. 825 (1966), "the First Amendment prevents [the state legislature] from using the power to investigate enforced by the contempt power to probe at will without relation to existing need." Id. at p. 829.

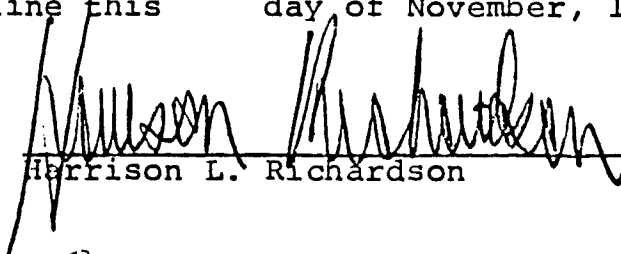
Finally, Defendants would like to direct the Court's

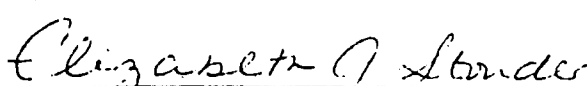
attention to the Legislative Report on P.L. 1975, c. 593, which contains the provisions on Legislative Investigating Committees. (A copy of the relevant portion of this report is attached hereto.) First, on p. 2 of the Committee Report, the State Government Committee observed that "[t]he Legislature has no power to investigate a person . . . or to require testimony on purely personal matters." The financial records of Command Research are personal matters. The Committee can only delve into those records insofar as they contain information about utilities, the focus of the Committee's investigation.

More significantly, the Committee proposed amendments to the statute which would have omitted the sections requiring Superior Court participation in contempt proceedings. These amendments were never passed by the Legislature. It is, thus, clear that the Legislature determined that Court involvement in contempt proceedings was either necessary or desireable.

It is respectfully requested that this Court deny the Committee's Motion to Find Defendants in Contempt.

DATED in Portland, Maine this day of November, 1984.


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SUMMARY MEMORANDUM SUBMITTED
ON BEHALF OF
DAVID F. EMERY

Jon R. Doyle, Esq.
Michael J. LaTorre, Esq.

This summary memorandum is submitted in assistance to the Court with respect to the position of the Intervenor David F. Emery and contains an outline of Mr. Emery's position and supplements the memorandum of law previously filed.

JURISDICTION. If we simplify the issues in this matter to their logical result there is a need for the Court to balance the demands of the Joint Select Committee to Investigate Public Utilities against the private rights of individuals involved. The Committee suggests that the Court ought never to get the point of balancing rights because it says, incorrectly, that the Court has no jurisdiction to do other than determine which penalty to impose. The law which we have cited in our memorandum is clear that the Court does have such authority, and even more clearly, the legislative history of the statute governing the Committee's activities furnishes extremely important information.

Attached to this memorandum is the State Law Library lending copy of a Report of the State Government Committee on the Study of Legislative Investigating Committees dated February 4, 1976. This study was done subsequent to the enactment of the legislation under which the Joint Select Committee is currently operating. Importantly, the State Government Committee said (Page 2, last paragraph) that the legislature has no power to require testimony on purely personal matters and it noted (Page 4, paragraph 2) that the Courts clearly have a role to determine conflicts between investigatory committees and their witnesses. Although the State Government Committee suggested that that might raise questions with respect to separation of powers, it did not cite any law to support that. It did prepare a recommended bill removing the present provisions invoking Court determination. However, in the course of the legislative process after referral to the Legislative Judiciary Committee the bill received an Ought Not To Pass Report which was accepted by the full legislature. The only conclusion which can be drawn is that the Legislature wanted the Courts to continue their role of determining conflicts and must have felt that to be a proper role. Clearly, by any yardstick this Court has jurisdiction to determine conflicts between the Committee and the witnesses and is not left to a pure ministerial role in determining the imposition of penalties.

SCOPE OF REVIEW. It is clear that the scope of the Committee's review is not unlimited. Although the Committee has argued for some time that it was entitled to anything that might even remotely affect Maine public utilities, now it is clear from its Chairman's testimony the other day and that of a member of its committee that the test of relevance and scope is whether rate payer money was involved in the activity. If, as in the case of Congressman Emery, the witness Potholm came into possession of an Emery poll, only because he was asked to consult on it, and if the Committee could not, as it could not at the hearing, provide any connection between

the use of the poll and Maine public utilities then clearly it is beyond the scope of the Committee's review. Emery's affidavit was totally uncontradicted and it is important to note that Potholm never even participated in the polling activities which were undertaken. He was only asked to consult from time to time. Even by the Committee's yardstick of scope and relevance, the Committee is not entitled to the Emery polling material. We believe too for other reasons that in balancing the needs of the Committee against the private rights involved that the Court will be lead to the inescapable conclusion that the Committee should not obtain the data.

BALANCING TEST. In this case, the potential or harm which would be caused by the release of the polling data far outweighs any need for access which the Committee might have. The data involved is of a very sensitive nature and if released to the general public, as have been other documents handled by the Committee, it could directly and adversely affect not only Mr. Emery, but other current Maine political figures; political campaigns, and the future of a number of Maine politicians. The injury that would inure to the person involved by the disclosure is far greater than the benefit which the Committee might obtain. Even assuming for a moment that the polling information contains one or two questions asking respondents to comment upon whether or not Maine Yankee should be closed, the Committee already knows that such data has been in other polling material and certainly one more piece of evidence adds nothing to their consideration. To risk the harm that could be done by the release of an entire polling data for the benefit of obtaining one or two questions is very troublesome to contemplate. The suggestion in the law is that there must be a balance struck - where as here that involves sensitive information then the balance requires non-disclosure.

We submit then that the Emery polls are protected; that they are not required to be turned over to the Committee, and in fact are beyond the scope of the Committee's jurisdiction. Even using the Committee's test of involvement of rate payer monies they do not qualify. They are documents which are not germane to the scope of inquiry - even if the Committee's own scope is correctly stated by it. These are private documents.

We therefore ask that the appropriate order be entered protecting the documents.

November 6, 1984

JON R. DOYLE

MICHAEL J. LATORRE

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-84-430

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES,

Plaintiff

vs.

OPINION and ORDER

CHRISTIAN P. POTHOLM and
COMMAND RESEARCH,

Defendants

Statement of Proceedings

This matter is before the Court on a motion pursuant to 3 M.R.S.A. §473 by the Joint Committee to Investigate Public Utilities to hold Christian Potholm, individually and in his capacity as President of Command Research, in contempt of the Committee.

Pursuant to a Legislative Joint Order, the Legislative Council established the Joint Select Committee to Investigate Public Utilities. The Joint Select Committee (Committee) is charged with investigating and reporting on the nature and extent of participation of public utilities in political processes and activities and the relationship between any political participation and the regulation of the utilities, including whether the political participation has involved violations of Maine statutes, and whether ratepayers' money has been used directly or indirectly to affect the regulation of public utilities.

On June 7, 1984, the Committee issued a written Request for Production of Documents to Dr. Potholm, seeking all documents

and writings related to his polls of both utility and non-utility clients. On June 8th, a similar Request for Production was issued to Command Research, the company of which Dr. Potholm is president. On August 27, 1984, Dr. Potholm responded to a number of the requests, producing in excess of 13,000 pages of documents. Written objections were filed to a number of the requests, and Dr. Potholm refused to produce a number of the documents requested.

On September 7, 1984, the Committee voted to issue a subpoena duces tecum to Dr. Potholm and to Command Research. In response to the subpoena, Dr. Potholm produced more documents, but he did not produce all of the documents requested. The Committee voted to apply to the Superior Court to compel obedience to the subpoena pursuant to 3 M.R.S.A. 165(7). On October 12th this Court ordered Dr. Potholm, both individually and in his capacity as a principal of Command Research, to appear before the Committee with the documents subpoenaed by the Committee not previously produced.

On October 25, 1984, Dr. Potholm appeared before the Committee as ordered by this Court. He agreed to produce certain documents, but he continued to refuse to produce other documents sought by the subpoenas, claiming that they were privileged or beyond the scope of the Committee's investigation. The Committee found Dr. Potholm in contempt and has asked this Court to impose punishment.

Discussion of Issues

The threshold issue in this case is whether the Committee's finding that Dr. Potholm is in contempt is subject to judicial review, or whether the Court's only function in this matter is the imposition of punishment for the legislative contempt finding.

The concept of separation of powers is an integral part of the Maine Constitution:

Section 1. The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

Me. Const. art III. Counsel for the Committee has pointed out that the Legislature has contempt power under the Maine Constitution:

"Each House, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for anything said, done, or doing in either House; provided that no imprisonment shall extend beyond the period of the same session."

Me. Const. art. IV, § 6. This constitutional power of the Legislature to hold persons in contempt and punish them is not at issue here. In the instant case, the Joint Committee of the Legislature has applied to this Court for a determination

of punishment for the Committee's finding of contempt¹. Under Me. Const. art. III, §§ 1 and 2, this Court cannot exercise whatever contempt power inheres in the Legislature while it is in session, and any attempt by either the Legislature or a legislative committee to delegate that plenary power must fail on Separation of Powers grounds. Since the courts of this state are forbidden from exercising legislative authority of any kind, the statutory framework pursuant to which the Committee has applied to this Court to enforce obedience to its subpoena must be considered to invoke only whatever judicial authority the Court has. Consequently, in considering the enforcement of the Committee's subpoena duces tecum, this Court must apply principles long used by the judicial branch in determining whether to enforce a judicial subpoena duces tecum. See State ex rel Joint Committee v. Bonar, 230 S.E.2d 629, 632 (W.Va. 1976).

Constitutional considerations dictate that the court is not bound by the Committee's finding that Dr. Potholm is in contempt of its proceedings. Indeed, this Court is obligated to make an independent inquiry into whether, by judicial standards, Dr. Potholm's conduct amounts to contempt.

§ 6

The legislative history of the statutory provisions governing

¹Thus this case must be distinguished from cases like Camiel v. Select Committee on State Contract Practices, 324 A.2d 862 (Pa.Cmwlth. 1974), where a court was petitioned by a witness to intervene to quash a subpoena issued by a legislative committee. This sort of judicial interference with legislative procedures contemplated in Camiel posed serious separation of powers questions because the judiciary was not involving itself at the legislature's request.

Legislative Investigating Committees, P.L. 1975, c. 593, reveals that the Legislature, in enacting those provisions, was fully aware of the need for judicial review of legislative contempt findings. The State Government Committee undertook a study of possible amendments to Chapter 593, to clarify and strengthen the legislative investigatory process. The Committee proposed to delete the provisions providing for judicial determination of conflicts between investigatory committees and their witnesses, leaving the Legislature to determine the issues and to enforce the procedures by legislative contempt actions. See Legislative Report on P.L. 1975, c. 593, Report of State Government Committee, p.4. These amendments were rejected by the Legislature. The Court finds this indicative of a legislative intent to allow for judicial review.

The constitutional requirement for an independent inquiry by this Court is also clearly reflected in § 473, the statutory provision pursuant to which the Committee has applied for a finding of contempt:

No witness shall be punished for contempt of an investigating committee unless the court finds:

1. Conduct. That the conduct of the witness amounted to contempt;
2. Certain requirements. That the requirements of sections 424, 430, 453 and 454 have been complied with; and
3. Citations. That in the case of:
 - A. A citation for failure to comply with a subpoena the requirements of section 423 have been complied with;
 - B. A citation for failure to testify in response to a request for his testimony challenged as not pertinent to the subject matter and scope of the investigation, the

requirements of sections 412 and 453 have been complied with and the request was pertinent as explained;

C. A citation for failure to testify in response to a request for his testimony on grounds of privilege, the requirements of section 457 have been complied with.

Subparagraphs 1, 2, and 3(A) are clearly applicable and under § 473 must be satisfied before the Court can hold Dr. Potholm in contempt of the Committee. Since "testimony" is broadly defined under the statute as "any form of evidence received by an investigating committee," 3 M.R.S.A. § 402(8), Dr. Potholm's failure to produce is a failure to "testify", and subparagraphs 3(B) and (C) of § 473 must be satisfied as well.

1. § 473(2) Requirements

a. procedural requirements

The procedural requirements under § 473(2) -- those laid out in §§ 424, 430, and 454 -- have been met by the Committee. When he was subpoenaed by the Committee, Dr. Potholm received ample notice of the subject matter of the investigation, so § 424 is satisfied. The decision to apply to this Court to compel obedience to the Committee's subpoena was by "investigating committee action" as defined in § 421, and thus § 430 was also satisfied. The Chairman directed compliance with the subpoenas, as he was authorized to do by § 454, and he was not overruled by the Committee, thus § 454 is satisfied as well.

b. pertinency requirement

Section 453, the only substantive provision under § 473(2),

deals with the pertinency of the Committee's Requests for Production to its investigation. Since Dr. Potholm challenged the request for his testimony² as not pertinent to the subject matter and scope of the investigation, § 453 requires the Committee to explain "the relation believed to exist between the request and the subject matter and scope of the investigation." This requirement is closely tied to the pertinency requirement of § 412:

The authorization creating an investigating committee shall clearly state, and thereby limit, the subject matter and scope of the study or investigation. No investigating committee shall exceed the limits set forth in such authorization.

The Committee claims that its Request for Production did not exceed its authorization, and that the pertinency of the Committee's Requests to its investigation was adequately explained by the Chairman of the Joint Committee to Dr. Potholm at the October 25, 1984 hearing:

. . . . I would give you an explanation as is set forth in the statutes as to why the questions you were asked individually and in your capacity as president of Command Research are within the scope of this committee's review legally

The authorization for this investigating committee, legislative joint order senate paper 643 specifically sets forth in accordance with Section 412, Title III of the Maine Revised Annotated Statutes that the matters which this committee's charged to investigate specifically paragraphs 2 and 3 of the joint order as follows: The nature and

²"Testimony" is broadly defined as "any form of evidence received by an investigating committee." 3 M.R.S.A. § 402(8). The writings and other documents produced by Dr. Potholm clearly fall within this expanded definition of testimony.

extent of the participation of public utilities either directly, indirectly or through their subsidiaries, affiliates, political action committees, officers, employers or contractors in political processes and activities including both referenda campaigns and election campaigns. Whether that political participation has involved a violation by public utilities or other persons of laws relating to election, registration of voters, initiatives and referenda, campaign report or finances or political or election activities or practices.

As far as the claim -- because of your contractual relationship, Dr. Potholm, with Central Maine Power Company, New England Telephone Company and Save Maine Yankee for polling services and your contractual relationship with other clients in which political masking questions were included in polls conducted on their behalf, it is this committee's belief that you had the opportunity and did avail yourself of the opportunity to share political information between and among utility and non-utility clients and thus may have contributed to the utilities unauthorized participation in political processes. The writings sought may well shed light on these activities.

The Committee is of the belief that your relationship with these several clients, many of whom may have been political candidates or committees permitted the transfer of polling information by you to them and vice versa much of which had been or may have been originally contracted for by a regulated utility.

I, therefore, direct you to comply with this request for the documents as far as the scope of the investigation objection that was made. . . .

This general explanation offered by the Committee suggested the relevance of some of the Committee's Requests.

The § 453 requirement of an explanation of pertinency cannot be taken lightly. See Scull vs. Virginia ex rel Committee on Law Reform, 359 U.S. 344, 349-53 (1959) (where committee failed to adequately inform witness in what respect its questions were pertinent to the subject under inquiry, conviction for contempt was a denial of due process); Watkins vs. United States, 354 U.S. 178, 209-14 (1959). The Legislature has the power to investigate any subject with respect to which it may desire

information in aid of its lawmaking function, Maine Sugar Industries, Inc. vs. Maine Industrial Building Authority, 264 A.2d 1, 6 (Me. 1970); 81A CJS States § 56, but the inquiry must be confined to facts relevant to the subject of the investigation. 81A CJS States §§ 56-58; DuBois vs. Gibbons, 2 Ill.2d 392, 118 N.E.2d 295, 307 (1954). For this reason, a witness cannot be compelled to reveal his private and personal affairs, except to the extent to which such disclosure is reasonably required for the general purpose of the inquiry. DuBois, 118 N.E.2d at 309-10; Watkins vs. United States, 354 U.S. 178, 187 (1957); McGowan vs. Dougherty, 273 U.S. 135, 176-80 (1927) (quoted in part in Maine Sugar Industries, 264 A.2d at 6-7)). The right to compel a witness to produce books and papers before a legislative committee turns on whether their production is reasonably pertinent to the subject of the investigation as defined by the resolve creating the committee. CJS States §§ 56-58; State ex rel Joint Committee on Government and Finance of West Virginia Legislature v. Bonar, 230 S.E.2d 629, 630-32 (W.Va. 1976); Hagaman v. Andrews, 232 So.2d 1, 8 (Fla. 1970); Ward v. Peabody, 405 N.E.2d 973, 978 (Mass. 1980).

At the same time, the Legislature must be presumed to be concerned only with matters within the proper scope of investigation. Maine Sugar Industries, 264 A.2d at 7. Requiring a showing of relevance "too rigid or exacting ... might unduly trammel [the Legislative Committee's] enterprise, which, on its investigatory side, could not, at least in the beginning, know exactly its own limits." Ward, 405 N.E.2d at 978. At

least one court has acknowledged a legislative committee's power to request documents not "plainly irrelevant" to the authorized investigation. Id. at n.1. As Justice Cardozo stated, "Only where the futility of the [legislative] process to uncover anything legitimate is inevitable or obvious must there be a halt upon the threshold." In re Jamaica Bay in City of New York, 256 N.Y. 374, 176 N.E. 537, 539 (1931).

In the instant case, the Committee was given broad authority to investigate the relationship of public utilities to their contractors, the participation of public utilities directly and indirectly in political processes, and the public utilities' direct and indirect use of political participation and ratepayers' money to affect their regulation. The Committee has claimed that Dr. Potholm and Command Research passed polling information to the utilities through various third parties. The Request for Production served on Dr. Potholm called for financial and other information about Command Research, including its political activity, its clients, and the polling work it did for third parties which is believed by the Committee to have been passed, ultimately, to the utilities. This Court cannot say that the Committee has requested information so plainly irrelevant that the Requests themselves are invalid. While the Court concedes that the Committee offered a somewhat attenuated explanation to Dr. Potholm of the relevance of its Requests, the Court nonetheless concludes that the Committee was acting within the limits of its authorization, as required by § 412, and that

its explanation of relevance was sufficient to satisfy § 453.

2. § 473(3) Requirements

a. procedural and pertinency requirements

Subparagraph A of § 473(3) brings in the § 423 procedural requirement that a decision to issue a subpoena be by "investigating committee action," as it was in the instant case. Subparagraph B requires compliance with the scope and pertinency requirements of §§ 412 and 453, which this Court has already found.

b. privilege requirement

Because Dr. Potholm refused to "testify," within the statute's broad meaning of the term, on the grounds of privilege, subparagraph C of § 473(3) requires compliance with § 457:

The witness shall be given the benefit of any privilege which he could have claimed in court as a party to a civil action, provided that the committee chairman may direct compliance with any request for testimony to which claim of privilege has been made. However, the chairman's direction may be overruled by investigating committee action.

In the instant case, the Committee Chairman did in fact direct compliance with the Committee's requests. This compliance was refused by Dr. Potholm. This Court does not read § 457 as requiring the Court to find contempt on the simple fact of this refusal to comply. It is well established that where a privilege is asserted by a witness before an investigatory committee, the privilege must be outweighed by the committee's need for the information before the witness can be held in contempt. See e.g., Ward, 405 N.E.2d at 978 ("At the edge of relevancy, when

the value to the investigation of a piece of demanded information is seen to be marginal, courts have been prepared to assess and allow as a counterweight 'the right to be exempt from all unauthorized, arbitrary or unreasonable inquiries and disclosures in respect of [a witness's] personal and private affairs'," quoting Sinclair v. United States, 279 U.S. 263, 292 (1929)); Hagaman v. Andrews, 232 So.2d 1, 7 (Fla. 1970); State ex rel Joint Committee v. Bonar, 230 S.E.2d at 631 ("[T]he courts will not assume that every legislative investigation is justified by a public need that overbalances private or executive rights or privileges," citing Sinclair and Watkins v. United States, 354 U.S. 178 (1957).); Uphaus vs. Wyman, 360 U.S. 72 (1959)(governmental interest in investigation of communist activities in the state outweighed individual rights and associational privacy). The balancing of public need against private privilege performed in these cases is similar to that indicated by the Law Court in Maine Sugar Industries. In that case the private, contractual interest in nondisclosure was deemed outweighed by the public need for an investigation into the insuring of industrial loans. Maine Sugar Industries, 264 A.2d at 6-8.

In the instant case, two of the "privileges" asserted by Dr. Potholm are not among the more compelling privileges long recognized and protected by the courts, such as executive privilege, the privilege against self-incrimination, attorney-client privilege, or the marital privilege. Dr. Potholm asserts a proprietary or contractual privilege, and a privilege to maintain trade

secrets. Dr. Potholm claims that, in accordance with his contractual agreements with his clients and the code of ethics in the polling industry, he has bound himself with his utility and non-utility clients not to divulge any information pertaining to his commissioned research without their prior approval. He also claims that exposure of the requested materials will reveal his polling techniques, and damage Command Research in the competitive market.

The Law Court's decision in Maine Sugar Industries suggests that while the less compelling privileges, such as the contractual or proprietary privilege and the privilege to maintain trade secrets asserted by defendants, are entitled to some protection from the Court, the interests in nondisclosure protected by such privileges may be outweighed by the public interest in the subject matter of a legislative investigation.

Dr. Potholm also claims that exposure of the requested materials will impinge upon his First Amendment right of political association. While this constitutional privilege is entitled to greater protection, it also must nonetheless be balanced against the governmental interest in the investigation. Uphaus v. Wyman, 360 U.S. 72 (1959). Moreover, based on its in camera inspection, the Court concludes that production of the documents requested by the Committee will in no way compromise Dr. Potholm's right of free political association.

In Camera Inspection

In its inspection of the documents turned over to it by Dr. Potholm in camera, the Court, in accordance with §§ 473 and 457 and the relevant case law, has weighed the Committee's need for the information contained in each document as against Dr. Potholm's asserted interests. The Court concludes that the documents submitted to the Court for in camera inspection fall into the following categories:³

A. Documents which are not material to the Committee's request.

B. Documents which the Court concludes are protected from the Committee's examination as a result of the judicial "balancing" test, either:

(i) because they are not within the scope of the Committee's legislative authorization, and therefore they are not relevant to the Committee's investigation; or

(ii) because the relevance of the documents to the investigation is so slight that it is outweighed

³In connection with the Court's in camera inspection of documents, two polling documents were reviewed which were not drafted or prepared in whole or in part by the defendants and, therefore, not subject to the Committee's subpoena. Furthermore, the information sought is otherwise available to the Committee by either the authors' of the document or the person for whom the document was prepared. Cf. Bonar, 230 S.E.2d at 632 (information sought by legislative committee's subpoena must be not otherwise practically available). These documents are identified as the Market Opinion Research Statistical Summary prepared for the Cragin Campaign Committee and the Lance Tarrance and Associates poll prepared on behalf of Congressman David Emery.

by the interests in nondisclosure asserted by Dr. Potholm and/or Command Research.

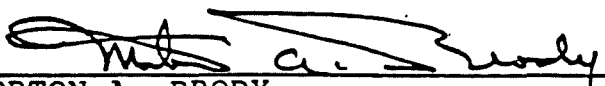
C. Documents which the Court concludes shall be made available to the Committee in response to their subpoena. (These documents are set out in Schedule A attached hereto and made a part hereof.)

CONCLUSION

It is therefore ORDERED that defendants produce those documents set out in Schedule A of this opinion within five days. Plaintiff's application for contempt is denied except as it relates to defendant's failure to produce those documents listed in Schedule A. In the event the scheduled documents are not produced within the five day period, this matter will be scheduled for hearing before this Court for enforcement of the Committee's contempt citation in accordance with this opinion and order.

Intervenor David Emery's Motion for a Protective Order is DENIED without prejudice, in view of the fact that the Court's Order in the principal case does not require that the "V. Lance Tarrance poll" be produced by Defendants Potholm and Command Research.

Dated: November 8, 1984


MORTON A. BRODY
Justice, Superior Court

SCHEDULE A

1. Cover page of the Command Research final questionnaire to St. Mary's Hospital dated July 1983, and pages 1 and 2 of that questionnaire up to and including the question and answer to Question #4. (4)

2. The cover page contained in the Command Research final questionnaire for St. Mary's Hospital dated July 1983 together with pages 7 and 8 of that report up to and including the question and answer to Question #4. (3)

3. Pages 2, 3 and 4 of the Command Research computer printout for St. Mary's Hospital dated July 1983. (3)

4. Title page of the Executive Summary prepared by Command Research for Cary Medical Center dated May 1983 together with pages 1, 2, 20 and 21 up to the question and answer to Question #5. (4)

5. Cover page of the Executive Summary of Command Research for Sportsman's Alliance of Maine dated June 1983 together with pages 5 and 6 of the Executive Summary up to and including the answers to Question #4. (3)

6. Cover page to the Executive Summary of the Sportsman's Alliance of Maine June '83 poll by Command Research together with pages 5 and 6 up to and including the question and answer to Question #4. (3)

7. Pages 1 and 2 of the Command Research computer printout for Sportsman's Alliance of Maine dated June 1983. (2)

8. Cover page of the questionnaire for Maine Hospital

Association by Command Research dated February 1983 together with page 1, which includes the questions and answers to Questions #1 through #4. (2)

9. Pages 3, 4, and 5 of the computer printout of Command Research for Maine Hospital Association dated February 1983. (3)

10. Cover page of draft questionnaire of Command Research for St. Regis Paper Company dated September 1981 together with page 1 up to and including the question and answer to Question #4. (2)

11. Cover page to the Command Research Executive Summary for St. Regis Paper Company dated September 1981 together with page 32 up to and including the answer to Question #4. (3)

12. Pages 14, 15, and 16 of the computer printout of Command Research for St. Regis Paper Company dated September 1981. (3)

13. The following records of receipts and disbursements:

Check from David Emery dated October 13, 1980.

Check from Central Maine Power Company dated March 20, 1981.

Check from Central Maine Power Company dated July 30, 1981.

Check from David Emery dated August 5, 1981.

Check from David Emery dated September 16, 1981.

Check from New England Telephone dated September 23, 1981.

Check from David Emery dated October 15, 1981.

Check from New England Telephone dated October 20, 1981.

Check from David Emery dated November 16, 1981.

Check from Central Maine Power dated December 16, 1981.

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT

Civil Action

Docket No. CV-84-430

JOINT SELECT COMMITTEE TO
INVESTIGATE PUBLIC UTILITIES,

Plaintiff,

vs.

CHRISTIAN P. POTHOLM,

Defendant,

and

COMMAND RESEARCH,

Defendant.

E X C E R P T S

MOTION FOR CONTEMPT

TESTIMONY OF CHRISTIAN POTHOLM

BEFORE:

HONORABLE MORTON A. BRODY, JUSTICE OF THE SUPERIOR COURT

Kennebec County Courthouse
Augusta, Maine

November 2, 1984
9:00 a.m.

APPEARANCES:

For the Plaintiff:

JOHN J. FLAHERTY, ESQ.
ESTEL LAVOIE, ESQ.

For the Defendants:

HARRISON L. RICHARDSON, ESQ.

For the Intervenor:

JOHN DOYLE, ESQ.
MICHAEL J. LATORRE, ESQ.

MAUREEN A. BRADFORD

Official Court Reporter

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INDEX OF EXHIBITS

<u>Plaintiff's Exhibit No.</u>	<u>Description</u>	<u>Marked</u>	<u>Offered</u>	<u>Admitted</u>
3	Citation	2	2	2
4	Transcript of Potholm testimony	2	2	2
5	Memorandum of Understanding	99	--	--
<u>Defendants' Exhibit No.</u>				
4	Photocopy of financial records	--	8	8
5	Letter from Michael LaTorre, Esq. to Christian Potholm, 10/31/84	--	10	10
6	Code of Professional Ethics and Practices	--	14	15
7	Affidavit signed by Myron W. Curtis	--	16	93
8	Affidavit signed by John S. Marr	--	18	--
9	Affidavit signed by Christian Potholm	29	30	30
10	Maine Sunday Telegram article, 9/21/84	--	35	35

TRANSCRIPT OF PROCEEDINGS

(This case came on for hearing before
Honorable Morton A. Brody, Justice, at the
Kennebec County Courthouse, Augusta, Maine, on
Friday, November 2, 1984, commencing at 9:00 a.m.)

THE COURT: Good morning, ladies and gentlemen.

MR. RICHARDSON: Good morning.

THE COURT: All right, in Docket No. CV-84-430,
Joint Select Committee to Investigate Public Utilities
versus Christian Potholm and Command Research, are we
ready to proceed?

MR. FLAHERTY: Yes.

MR. RICHARDSON: Yes, sir.

MR. FLAHERTY: If the Court please, as the record
will reflect, in these proceedings we already have in
evidence Plaintiff's Exhibits 1 and 2, being the
subpoenas with attached materials pursuant to the
statute; and at this time I would ask the Clerk to mark
the original citation please as 3, I believe it's 3,
and the original transcript of the Potholm appearance
before the Committee. I understand that there is no
objection by counsel for Intervenor. Accordingly, I
would offer these, Your Honor.

THE COURT: All right, they may be admitted
without objection.

1 MR. FLAHERTY: Thank you.

2 As the Court is aware, it has already been
3 provided with a complete copy of that transcript so --
4 but if it wishes to see the original, it's right here.

5 Now, Your Honor, we confront the -- a simple
6 procedural question, and that is, given the fact that
7 the Committee takes the position and has taken the
8 position in its several briefs submitted to this Court
9 that given compliance with the requirements of Section
10 473 of Title 3, this Court is, pursuant thereto, and
11 Section 165, Sub 7 of Title 3 required to proceed to a
12 finding of contempt and, accordingly, punish, if it so
13 sees fit, until such time as there is a purging of that,
14 we inquire as to whether -- if the Court wishes to
15 receive any further testimony in this regard in the
16 questions of privilege or objections as beyond the
17 scope either tentatively or otherwise. As indicated
18 in our prior meeting with the Court, we would await
19 the presentation of the defense in that regard and
20 present such testimony as we felt appropriate, while
21 always contending that it would not be germane.

22 THE COURT: All right. Mr. Richardson.

23 MR. RICHARDSON: Thank you, Your Honor.

24 We have filed a memorandum in support of our
25 position that Title 3, Section 401 provides the

1 exclusive jurisdiction for the basis of this Court's
2 involvement. We're ready to proceed with the
3 presentation of evidence in order to assist the Court
4 to apply what we believe are the tests required by
5 Section 473 of Title 3. We're prepared to present
6 evidence, as indicated to the Court during the scheduled
7 issues conference which was held. We had filed a
8 memorandum. I have not been favored with a copy of the
9 Joint Select Committee's memorandum of law in support
10 of this application for contempt, but I have had a
11 chance just a few minutes ago to review Mr. Doyle's
12 copy of that memorandum. Our position is, as I've
13 stated, very simply that Title 3, Section 401 provides
14 the exclusive jurisdictional basis for this Court's
15 involvement. We welcome that involvement, and we're
16 ready to proceed with the presentation of evidence.

17 THE COURT: Well, the record should first initially
18 clearly reflect the fact that pursuant to conference
19 held earlier in the week, counsel for the Plaintiff and
20 the Defendants and the Intervenor have supplied the
21 Court with memoranda which the Court has had an
22 opportunity to review.

23 Also, the record should reflect that in accordance
24 with the discussion among counsel, certain documents
25 were presented to the Court for an in camera review.

1 The record may reflect that the Court has had an
2 opportunity to review all of those documents, and the
3 Court is now prepared to hear argument and testimony,
4 if necessary, with respect to the major issues in this
5 case. Those major issues, as were delineated in that
6 conference, are first the threshold question
7 Mr. Flaherty made reference to initially with respect
8 to the Court's power vis-a-vis the contempt order of
9 the Committee. Second major issue is whether or not
10 the documents requested in the subpoena duces tecum are
11 within the scope of the Committee's authorization; and
12 the third major category of argument is whether or not
13 those documents are protected by privilege, either
14 contractual or proprietary, or those privileges that
15 have been represented to the Court by the Defendants
16 as pertaining to the documents in this case.

17 I'm ready to hear that testimony now.

18 MR. RICHARDSON: Yes, Your Honor.

19 As a courtesy of the witnesses, I'd like to
20 present the testimony first and then the argument.

21 We'd call Christian Potholm to the stand, please.

22 May I ask Mr. Potholm be allowed to remain
23 standing during his testimony?

24 THE COURT: Whatever makes him more comfortable.

25 (The oath was administered to Christian

Potholm by the Clerk.)

CHRISTIAN P. POTHOLM, called on behalf of himself, having
been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RICHARDSON:

Q Mr. Potholm, what is your occupation?

A I'm a professor of government at Bowdoin College and
also the president of Command Research.

Q Do the activities of Command Research include
activities other than polling for utility and
nonutility clients?

A Yes, they do.

Q Could you briefly suggest to the Court, please, what
other areas Command Research is involved in?

A Command Research is involved in a number of educational
areas in terms of travel consulting and occasionally
speaking on a variety of subjects unrelated to polling.

Q Did you conduct polls for nonutility clients between
May of 1980 and April of 1983?

A Yes, I did.

Q Did you also conduct polls for utility-related clients
such as CMP, Save Maine Yankee, Atlantic Research, and
New England Telephone?

A Yes, I did.

Q Have you turned over to the Committee all records in

1 your possession relating to polling activities conducted
2 on behalf of Save Maine Yankee, New England Telephone,
3 Central Maine Power, and Atlantic Research?

4 A Yes, I have.

5 Q Did you also turn over to the Committee all of the
6 financial records of the corporation reflecting receipts
7 of income from those clients?

8 A Yes, I did.

9 Q In connection with your polls for nonutility --

10 THE COURT: Excuse me, before we leave that, do I
11 understand that the request set forth in Paragraph 5 of
12 the Committee's subpoena have been complied with?

13 MR. FLAHERTY: No, they have not, Your Honor.

14 THE COURT: I'm asking Mr. Richardson.

15 MR. RICHARDSON: My question was, have you turned
16 over to the Committee all records reflecting the
17 receipt of income -- financial transactions with
18 Atlantic Research, Committee to Save Maine Yankee,
19 Central Maine Power Company or any other Maine utility
20 company? The answer to that is yes, he has turned over
21 the corporate ledger book which contains all of these
22 other transactions. That's my next question, and your
23 answer to that, Dr. Potholm, is?

24 A No.

25 Q Now I believe that the record contains -- but in the

1 access of caution I'm going to put them in again, if
2 I may. I think that's Defendants' 4 as marked.

3 MR. FLAHERTY: Your Honor, Brother Richardson has
4 indicated to me that several documents in Defendants'
5 Exhibit 4 have already been turned over -- these are
6 copies of them -- to the Committee. I'm accepting that
7 representation provisionally at this time with all due
8 deference to Mr. Richardson until the Staff Director
9 arrives. To the extent he wants to admit them on that
10 basis --

11 THE COURT: All right, subject to that exception,
12 the document may be admitted.

13 MR. FLAHERTY: Thank you, Your Honor.

14 MR. RICHARDSON: I want the record to reflect what
15 they are. Defendants' Exhibit 4, would you tell us
16 whether or not that is a photostatic copy of the
17 submission you made to the Committee's question that
18 you provide them with all financial records relating
19 to your dealings with -- that is, the receipt of income
20 from CMP, Committee to Save Maine Yankee, Atlantic
21 Research, New England Telephone --

22 THE COURT: May I see that, please?

23 Proceed.

24 BY MR. RICHARDSON:

25 Q In connection with your conduct of polling activities

1 for nonutility clients, first of all, Dr. Potholm, I
2 want to focus your attention on some specific areas.
3 First of all, did there, at the time the polls were
4 conducted, and do there now exist contractual agreements
5 between you and those nonutility clients by which these
6 polling results, polling data are to remain confidential?

7 A Yes.

8 Q Is that true in every nonutility client case?

9 A That is true in every nonutility client case.

10 MR. FLAHERTY: Excuse me, Your Honor, I recognize
11 this is a nonjury proceeding, but this witness is
12 providing us conclusions as to what those contracts
13 provide; and unless I have some representation from
14 counsel that there are indeed clauses to that effect
15 in the contract, I'm simply making an objection for the
16 record. We take the position, of course, later, holding
17 different basis, that there is no privilege.

18 THE COURT: Objection is overruled, proceed
19 Mr. Richardson.

20 BY MR. RICHARDSON:

21 Q I ask you whether or not you have received communications,
22 both written and oral, from clients -- nonutility
23 clients demanding that in obedience to the contractual
24 agreement, you not turn over those records?

25 A I have.

1 Q Have you received a letter from Michael LaTorre, Esq.,
2 representing former Congressman David Emery, dated
3 October 31, 1984 demanding that you not turn over those
4 records?

5 A I have.

6 MR. FLAHERTY: Excuse me. I haven't seen it.
7 Give me one minute.

8 Do you have a copy of this? (To Mr. Richardson)

9 MR. RICHARDSON: I don't.

10 BY MR. RICHARDSON:

11 Q And I ask you, Mr. Potholm, is Defendants' Exhibit 5
12 the original of the letter to you or -- yes, to you
13 from Mr. Doyle on behalf of former Congressman Emery
14 demanding that you not turn over the polls?

15 A Yes.

16 MR. RICHARDSON: I would offer Defendants' 5.

17 THE COURT: Mr. Flaherty.

18 MR. FLAHERTY: I have no objection, Your Honor.

19 THE COURT: Mr. Doyle.

20 MR. FLAHERTY: Mr. Doyle has provided me with a
21 copy.

22 MR. DOYLE: I have no objection.

23 THE COURT: Admitted without objection, Defendants'

24 5.

25 / /

1 BY MR. RICHARDSON:

2 Q Have you received other written instructions from your
3 clients, nonutility clients directing you not to produce
4 these records?

5 A I have.

6 Q And were those materials delivered -- those letters of
7 those other clients delivered as part of the in camera
8 submission to this Court in connection with the
9 conference with counsel some days ago?

10 A Yes.

11 MR. RICHARDSON: And from a procedural point of
12 view, Your Honor, at some point, depending upon the
13 ultimate outcome, I may wish to identify by document
14 and number -- that is, by Defendants' exhibit number,
15 those documents that relate to instructions to
16 Mr. Potholm from his clients that were turned over to
17 you in the in camera request.

18 BY MR. RICHARDSON:

19 Q Dr. Potholm, are there ethical standards within the
20 polling industry common to that industry dealing with
21 the propriety of turning over confidential client
22 information to persons other than those authorized by
23 the clients?

24 A Yes, there are.

25 Q What are those standards?

1 MR. FLAHERTY: Excuse me, Your Honor. For the
2 record, we make the same objections as we made
3 previously, that is, that the standards speak for
4 themselves to the extent that they are relevant.

5 THE COURT: How do I know what those standards are
6 unless someone testifies?

7 MR. FLAHERTY: I suspect they are in writing.

8 THE COURT: Are they in writing?

9 MR. RICHARDSON: They are in writing, and I'm going
10 to offer affidavits; but I think that Dr. Potholm is
11 completely competent, if that's the objection, he is
12 competent to testify to those interpretations of those
13 standards.

14 THE COURT: Your objection is on the basis of
15 foundation?

16 MR. FLAHERTY: My objection, Your Honor, is that,
17 as I perceive it, the suggestion is that there are
18 ethical standards. The understanding now is that they
19 are indeed in writing. The inquiry is, what is
20 Mr. Potholm's view of the impact of those ethical
21 provisions.

22 THE COURT: I'm going to overrule the objection.
23 You may answer.

24 BY MR. RICHARDSON:

25 Q What are those standards?

1 A The standards are that the confidentiality of the
2 interviewing process shall be protected, and that the
3 polls and polling data produced for clients are the
4 private property of those clients and are not to be
5 released without the express permission of those clients.

6 Q Is there a code of professional ethics and practices
7 adopted by the American Association for Public Opinion
8 Research?

9 A Yes.

10 Q Now do you regard yourself bound by that code of
11 professional ethics and practices?

12 A Yes.

13 Q I show you what has been marked by the Clerk for
14 identification as Defendants' Exhibit 6 and ask you if
15 that is a copy of the Code of Professional Ethics and
16 Practices?

17 A Yes.

18 Q Do you regard yourself as being bound by those
19 provisions?

20 A I certainly regard myself as being bound by the two
21 that I have circled. I'm not familiar with every single
22 one of the other ones here.

23 Q And by the two that you have circled, are you referring
24 to Sub Paragraph B under Roman numeral II and
25 Sub Paragraph D(2) under Roman numeral II?

1 A Yes.

2 Q Do those paragraphs of the standards or the Code of
3 Professional Ethics and Practices appropriately define
4 in your view the ethical obligations imposed upon you
5 as a professional involved in polling?

6 A Yes.

7 Q Do you know of your own knowledge whether or not these
8 commonly accepted standards within the industry --

9 MR. FLAHERTY: I don't object to letting the
10 document in in light of the Court's prior ruling.
11 Whether they're commonly accepted in the industry --

12 THE COURT: Just a moment.

13 MR. FLAHERTY: -- is something to which I suggest
14 this man is incompetent to testify.

15 THE COURT: The objection is overruled.

16 BY MR. RICHARDSON:

17 Q You may answer. Do you know of your own personal
18 knowledge whether or not these are commonly accepted
19 within the polling industry?

20 A Yes, they are.

21 MR. RICHARDSON: I offer, if you will, Your Honor,
22 Defendants' 6.

23 THE COURT: Mr. Flaherty.

24 MR. FLAHERTY: Same objection.

25 MR. DOYLE: No objection, Your Honor.

1 THE COURT: What is the objection to 6?

2 MR. FLAHERTY: That document there is a copy of a
3 piece of paper. There's nothing on it to indicate who
4 promulgated it or anything.

5 THE COURT: It indicates, we the members of the
6 American Association for Public Opinion Research
7 subscribe and so forth.

8 MR. FLAHERTY: I haven't even heard Mr. Potholm
9 is a member.

10 MR. RICHARDSON: He has testified he regards
11 himself bound by those provisions which I --

12 THE COURT: Just a minute. Are you a member of
13 this association?

14 THE WITNESS: No, I'm not.

15 MR. FLAHERTY: Then I object further, Your Honor.

16 THE COURT: Well, I'm going to admit the exhibit
17 for whatever weight the Court wishes to give it.

18 MR. FLAHERTY: I appreciate that.

19 BY MR. RICHARDSON:

20 Q Now Dr. Potholm, do you know Myron W. Curtis?

21 A Yes, I do.

22 Q Who is he?

23 A He is the Director of the Computing Center at Bowdoin
24 College.

25 Q And to your knowledge, did he at my request prepare an

1 affidavit with respect to the proprietary confidential
2 nature of information produced by polling activities
3 as is maintained on computer data banks?

4 A Yes.

5 Q And I show you Defendants' Exhibit 7 and ask you if
6 that is the original of an affidavit signed by Myron
7 W. Curtis dated October 31, 1984, setting forth his
8 statement with respect to the confidentiality and
9 confidential nature of information secured during
10 polling activities.

11 A It is.

12 MR. RICHARDSON: I offer Defendants' 7. In support
13 of the offer, I'd like to indicate that this is a bench
14 trial. The Court does have wide authority under the
15 Rules of Evidence to facilitate this proceeding. I
16 didn't think it was necessary to bring Mr. Curtis here.
17 I feel that this is of some assistance to the Court in
18 understanding the broad parameters of this issue, and I
19 would ask you to receive Defendants' Exhibit 7 bearing
20 in mind it is a bench trial. It is not a jury trial,
21 and I don't think that it is necessary -- should be made
22 necessary for me to call Mr. Curtis here from Bowdoin.

23 THE COURT: Mr. Flaherty.

24 MR. FLAHERTY: Your Honor, I have to object to that
25 affidavit for the record. We need to have the

1 opportunity, as in all such cases, to cross-examine
2 Mr. Curtis. This methodology was employed before the
3 Committee. It's one of the reasons we're here. I
4 suggest anything Mr. Potholm can testify to subject to
5 the Court's restrictive approach to this we'll address
6 as it comes forward; but I must for the record object
7 to that affidavit.

8 THE COURT: Well, this is a bench trial, but we're
9 still governed by the Rules of Evidence. If there is an
10 objection, the purpose of the Rules of Evidence in this
11 regard is to allow the opposing party to have an
12 opportunity to examine the author of the exhibit as to
13 the weight or admissibility of the contents. So if
14 there is an objection, I'm going to sustain the
15 objection.

16 MR. FLAHERTY: Thank you, Your Honor.

17 MR. RICHARDSON: Your Honor, we'll obviously not,
18 at least at this point, pursue further the issue with
19 respect to Mr. Curtis and Mr. John S. Marr who is
20 president of the Computer Center in Falmouth, Maine.
21 Mr. Curtis, Director of the Computing Center at Bowdoin
22 College, we'll make an effort to have both of them appear
23 here as witnesses, if that's going to be the Court's
24 ruling. I do want to identify then that Defendants'
25 Exhibit 3, which is an affidavit signed by John S. Marr,

1 President of the Computer Center in Falmouth, Maine,
2 dated November 1st, 1984, it is essentially the same
3 thing. It is supportive and corroborative of
4 Mr. Potholm's testimony that there is a commonly
5 accepted standard in the industry to treating this
6 information as confidential. I will show counsel for
7 the Committee Defendants' 8. I will offer it. He can
8 object, and you can exclude it, and then the record will
9 be clear.

10 MR. FLAHERTY: Well, Your Honor, he can offer it,
11 and I'll object. He's testified to its contents, but
12 there is no jury here.

13 THE COURT: With respect to those two documents,
14 I'm going to sustain the objection; and I understand
15 you are going to have the witnesses here to --

16 MR. RICHARDSON: I'm going to try to get the
17 witnesses here because I am mindful of the Court's
18 indication to counsel that we should attempt to
19 complete the evidentiary portion of our presentation
20 this morning.

21 BY MR. RICHARDSON:

22 Q Dr. Potholm, with respect to your testimony before the
23 Committee, have you ever refused --

24 THE COURT: Excuse me. Just to facilitate any
25 arrangements that you want to make, I am perfectly

1 willing to stay here today as long as it takes except
2 for one engagement I have at three o'clock, which will
3 only take about an hour, to finalize all of the pending
4 matters today. So if these witnesses can't appear this
5 morning but can appear this afternoon, keep that in mind.

6 MR. RICHARDSON: Yes, sir.

7 BY MR. RICHARDSON:

8 Q Dr. Potholm, have you ever refused to testify before
9 this Committee?

10 A No.

11 MR. FLAHERTY: Excuse me. There is, in evidence as
12 Plaintiff's Exhibit 4, the certified record of the
13 proceedings before the Committee which depict and
14 detail precisely what happened and what Mr. Potholm's
15 responses were to the Committee's questions, what the
16 colloquy was, what was sought, what was explained. For
17 that reason, I suggest that that is the evidence which
18 this Court is required respectfully to direct its
19 attention to in terms of whether there was or was not
20 a contempt.

21 THE COURT: One of the issues in this case is the
22 contempt of the witness.

23 MR. FLAHERTY: That's correct.

24 THE COURT: I think that that question is
25 appropriate, and the objection is overruled. He may

1 answer.

2 MR. RICHARDSON: Thank you.

3 BY MR. RICHARDSON:

4 Q Mr. Potholm, the answer to my question, sir, have you
5 ever refused to testify before the Joint Select
6 Committee on Public Utilities concerning your involvement
7 in these issues --

8 MR. FLAHERTY: Please, Your Honor --

9 THE COURT: Just a moment.

10 MR. FLAHERTY: If I may amplify my objection,
11 Mr. Potholm has never been directed to testify before
12 the Committee. Mr. Potholm has never even been requested
13 to testify before the Committee. The clear process of
14 the Committee is to submit the written Interrogatories
15 and requests for production. Then, after receipt of
16 the same, to offer -- interview to the witness, and
17 then to submit the witness -- subject the witness to
18 sworn testimony, if deemed necessary by the Committee.
19 At no time to this date has Mr. Potholm ever been
20 requested to testify before the Committee, and for
21 that reason also I object.

22 THE COURT: All right. Let me just say for the
23 benefit of all counsel that I have read completely the
24 entire transcript of all the proceedings with respect
25 to this witness as it relates to this proceeding. I

1 am aware of what has transpired before the Committee.
2 I'm going to allow some latitude in the examination of
3 this witness, both in direct and cross-examination,
4 because, as I have indicated, we're dealing with a
5 contempt issue.

6 MR. FLAHERTY: Thank you, Your Honor.

7 THE COURT: Proceed.

8 MR. RICHARDSON: Thank you.

9 BY MR. RICHARDSON:

10 Q The answer to my question, sir?

11 A I have forgotten the question.

12 Q Have you ever refused to testify before the Joint Select
13 Committee on Public Utilities?

14 A I have not.

15 Q Have you ever refused to answer question or questions
16 about tracking questions?

17 A I have not.

18 Q Did you testify concerning tracking questions and the
19 reason for their use before the Public Utilities
20 Commission Investigation in February of 1983?

21 A I did.

22 Q What is a tracking question?

23 A A tracking question is a question which appears on a
24 number of polls which asks the same question on a
25 variety of different polls and enables the pollster to

1 have a check of what is going on.

2 Q What do you mean, a check of what is going on?

3 A Well, tracking questions actually have a number of
4 purposes, but one purpose is to make sure that the data
5 that is being acquired and is being coded and is being
6 put onto computer tapes is being done so properly. It
7 is a check for me on the development of the data.

8 Q Well, let me ask the question, for example, is the
9 question as posed in the Committee's subpoena one, two,
10 three, and four, they ask for tracking study relating
11 to Maine Governor Joseph Brennan, 1982 Maine gubernatorial
12 candidate, Maine 1982 senatorial candidates, and
13 President Reagan. What use is it to the pollster in
14 measuring the reliability of the poll data to have those
15 tracking questions on a continuing basis from a number
16 of polls?

17 A The questions relating to the performance of President
18 Reagan and Governor Brennan are standard tracking
19 questions which we use. They are very helpful to
20 determine the validity of the rest of the poll.

21 Q How do they tell you that?

22 A Because by doing them a number of times, I have a very
23 good idea of what those questions should turn out, and,
24 therefore, I can test the outcome on a given poll with
25 the results that I know that they should have.

1 Q Well, if the tracking questions on a particular poll
2 yielded results with respect to the person's requested
3 views of say Governor Brennan yielded results that, if
4 you will, are out of whack with other polling tracking
5 questions that have been asked with respect to Governor
6 Brennan, would that raise any concern in your mind as
7 to the reliability of the poll answers in the balance
8 of the poll?

9 A Yes, it would be a red flag that the poll should be
10 examined, particularly in terms of errors in coding or
11 transcribing.

12 Q Is that the -- I -- What other reasons? Let me put it
13 that way. What other reasons are there in your opinion
14 as a professional for including the tracking questions
15 in polls that have nothing to do with politics,
16 politicians, or in this case utilities?

17 A There are a number of reasons. One reason is that
18 clients are generally interested in these topics, even
19 if the study is about something else, and number two,
20 the questions themselves give me a firm indication of
21 the kind of respondent that we're dealing with.

22 Q Give me an example?

23 A Well, if, for example, a respondent has no opinion on
24 the performance of the President and no opinion on
25 the performance of the Governor, that person is less

1 likely to be a very valid respondent to the other
2 questions. Most people have an opinion of one or both
3 of those questions. In addition, those questions --
4 the answers to those questions do not change here in
5 Maine rapidly over time, and very rarely do they ever
6 change in the same direction at the same time. So by
7 asking those tracking questions, I can have a good
8 sense of what is in the rest of the material. In
9 addition, the asking of those questions in the
10 beginning of the questionnaire enables the respondent
11 to become at ease with the questioning process, and
12 again, most people have an opinion on one of those two
13 questions.

14 Q Is the tracking question part then of the nonutility
15 polls, is that part of the substance of the poll itself?

16 A Strictly speaking it is not.

17 Q Why not?

18 A Simply because it may have absolutely no relevance for
19 the body of material, the corpus of material within the
20 study itself. It is really a verification tool from my
21 perspective, a selling point rather than something that
22 is an intrinsic part of the data that may be selected.

23 Q Have you been and are you now prepared to testify before
24 the Joint Select Committee on the issue of the use of
25 tracking polls in somewhat -- I appreciate this has

1 been in an abbreviated sense here in Court, but are you
2 prepared to tell the Committee what use you make of
3 tracking polls and how they fit into it as a measure
4 of the reliability of the information you get from the
5 balance of the poll?

6 A I am.

7 Q Have you ever refused to testify on that issue?

8 A I have not.

9 Q And did you testify in substance as you have testified
10 here when your deposition was taken in the proceedings
11 before the Public Utilities Commission on February 9,
12 1983?

13 A I did.

14 Q And are you prepared, Dr. Potholm, as part of your
15 responses to those questions to -- if the Committee for
16 some reason wants to know -- in a particular poll which
17 does not identify the client and does not identify the
18 substantive portions of the poll, are you prepared to
19 indicate to them what the tracking poll results were in
20 these nonutility tracking poll questions?

21 A I am.

22 Q Now with respect to some of the discussion that's going
23 on, I want to make sure that the record contains at
24 least some understanding or indicates your position as
25 to what various terms mean. What is, for example -- how

1 does the computer tape play a role in this process?

2 A The computer tape is the storage mechanism for all the
3 responses in a given poll. Technically speaking, the
4 computer tape is the poll. It contains all the raw data
5 collected in the course of a poll minus the identifica-
6 tion of the respondent.

7 Q The identification then of the respondent is taken out
8 of the information before it's put on the computer?

9 A Yes.

10 Q And is this the sort of tape that is used here
11 (indicating)?

12 A Yes, it is.

13 Q This is not a polling, but this is the sort of thing
14 that is used?

15 A Yes.

16 Q All right. What is the -- now the Court has reviewed
17 in camera a number of computer printouts. What do they
18 indicate?

19 A The computer printout is essentially a visual
20 representation of some or in some cases all of the
21 data on the tape and the manipulation of that data.

22 Q What do you mean manipulation? That is a sinister
23 word.

24 A The arrangement of the data in a way that produces
25 information. In other words, the tape may contain

1 hundreds of thousands of observations. The computer
2 printout may reduce that by a substantial amount by
3 focusing on the relevant pieces of information.

4 Q Is the computer tape containing the information, is that
5 polling data in your view?

6 A Yes, that is the raw data of the poll that is, in fact,
7 technically speaking the poll.

8 Q Do you have possession of any such poll data, that is,
9 the computer tape itself?

10 A I do not.

11 Q You do have the computer printouts?

12 A I have some computer printouts, yes.

13 Q And those have -- all of those computer printouts
14 relating to utility clients, have they been delivered
15 to the Committee?

16 A Yes.

17 Q Those were among more than 13,000 documents that you
18 turned over?

19 A Yes, they were.

20 Q And with respect to the nonutility clients, were there
21 computer printouts?

22 A Yes, there were.

23 Q And have you delivered those to me and I in turn, as
24 you understand it, delivered them to Judge Brody for
25 his in camera view?

1 A Yes.

2 Q What is an executive summary?

3 A An executive summary would be an overview of the
4 computer printout. The executive summary can take a
5 variety of forms and be a variety of lengths. It may
6 contain operational recommendations and interpretations
7 of the data.

8 Q Does the executive summary -- May I ask this, does that
9 combine your perception and expertise in interpreting
10 the poll, the poll data?

11 A Yes, it does. The executive summary does not contain
12 all the polling data of the tape or all of the computer
13 printout, but it contains figures and summaries of
14 that material and also the recommendations and the
15 interpretations that I would make of the data.

16 Q Now you have previously filed an affidavit. You have
17 previously filed an affidavit that -- with the
18 Committee in which you indicated that you had not
19 turned over polling data to anybody without the
20 permission of the client. Is the polling data to which
21 you referred in that affidavit the polling data which
22 you have described under oath in this courtroom?

23 A Yes, it is.

24 MR. RICHARDSON: And I would call the Court's
25 attention, if I may, to the fact that as Exhibit A-1 to

1 E-1 to its original application, the Committee filed with
2 the Court Mr. Potholm's affidavit or a copy of his
3 affidavit of September 21, 1984. I believe the Court --
4 it is a matter of record, and if I may, I'd like to ask
5 the Court if it has it before it now?

6 THE COURT: Well, I have a copy in the file, and I
7 have read it. So I'm sure I have it here. Do you plan
8 to examine this witness about it?

9 MR. RICHARDSON: I just want to make sure that that
10 affidavit is part of the record. I will check that
11 myself, Your Honor.

12 THE COURT: The record may indicate that the Court
13 has reviewed it. Whether or not it's actually in the --

14 MR. FLAHERTY: Your Honor, we have no objection to
15 its being considered a part of the record, E-1.

16 MR. RICHARDSON: That was part of the original
17 file, right?

18 MS. LAVOIE: Yes.

19 MR. RICHARDSON: Just in the excess of caution.

20 THE COURT: Dr. Potholm, as I say, perhaps in an
21 excess of caution, I have asked the Clerk to mark for
22 identification as Defendants' Exhibit 9 the affidavit
23 of September 21, 1984. Is that the copy of the affidavit
24 you filed?

25 THE WITNESS: Yes, it is.

1 MR. RICHARDSON: I offer it, Your Honor.

2 MR. FLAHERTY: I have already stipulated, Your
3 Honor, that it can be considered a part of the record.

4 MR. DOYLE: No objection.

5 THE COURT: It may be admitted without objection.

6 BY MR. RICHARDSON:

7 Q Dr. Potholm, I ask you whether or not the so-called
8 tracking questions that we've been discussing are --
9 I guess the word I'm looking for is perishable or time
10 sensitive? Do they have a lingering significance to
11 you as a pollster?

12 A They do not.

13 Q Why?

14 A Simply because over time all polling data ages and
15 their relevance is only in terms of the moment in which
16 those polls are being taken.

17 Q Do you -- Turning to another issue, do you, Professor
18 Potholm, or have you been involved in the day-to-day
19 work of maintaining the books of Command Research?

20 A I have not.

21 Q Who is responsible for the day-to-day work of maintaining
22 the financial ledger accounts and books of the accounts
23 of Command Research?

24 A Sandy.

25 Q Sandy is Mrs. Potholm?

1 A Yes.

2 Q And with respect to those records, understanding that
3 you don't maintain them, but I ask you whether or not
4 those records identify the people that you hire to make
5 telephone calls to respondents in order to generate the
6 polling data?

7 A They do.

8 Q Do you object to the production of that ledger book?

9 A Yes, I do.

10 Q Why?

11 A I do so for a variety of reasons. It contains all
12 manner of information of a competitive nature, contains
13 my prices, instructors could be determined from that,
14 the vendors that we use, the subcontractors that we
15 use, the costs of using those, all manner of activity
16 that is proprietary and relates to the competitive
17 nature of the enterprise with specific reference to the
18 names of the people who make the phone calls.

19 Q Excuse me, are you, in fact -- is Command Research, in
20 fact, in competition with V. Lance Tarrance and Market
21 Opinion Research and --

22 A We're in competition with not only national firms but
23 State firms as well.

24 Q Go ahead.

25 A I was trying to answer the original question about the

1 identity of the people who make the phone calls for me.
2 It is part of my contractual relationship with them
3 that their names not be divulged simply because many of
4 them have very strong views on many of the subjects
5 for which they are doing polling, and they have asked
6 me to maintain that their names not be mentioned, not
7 only in this Court but anywhere else simply because they
8 have strong opinions on the subjects even though, in
9 their professional capacity, they are making calls on
10 my behalf or clients who they may not agree with.

11 Q Should the Court understand from that that there may be
12 some people that are anti-nuclear enthusiasts who may
13 have been involved in the polling that was done on behalf
14 of Save Maine Yankee 1 and Save Maine Yankee 2?

15 A Absolutely.

16 THE COURT: Excuse me, would these ledgers identify
17 these people as having some connection with -- some
18 strong connection with one side or the other? Are these
19 just names?

20 THE WITNESS: They very well could. Some of the
21 names might be recognized, Your Honor.

22 THE COURT: And I take it these ledgers were not
23 turned over to me as part of the in camera inspection;
24 is that correct?

25 MR. RICHARDSON: They were not.

1 THE COURT: Were these ledgers included in the
2 response in that category in response to request number
3 5 that we agreed would not be turned over for in camera
4 inspection?

5 MR. RICHARDSON: Yes, and if I may, Judge, I want
6 to bring the Court up to date on where that issue is as
7 far as we're concerned. Because of the time constraints,
8 it wasn't possible for me to have this in order to
9 present to you, but as will be developed in the
10 testimony, I have had prepared a typewritten summary of
11 all that raw data, all those entries, and it has taken
12 an enormous amount of time, but we have that prepared,
13 and I'm prepared to offer testimony concerning the
14 summary's authenticity. I have the records here. I
15 have the summary here, and I'm prepared to turn that
16 summary over to you for an in camera inspection. I did
17 not suggest when we met before, Judge, turning over the
18 four volumes of receipts and all this because, frankly,
19 Your Honor, it was chaos. It would -- it was taking me
20 several hours to get through it, but I do have a summary.
21 I do want to ask Your Honor to review it in camera if
22 Your Honor wishes to do so.

23 MR. FLAHERTY: Your Honor, on behalf of the
24 Committee, I just want to state at this point that
25 while a summary obviously would be of considerable