



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20461

NJ000580

January 30, 1990

MEMORANDUM

**TO: FRED EILAND
CHIEF, PRESS OFFICE**

**FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION**

**SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT -
FRIENDS OF GARY HART - 1988, INC.**

Attached please find a copy of the final audit report on Friends of Gary Hart - 1988, Inc., which was approved by the Commission on January 25, 1990.

Information copies of the report have been received by all parties involved and the report may be released to the public.

Attachments as stated

cc: FEC Library
RAD
Public Disclosure
Office of General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

REPORT OF THE AUDIT DIVISION
ON
FRIENDS OF GARY HART - 1988, INC.

I. BackgroundA. Overview

This report is based on an audit of Friends of Gary Hart - 1988, Inc. ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it seems necessary, and to require the keeping and submission of any books, records, and information which it determines to be necessary to carry out its responsibilities.

The Committee registered with the Federal Election Commission on April 15, 1987. The Committee maintains its headquarters in Denver, Colorado.

The audit covered the period from the Committee's inception, November 23, 1986, through April 30, 1988.* In addition, data relating to the Statement of Net Outstanding Campaign Obligations (NOCO) were reviewed through May 31, 1988. The Committee reported an opening cash balance of \$-0-, total receipts of \$3,529,974.39, total disbursements of \$3,193,823.62 and a closing cash balance of \$336,150.67 on April 30, 1988. Under 11 C.F.R. § 9038.1(e)(4) additional audit work may be conducted and addenda to the report issued as necessary.

*/ The coverage dates include the period of time from Senator Hart's initial withdrawal from the Presidential campaign to his subsequent reentry into the campaign.

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This report is based upon documents and workpapers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

From the inception of the Committee until February 9, 1988, the Treasurer of the Committee was Michael Moore. From February 9, 1988 to date, the Treasurer of the Committee is Stephen Alfors.

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances; except that due to the lack of certain documentation for disbursements as noted in Finding III.B., testing relative to qualified campaign expenses, state allocations, and disclosure was limited.

II. Audit Findings and Recommendations Related to Title 2 of the United States Code

A. Contributions in the Form of Checks Made Payable to Americans With Hart ("AWH")

Section 421(9)(A)(i) of Title 2, United States Code states, in relevant part, that the term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

In addition, 11 C.F.R. § 110.1(b)(4)(i) states, in relevant part, that a contribution shall be considered to be designated in writing for a particular election if the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made.

During the Audit staff's review of receipts, it was noted that \$13,606 in checks bearing the payee designation "Americans With Hart," or memoranda to that effect, were received

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Committee. Of the remaining \$11,010, a Committee representative stated that they plan to forward \$3,219 from 116 contributors to AWH and request clarification on the remaining \$7,791 in contributions from 22 contributors. According to the Committee, the \$3,219 is being refunded due to the cost of verifying that the contributions were intended for the Committee and is not an admission by the Committee that the funds were actually intended for AWH.

In the interim audit report, the Audit staff recommended that within 30 days of the date of service of this report, the Committee submit evidence demonstrating that the \$11,010 in contributions were actually intended for the Committee. Absent such evidence, the Committee should forward the amount of the contributions to AWH and provide a copy of the refund check, front and back, to the Audit staff.

In its response to the interim audit report, the Committee provided documentation in support of the disposition of the remaining \$13,076 in contributions discussed above. The table below depicts said disposition.

<u>Disposition</u>	<u>Number of Contributions</u>	<u>\$ Value</u>
1. Check forwarded to AWH (3/1, 88)	116	\$ 3,325.00
2. Check forwarded to AWH (2/24 '89)	14	3,370.00
3. Documentation indication from by contributor to show contribution intended for Committee	12	5,821.00
4. Refunded to contributor	2	600.00
TOTAL	144	\$13,116.00*

Recommendation #1

Based upon our analysis of the Committee's response, the Audit staff recommends no further action regarding this matter.

* This total differs slightly from the \$13,076 cited in the interim audit report. Said difference [+ \$40.00] is not considered material.

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3. Contribution of Computer Equipment

The Committee received an in-kind contribution described as use of computer equipment. Documentation in Committee files indicated that the use of the computer equipment was valued at \$250 per month for the period January - April 1987. The file also contained an invoice for the purchase of the equipment which indicated that a portion of the purchase price was paid with a check drawn on General Dynamics (check #161752). The documentation provided leaves open the questions of the actual owners of the equipment, the actual users of the equipment, and how the \$1,000 value for four months use of computer equipment was derived. The Committee was unable to clarify any of these issues as of the end of fieldwork. In a response regarding these questions received from the Committee, the Committee stated that they were attempting to make contact with the contributor but had been unsuccessful to date [July 25, 1988].

In the interim audit report, the Audit staff recommended that within 30 calendar days of the date of service of this report the Committee:

- o provide evidence concerning the valuation of the contribution, and
- o provide evidence demonstrating the actual ownership of the equipment, and by whom and for what purpose the equipment was used.

In response to the interim audit report, the Committee provided correspondence from the named contributor in which he explained the circumstances surrounding the purchase and subsequent in-kind contribution of the computer equipment in question. The contributor explained that the reference to a General Dynamics check is understandably a source of confusion.

According to the contributor, as an employee of General Dynamics, he participated in "A voluntary employee benefit program which allowed any employee to take out an interest-free loan from General Dynamics to purchase computer equipment for their personal home use." The loans were then repaid through automatic paycheck withdrawals. The balance of the purchase price was paid from personal funds and the \$3,600 loan was paid in full in October 1985. The contributor also stated that he chose to loan his personal computer to the Committee's national campaign office in Washington, D.C. "on a purely voluntary individual basis," and regained possession of all hardware and software in April 1987.

Although the response does not specifically detail the derivation of the \$250 per month valuation, given the purchase price and age of the system, the \$250 per month valuation appears reasonable.

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Recommendation #2

The Audit staff recommends no further action.

C. Possible/Apparent Contributions in the Form of Advances - Media Purchases

Section 441b(b)(2) of Title 2, United States Code states, in relevant part, that the term "contribution" includes advances made to a candidate or his authorized committee.

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

On January 29, 1988, the Committee made a \$40,000 disbursement to DB Productions, a corporation, for media buys. Supporting documentation was not made available to the Audit staff during fieldwork, and the vendor account could not be reconciled. During post audit, copies of invoices totaling \$13,907.62 were provided to the Audit staff by the Committee. The Committee stated that there were four more invoices to be obtained, apparently for the \$26,092.38 balance. All of the supplied invoices were for service dates in February, 1988.

In the opinion of the Audit staff the lack of documentation for \$26,092.38 of the disbursement does not allow a determination as to whether or not it represents a qualified campaign expense. In addition, since the dates of the media purchases are not known, the possibility exists that DB Productions made a prohibited contribution by advancing funds on behalf of the Committee to effect media buys.

In the interim audit report, the Audit staff recommended that, within 30 calendar days of the service of that report, the Committee provide documentation in the form of invoices from broadcast stations detailing the remaining \$26,092.38 for media purchases, including dates purchased and run.

The Committee provided photocopies of station invoices supporting approximately \$40,000 (gross) in air time purchased. According to the invoices/affidavits, the ads were run in early February, 1988.

Recommendation #3

The Audit staff recommends no further action regarding this matter.

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D. Itemization of Expenditures

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

Further, Section 104.3(b)(4)(i)(A) of Title 11, Code of Federal Regulations, defines the term purpose as a brief statement or description of why the disbursement was made. Statements or descriptions such as "advance", "election day expenses", "other expenses", "expenses", "expense reimbursement", "miscellaneous", "outside services", "get-out-the-vote" and "voter registration" would not meet the requirements of 11 C.F.R. §104.3(b)(4) for reporting the purpose of an expenditure.

On March 31, 1987, the Committee entered into an agreement with Stratton & Associates ("SA") of Denver, Colorado. According to the agreement, this firm was to provide political organizing consulting services at a rate of \$1,700 per month plus previously agreed and reasonable travel expenses and other expenses. During the period from January, 1987 to March 1988, the Committee made payments to SA of \$23,305.31. In addition, payments totaling \$33,949.80 were made to Michael Stratton (the individual who executed the March 31, 1987 agreement on behalf of SA). The Audit staff reviewed the documentation provided and noted instances where, in the case of both SA and Michael Stratton, reimbursement of expenses associated with other individuals' travel as well as payments to vendors were itemized on the Committee's reports as travel and subsistence or contract services without any further description of the additional uses for which the funds were expended.

Although adequate documentation was not available for all payments, See Finding III.B., the Audit staff was able to identify 11 payments totaling \$30,596.61 where additional itemizations are required to detail expenses other than the individual's travel and subsistence.

Payments itemized as travel and subsistence for which documentation detailing the actual use of the funds was not present may also include items for which additional descriptions are required. The Audit staff identified 11 such payments totaling \$6,490.

A Committee official acknowledged that in some cases adequate documentation was not maintained and they would attempt to obtain the documentation and forward it to the Audit staff.

It was also noted in an accounting received from Arnold and Porter (see Finding III.G.) that the itemization included

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\$11,000 in payments, made between the time Senator Hart left the presidential primary race the first time and then reentered, to Patricia Sampers, a consultant to the Committee. A Committee representative stated that this was due to Arnold and Porter having an unused portion of the retainer paid to them by the Committee available. Rather than repay the funds to the Committee, Arnold and Porter was requested to pay the consultant out of the unused portion of the retainer.

In the interim audit report, the Audit staff recommended that within 30 days of the date of service of this report the Committee obtain the necessary documentation and file amended Schedules B-P to its reports to include additional descriptions relative to the purpose of the payments in question, including the consulting fees paid by Arnold and Porter.

On March 28, 1989, the Audit staff received the Committee's response relative to this finding in which it referred to the requested amendments and stated additional documentation had been obtained and amendments had been prepared with respect to reported payments to Michael Stratton/Stratton & Associates. In addition, with regard to payments made by Arnold and Porter, the Committee stated that it is filing a comprehensive amendment "which will fully satisfy this Recommendation."

Amendments were filed on August 7, 1989^{*/}, approximately 3 1/2 months after the close of the response period. Based on our review of the amendments and associated expenditure documentation, adequate clarification of the public record was accomplished.

Recommendation #4

The Audit staff recommends no further action at this time.

E. Matters Referred to Commission's Office of General Counsel

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

^{*/} According to a Committee official, the amendment was mailed (first class) in early April, 1989. However, a review of Commission records indicate it was never received. When informed of this in late July, the Committee official forwarded a photocopy of the amendment which was received on 8/7/89.

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III. Findings and Recommendations Related to Title 26 of the United States Code

A. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The Regulations at 11 C.F.R. § 9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified through the Date of Ineligibility - 3/11/88}}{\text{Numerator plus Private Contributions Received through 3/11/88}} = .325117$$

$$\frac{\$1,116,881.99}{\$3,435,319.05} = .325117$$

Thus, the repayment ratio for non-qualified campaign expenses is 32.5117%.

B. Apparent Non-qualified Campaign Expenses - Travel and Subsistence

Under 11 C.F.R. § 9038.2(b)(2), failure to provide adequate documentation in accordance with 11 C.F.R. § 9033.11(a), may result in expenditures being determined non-qualified.

Section 9033.11(a) of Title 11, Code of Federal Regulations, states in relevant part that the committee shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee as provided in 11 C.F.R. § 9033.11(b).

11 C.F.R. § 9033.11(b) expands this by specifying the types of documentation to be supplied: a receipted bill, invoice, voucher, contemporaneous memorandum accompanied by a

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Cancelled check negotiated by the payee, or a cancelled check negotiated by the payee that states the purpose of the disbursement. Where such support is not available, collateral evidence demonstrating that the disbursement is part of an otherwise sufficiently documented identifiable program or project or evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a per diem policy.

The Audit staff noted 664 disbursements totaling \$675,307.99, identified as travel and subsistence. Of these, 288 disbursements, totaling \$279,608, made prior to the date of ineligibility^{*/}, lacked adequate documentation.

These disbursements were in amounts ranging from \$125 to \$1,500. These amounts appeared to be based on a minimum amount per week although generally paid on a monthly basis. The Committee provided an opinion setting forth the policy as prepared by their legal counsel. In support of the payments, the Committee provided (1) agreements signed by all recipients stating the amount; (2) a statement accompanying each check outlining the intended purpose of the funds; and (3) a cancelled check with a memorandum on the face of the instrument reading variously "April expenses" (or words to that effect, the phrasing and month specified varied depending on grammar and the time issued).

Occasionally the memorandum entry on the check would also include the name of a state; only Iowa and New Hampshire were noted. Vouchers, receipted bills, invoices, itineraries or like documents were supplied by the recipients of the payments relative to a portion of the identified travel and subsistence disbursements.

The Committee stated that during the testing-the-waters portion of the 1988 campaign, the Committee carefully considered various options relating to the payment of field staff. The discussions resulted in a formal legal opinion which was the basis of the Committee's policy. Thus, when individuals were "away from home" performing services for the Committee, they were given per diem allowances for the cost of meals and lodging in lieu of expense reimbursement. Each individual received and signed a per diem agreement which was also signed by a campaign official. Thereafter, along with each per diem check, the individual received a notice reminding them of the policy and their responsibilities. All such disbursements were reported as "Travel/Subsistence" in the Committee's reports to the FEC.

Although the Committee agrees the legal opinion dealt with IRS, rather than FEC, consequences of the policy, the Committee contends that the policy satisfies the burden of proof

^{*/} 13 disbursements totaling \$7,317.67 made after the date of ineligibility also lacked adequate documentation.

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requirements for documentation of disbursements set forth in Section 9033.11 of the Code of Federal Regulations. The Committee further contended that for each disbursement in excess of \$200, the campaign has presented both a cancelled check and collateral evidence, as required at 9033.11(b)(iv)(B), namely "evidence that the disbursement is covered by a preestablished written campaign policy, such as a per diem policy."

The Audit staff does not agree with the Committee's contention that the policy satisfies the burden of proof requirements. In the Audit staff's opinion neither the written policy nor the information provided to date establishes that the disbursements in question were made in connection with the candidate's campaign for nomination. Admittedly, the Committee intended the per diem payments to be used to defray the costs of meals and lodging incurred by individuals when they were "away from home." No documentation was provided to demonstrate that the funds were indeed used for this purpose or any other purpose related to the campaign. In fact, no documentation was provided to show where the individuals who received the per diem payments were working.

The mere fact that the Committee chose to characterize these payments as per diem rather than advances should not obviate the need to provide documentation to show the monies in question were expended for qualified campaign expenses.

Receipts and vouchers are the major sources the Audit staff use to test allocation to states and to determine if a disbursement is a qualified campaign expense. The evidential matter presented by the Committee did not, in the opinion of the Audit staff, allow a determination of actual use and allocation to state limits.

In the interim audit report, the Audit staff recommended that, absent a showing to the contrary, within 30 days of the date of service of the report, the Commission approve the preliminary calculation that the aforementioned \$279,608.00 representing the value of undocumented travel and subsistence disbursements paid by the Committee be viewed as non-qualified campaign expenses. The Audit staff further recommended that absent a showing to the contrary the pro-rata portion \$91,570.78 ($\$279,608 \times .327497$)* be repaid to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

The Committee filed its response on March 29, 1989. The response begins with a discussion of the Committee's per diem policy.

*/ This ratio was revised slightly based on information concerning refunds actually made.

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The Committee restated its position that "its per-diem policy, along with agreements signed by recipients of per-diem payments and cancelled checks satisfy the burden of proof requirements for documentation of disbursements set forth in Section 9033.11 of the Code of Federal Regulations. For each disbursement in excess of \$200, the Committee has presented both a cancelled check and collateral evidence, as required at 9033.11(b)(iv)(B), namely "evidence that the disbursement is covered by a prestablished written campaign policy, such as a per diem policy."

In its response, the Committee took exception to several statements contained in the interim report.

- ° The interim report concluded that no documentation was provided to demonstrate that the funds (per diem payments) were indeed used to defray the costs of meals and lodging incurred by individuals when they were away from home. The Committee notes that in stating this conclusion "they [the auditors] call to question the word of over half of FOGH's paid campaign staff. These individuals personally signed a statement of understanding that such monies are solely for this stated purpose and no other."
- ° The interim report contained a statement "The mere fact that the Committee chose to characterize these payments as per diem rather than advances [to cover the costs of meals and lodging] should not obviate the need to provide documentation to show the monies in question were expended for qualified campaign expenses." Although in its response the Committee chose to quote only a portion of the above statement (see response at Attachment 2, page 2), the Committee reemphasized its position that the payments in question were in fact for per diem as evidenced by the information provided to the auditors during fieldwork.

The Committee included as part of its response information which in its opinion "...further demonstrates that all the expenses listed in Attachment 9 of the Interim Audit report were qualified campaign expenses, and were properly allocated to states." For each disbursement identified as undocumented in the interim report, the Committee listed, by payee, said disbursements including:

- "the check date, amount and check number for each of the payments₁/ in Attachment 9,

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- the page number in Attachment 9 referenced,
- the coding used to allocate these disbursements for Page 3 of the Report of Receipts and Disbursements,
- a brief description of the individual's job responsibilities and the office or state where the duties were performed,
- a statement of the individual's state of residence (obtained from W2 forms or other FOGH documentation),
- air travel information, if any, obtained from a careful review of vouchers from Imperial Travel Agency and showing the date, origin and destination of each flight, and
- an itemization of the supplemental documentation which is filed alphabetically by donor [payee] in Exhibit 12.

1 Payments to individuals which were for severance pay or other reimbursement have been removed from this section of the report, and appear at the end of this alphabetized list."

According to the Committee, affidavits reaffirming that monies received were actually spent as intended for travel and subsistence expenses were received from most of the individuals who received per diem payments. These affidavits were presented as part of the Committee's response.

In addition, the Committee noted that in cases where, during its review of the payments in question, state allocation errors were identified, an amendment to its reports was prepared to reflect a correction. Further, the Committee identified \$57,907.99 (\$50,607.99 + \$7,300) in payments to individuals originally disclosed as "Travel/Subsistence" instead of "Severance Pay." According to the Committee, "In general, the amounts paid were the same as one month of per diem. The intended purpose was to enable these staff workers to return to their home state, and to find other employment [after the first and second portion of the campaign terminated]." (Emphasis not in original.) An amendment was filed on August 7, 1989 to reflect these changes.*

*/ According to a Committee official, the amendment was mailed (first class) in early April, 1989. However, a review of Commission records indicate it was never received. When informed of this in late July, the Committee official forwarded a photocopy of the amendment which was received on 8/7/89.

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Finally, the Committee identified 13 disbursements questioned in the interim report which, although itemized as travel/subsistence on its reports, had no relationship to the per diem issue according to the Committee. Documentation in the form of travel expense vouchers, invoices, and receipted bills were submitted as part of its response.

The Audit staff reviewed the information described above; our comments are detailed below.

1. Severance/Termination Pay

Based upon our review of the disbursements reclassified by the committee as termination or severance pay, it is the Audit staff's opinion that, irrespective of the original classification, the amounts paid, in general, appear reasonable and under the circumstances may be viewed as separate from the "per diem" issue.

It should be noted, however, in the case of "severance pay" checks issued on May 7, 1987 relative to the termination of the first portion of the campaign, (a) in many instances individuals were issued a "per diem" check dated May 1, 1987 and then on May 7, 1989 were issued one or more checks now classified severance/termination pay, (b) in several instances the amount identified as severance pay exceeded the amount identified as monthly per diem, and (c) in two instances, checks identified as per diem were issued after May 7, 1987, to individuals who are listed as receiving a May 1, 1987 per diem payment as well as a May 7, 1987 severance payment.

With respect to the \$57,907.99 in payments reclassified as severance or termination pay by the Committee, the Audit staff has reduced the amount (\$279,608.00) identified in the interim report as undocumented travel and subsistence disbursements by \$50,607.99, and increased the amount of accounts payable for qualified campaign expenses as reflected on the NOCO statement contained in the interim audit report by \$7,300.00. This adjustment (\$7,300.00) represents the value of payments made after the candidate's date of ineligibility excluded from accounts payable pursuant to 11 C.F.R. §9034.5(b) at the interim report stage.

2. Non Per Diem Disbursements

Based upon our review of the documentation submitted by the Committee with respect to the 13 disbursements the Audit staff has reduced further the amount (\$279,608.00) of non-qualified campaign expenses mentioned in the interim audit report. In the opinion of the Audit staff, adequate supporting documentation was provided to document materially the 13 disbursements, totaling \$6,372.25.

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3. Per Diem Disbursements

In light of the matters discussed in 1 and 2 above, the disbursements now considered as per diem payments total \$222,627.76 [\$279,608 less (\$50,607.99 item 1 + \$6,372.25 item 2)]. The Committee's response contains a sizeable amount of information relative to the individuals to whom per diem checks were issued. The Committee has provided (a) photocopies of various payroll documents, (b) authorization forms and affidavits pertaining to the intended/stated actual use of the funds categorized as per diem, (c) a description of the position and/or work performed by the individual, including any air travel information identified, and the individual's state of residence, and (d) in those instances where errors were noted, the Committee has prepared amendments to its disclosure reports.

The Audit staff has reviewed the information supplied and notes that much of the same material was reviewed at the time of fieldwork. It is acknowledged that the affidavits obtained from the payees are useful in demonstrating that these payments were made for the intended purpose of providing travel and subsistence funds for Committee personnel. Further, the affidavits establish that the recipients understood the purpose of the payments and believed the funds were to be expended for that purpose. The documentation provided does not in all instances establish when travel occurred, the specific purpose of the travel, its duration, the types of expenses actually incurred or the location to which Committee personnel traveled. Without such information, it is not possible to determine the proper classification of these expenses as operating, compliance, or fundraising, nor is it possible to determine whether the expenses require allocation to any state expenditure limitation. In the opinion of the Audit staff, adequate supporting documentation was provided to document materially the per diem disbursements in question.

Summary

Based on our review of the information provided by the Committee in its response coupled with the Committee's apparent reliance on and compliance with the Commission's regulations concerning per diem payments, it is acknowledged that the \$222,627.76 in per diem disbursements discussed are documented in accordance with 11 C.F.R. § 9033.11(b)(1)(iv)(B).

Recommendation #5

It is recommended that no further action by the Committee is necessary.

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C. Apparent Non-qualified Campaign Expenses -
Media Purchases

As discussed at Finding II.C., the Committee was unable to provide documentation related to \$26,092.38 of the \$40,000 paid to DB Productions for media buys during fieldwork. In the opinion of the Audit Division, in the absence of adequate supporting documentation, the amount in question should be viewed as a non-qualified campaign expense, a pro rata portion of which is repayable to the United States Treasury in accordance with 11 C.F.R. §9038.2 (b) (3).

In the interim audit report, the Audit staff recommended that, absent a showing to the contrary, within 30 days of the date of service of the report, the Commission approve the preliminary calculation that the aforementioned \$26,092.38 representing the value of undocumented media disbursements paid by the Committee be viewed as non-qualified campaign expenses. the Audit staff further recommended that absent a showing to the contrary the pro-rata portion \$8,545.13 ($\$26,092.38 \times .327497$) be repaid to the United States Treasury pursuant to 26 U.S.C. §9038(b) (2).

On February 28, 1989, the Audit staff received the Committee's response which included documentation to support the payments in question.

Recommendation #6

The Audit staff recommends no further action on this matter.

D. Repayment of Surplus Funds

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations (NOCO) which contains, among other items, the total for all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

In addition, 11 C.F.R. § 9038.3(c)(1) requires a candidate whose net outstanding campaign obligations reflect a surplus on the day of ineligibility to repay to the Secretary within 30 calendar days of the ineligibility date an amount which represents the amount of matching funds contained in the surplus.

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The amount shall be an amount equal to that portion of the surplus which has the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's account.

Section 9038(b)(3) of Title 26 of the United States Code states that amounts received by a candidate from the matching payment account may be retained for the liquidation of all obligations to pay qualified campaign expenses incurred for a period not exceeding 6 months after the end of the matching payment period. After all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

Senator Hart's date of ineligibility was March 11, 1988. The Committee's Statement of Net Outstanding Campaign Obligations (NOCO) reflected a surplus on the date of ineligibility.

Statement of Net Outstanding Campaign Obligations

The Audit staff reviewed the Committee's financial activity through May 31, 1988, and its estimates of winding down costs.

The NOCC statement as adjusted by the Audit staff appears below.

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Friends of Gary Hart - 1988, Inc.
 Revised Statement of Net Outstanding Campaign Obligations
 March 11, 1988
 (Calculated Through May 31, 1988)

Assets

Cash on Hand	\$ -0-	
Cash in Banks	427,491.66	a/
Accounts Receivable	56,718.50	
Capital Assets	-0-	
Unliquidated Legal Retainer	<u>6,000.00</u>	
 Total Assets		 \$490,210.16

Obligations

Accounts Payable for Qualified Campaign Expenses and Winding Down Expenses through 5/31/88		(\$165,301.87)
8 Estimated Winding Down Costs (6/1/88 to 9/30/89)		
4 Salaries and Payroll Taxes	\$ (18,000.00)	
4 Legal Services	(110,000.00)	
6 Computer Services	(25,000.00)	
1 Audit Support	(18,000.00)	
1 Printing, Supplies, Postage	(12,000.00)	
0 Telephone	(3,000.00)	
7 Travel and Subsistence	(16,000.00)	
0 Estimated 1988 Taxes	(200.00)	
1 Office Expense	<u>(2,000.00)</u>	
	(204,200.00)	
9 (10/1/89 - 9/30/90)	<u>(31,400.00) b/</u>	(\$235,600.00) c/
 Total Obligations		 (400,901.87)
 Net Outstanding Campaign Obligations- Surplus		 <u>\$ 89,308.29</u>

a/ Includes contributions dated on or before March 11, 1988 but deposited after that date.

b/ The Committee filed a revised NOCO statement in October 1989 which included additional estimated winding down costs, totaling \$31,400, for the period 10/1/89 through 9/30/90.

c/ Estimated Winding Down Costs will be compared to actual expenses and adjustments, if material, made accordingly.

As noted on the NOCO statement, the Committee was in a surplus position on the Candidate's Date of Ineligibility. Application of the repayment ratio* contained at 11 C.F.R. § 9038.3(c)(1) results in a surplus repayment of \$29,035.64. On July 14, 1988, a repayment of \$31,462.06 was received from the Committee.

Conclusion #7

On January 25, 1990, the Commission made an initial determination that \$29,035.64, which represents a pro rata portion of surplus funds, is repayable to the United States Treasury. The repayment in an amount of \$31,462.06 has been received by the United States Treasury. Therefore, the Committee is due a return of \$2,426.42 representing an overpayment of the surplus repayment amount.

E. Interest on Federal Portions of Committee Surplus

If a committee transfers campaign funds into an interest bearing account, and if on the date of ineligibility the candidate's net outstanding campaign obligations reflect a surplus as defined in 11 C.F.R. § 9034.5, interest earned on the deposits after taxes must be repaid as part of the surplus subject to the ratio repayment formula of 26 U.S.C. § 9038(b)(3)).

Interest received on the Committee's surplus from March 12, 1988 through June 30, 1988 was calculated at \$4,864.17. Taking into consideration a provision for Federal Income Taxes of 15%, in accordance with 11 C.F.R. § 9034.4(a)(4), results in an amount payable to the United States Treasury of \$1,354.05:

Interest Earned 3/12/88 - 6/30/88	\$4,864.17
Provision for Federal Income Taxes (\$4,864.17 x .15)	<u>(729.63)</u>
	4,134.54
Repayment Ratio (Interim Audit Report)	<u>x .327497</u>
Interest Earned on Federal Funds Subject to Repayment 3/12/88 - 6/30/88	<u>\$1,354.05</u>

This amount was repaid by the Committee on July 14, 1988.

*/ The surplus repayment ratio (.325117) in this situation is the same as calculated at Finding III.A.

Conclusion #8

On January 25, 1990, the Commission made an initial determination that \$1,354.05, which represents a pro rata portion of interest earned on federal portions of the Committee's surplus, is repayable to the United States Treasury. The repayment has been received by the United States Treasury.

F. Matching Funds Received in Excess of Entitlement

Section 9038.2(b)(1)(i) of Title 11 of the Code of Federal Regulations states that the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Included are payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5.

As noted in Finding III.D, the candidate's NOCO statement reflected a surplus at the date of ineligibility (March 11, 1988). On March 18, 1988, prior to filing its initial NOCO statement, the Committee received \$5,399.68 in additional matching funds. Since the Committee was in a surplus position at the date of ineligibility, this payment was in excess of the candidate's entitlement. On July 14, 1988, a repayment of \$5,399.68 was received from the Committee.

Conclusion #9

On January 25, 1990, the Commission made an initial determination that \$5,399.68 represents matching funds received in excess of entitlement and that an equal amount must be repaid to the United States Treasury pursuant to 25 U.S.C. §9038(b)(1). The repayment has been received by the United States Treasury.

G. Reconciliation of Vendor Accounts

Section 9033.11(c) of Title 11 of the Code of Federal Regulations, states that the candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 C.F.R. § 102.9(c), and shall present these records to the Commission on request.

The Audit staff was unable to reconcile accounts maintained by the Committee for certain vendors. The vendors were Changing America, Inc., which handled the campaign's mail

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solicitations; Imperial Travel, Inc., which handled a large part of the campaign's travel; and Arnold and Porter, a law firm taking care of the legal aspects of the campaign.

A full and reconciliable accounting for Arnold and Porter was received during the exit conference. Invoices and a reconciliation for Imperial Travel, Inc. were received during post audit, leaving open only the matter of the reconciliation of the account maintained by the Committee for Changing America, Inc., which the Committee official stated would be forwarded to the Audit staff.

In the interim audit report, the Audit staff recommended that within 30 calendar days of the date of service of this report the Committee obtain and forward copies of invoices and reconciliation of the account for Changing America, Inc.

The Committee provided a letter, dated March 11, 1989, addressed to Changing America, Inc.'s accountant wherein the Committee concludes that, absent further documentation/explanation from Changing America, Inc., it appears that the Committee made a net overpayment of \$12,483.01. According to the Committee's reconciliation, the overpayment occurred when it made full payment against a statement issued by Changing America, Inc., the total amount of which was overstated by \$12,483.01.

In light of this apparent overpayment, the Audit staff has increased accounts receivable by \$12,483.01 on the WOCO statement.

Recommendation #10

The Audit staff recommends no further action at this time.

H. Repayment Recap

Surplus (III.D.)	\$ 29,035.64
Interest Earned (III.E.)	2,354.05
Excess of Entitlement (III.F.)	<u>5,399.63</u>
Total	\$ <u><u>36,789.32</u></u>

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