



FEDERAL ELECTION COMMISSION

WASHINGTON D.C. 20463

February 24, 1992

MEMORANDUM

TO: FRED S. EILAND
PRESS OFFICER

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

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT ON THE GEORGE
BUSH FOR PRESIDENT COMMITTEE, INC.

Attached please find a copy of the Final Audit report on the George Bush for President Committee, Inc. which was approved by the Commission on February 18, 1992.

Informational copies of the report have been sent to all parties involved and the report may be released to the public.

Attachment as stated

cc. Office of General Counsel
Office of Public Disclosure ✓
Reports Analysis Division
FEC Library



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

February 18, 1992

Mr. J. Stanley Huckaby, Treasurer
George Bush for President Committee, Inc.
228 South Washington Street, Suite 200
Alexandria, Virginia 22314

Dear Mr. Huckaby:

Attached please find the Final Audit Report on George Bush for President Committee, Inc. The Commission approved the report on February 18, 1992.

In accordance with 11 C.F.R. §9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is to repay to the Secretary of the Treasury \$113,079.70 within 90 days after service of this report (May 20, 1992). The report notes that the Committee has repaid \$105,623.82. Therefore, there is a balance of \$7,455.88 to repay. Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 C.F.R. §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (March 21, 1992), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 C.F.R. §9038.2(c)(3) permits a Candidate who has submitted written materials, to request an opportunity to make a oral presentation in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted by the Candidate within this 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the candidate so elects. If the Candidate decides to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this initial determination within the 30 day period provided, it will be considered final.

The Commission approved copy for the Final Audit Report will be placed on the public record February 24, 1992. Should you have any questions regarding the public release of this report, please contact Fred S. Eiland of the Commission's Press

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Mr. J. Stanley Huckaby, Treasurer
George Bush for President Committee. Inc.
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Office at (202) 219-4155 or toll free at (800)424-9530. Any questions you may have related to matters covered during the audit or in the report should be directed to Russ Bruner or Joseph F. Stoltz of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: President George Bush
Jan Baran

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

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REPORT OF THE AUDIT DIVISION
ON THE
GEORGE BUSH FOR PRESIDENT, INC.

I. Background

A. Overview

This report is based on an audit of George Bush for President, 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 deems necessary.

The Committee registered with the Federal Election Commission on February 19, 1987. The Committee's current mailing address is in Alexandria, Virginia.

The audit covered the period from the Committee's inception, July 11, 1986, through September 30, 1989. In addition, certain other financial activity relating to the Committee's Statement of Net Outstanding Campaign Obligations was reviewed through September 30, 1991. Records relating to the Committee's state allocation were reviewed through December, 1989.

The Committee reported an opening cash balance of \$-0-, total receipts of \$33,952,575.47, total disbursements of \$33,378,398.94, and a closing cash balance of \$574,176.53 on September 30, 1989. Under 11 C.F.R. §9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

The treasurer of the Committee from its inception to the present is J. Stanley Huckaby.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation; review of contribution and expenditure limitations; and other audit procedures as deemed necessary under the circumstances.

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

A. Prohibited Contributions - Media Commissions

Under Section 441b of Title 2 of the United States Code, it is unlawful for any corporation to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 C.F.R. §100.7(b), the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

Roger Ailes was the Committee's media consultant. The Committee contracted with his corporation, Ailes Communications Inc., to "supervise and manage all media production and purchasing of media time". Ailes Communications agreed to bill the Committee for actual production costs they incurred on behalf of the Committee without mark-up. However, Ailes Communications did receive \$285,245.51 in consulting payments during the campaign.

The same contract specifies that all media buying for the Committee will be done by Farrell Media, Inc. Farrell Media, Inc. is a subsidiary of Ailes Communications.

Compensation to Farrell was paid at the rate of 3.5% of the gross cost of the media time purchased. A review of the Committee's records does not indicate any network media buys, but rather the more labor intensive spot media buys. Based on a review of fees charged by other media firms for similar services rendered to other campaigns in the 1988 campaign period as well as previous elections, 3.5% is substantially less than what is normally charged for such services.

In the Interim Audit Report, the Audit staff recommended the Committee provide evidence which demonstrated that the 3.5% commission paid Farrell Media for media placement, did not constitute services at less than the usual and normal charge, and thus in-kind contributions from Farrell Media.

In response to the Interim Audit Report, the Treasurer stated that there was no standard media commission charged by the industry. He goes on to state, "Clearly, one such factor is that [sic] the size of the potential placement. Since a vendor's fees are based on a percentage commission, the larger the gross amount to be spent, the smaller percentage the vendor may be willing to accept in commissions. The Commission has recognized this over the course of several election cycles because it has approved media commission fees of between 3% and 15%." The Treasurer stated, this was the same percentage charged by the general election committee.

Recommendation # 1

The Audit staff recommends no further action on this matter.

B. Press Plane

Sections 9034.6(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, if an authorized committee incurs expenditures for transportation, ground services and facilities made available to media personnel, such expenditures will be considered qualified campaign expenses subject to overall expenditure limitations at 11 C.F.R. 9035.1(a). Further, if reimbursement for such expenditures is received by a committee, the amount shall not exceed either: The individual's pro rata share at the actual cost of the transportation and services made available; or a reasonable estimate for the individual's pro rata share of the actual cost of the transportation and services made available.

An individual's share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of transportation and services. The total amount of

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reimbursements received from an individual shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

Section 9034.6(d)(1) of Title 11 of the Code of Federal Regulations states, in part, that the committee may deduct from the amount of expenditures subject to the overall expenditure limitation at 11 C.F.R. 9035.1(a) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursement received equal to 3% of the actual cost of transportation and services as administrative costs. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements from the overall expenditure limitation.

Also, the Explanation and Justification for the above regulations (Federal Register, Volume 52, No. 106, page 20871) states, that "committees may deduct an additional 3% of the direct cost of providing services to the media if reimbursements in that amount are received. The additional 3% is intended to cover administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the Committee uses its own staff to perform these tasks or hires a travel consultant and collection agency." Further, when discussing the 3% administrative cost allowance the Explanation and Justification states that the new provision would continue to limit the amount billed to 110% of the direct cost of services. It doesn't increase the amount a campaign may bill for providing services. It only increases the size of the offset if reimbursements exceed 100% of direct cost to the campaign.

For one trip in October, 1987, and then frequently beginning in February 1988 the Committee provided a plane (Press Plane) for members of the press (Press) to accompany Air Force II. The Committee determined the cost of each leg of a trip and then billed members of the Press for air transportation, and in a separate calculation, ground transportation and services. In addition to members of the Press, the Press Plane manifest generally included Committee staff members who the Committee stated were charged with administering the press travel program, plus a small number of Secret Service agents and, on some flights, other Committee staff. When determining the amount to be billed to the Press, the Committee divided the cost of the flight by the number of

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persons on the plane excluding the staff who administered the Press travel program and the Secret Service agents. The resulting amount was then billed to the Press. The Committee also billed the Secret Service at first class airfare. The result of this procedure was to bill the Press for the cost of both the Committee staff members and the Secret Service agents, and to bill both the Press and the Secret Service for the Secret Service agent's travel.

As an example, the Committee method for billing was as follows: Assume a leg of a trip cost \$10,000; there are 20 press people; four Committee personnel to administer the program; and 2 Secret Service agents aboard. The Committee would have determined the amount billed to the Press as follows: Total Cost \$10,000 + 20 people = \$500 per person; and \$500 x 20 press people = \$10,000 billed to the Press.

The Interim Audit Report stated the appropriate method for computing the press billings in the above example is as follows: Total cost \$10,000 + 26 people = \$384.62 per person; and \$384.62 x 20 press people = \$7,692.40 billable cost. The regulation then allows a 10% markup for a total of \$8,461.64.

The Audit staff went through each leg of each trip using flight manifests provided by the Committee to determine a revised billable amount for the Press. The Committee billed the Press, a total of \$1,386,759.31 for airfare. The Audit staff computed the billable amount to the Press for airfare to be \$1,197,174.19 (including 10% markup).

The Committee also billed the Press for local ground costs on various trips. As a line item on these bills the Committee included "Daily Staff Expenses". Though no records were located to allow the Audit staff to calculate the costs covered by this item, it appeared to be the travel expenses of the Committee personnel that traveled with the Press. The Interim Audit Report noted that the explanation and justification for the Commission's regulations states that such administrative costs are not to be included in the cost calculation. The total amount billed to the Press for Daily Staff Expenses, during the Campaign was \$22,717.69

The Press was also billed for the total cost of the telephone filing centers but the Committee didn't take into account the refunds of \$4,330.11 they received.

One of the flights discussed above was a trip to New Orleans, Louisiana on August 16, 1988. The Committee billed the Press for the cost of this trip. The Audit staff could not locate any information in the Committee records that indicated the Committee paid any aircraft costs for this trip. The Audit staff could not locate any information in the Committee records

that indicated the Committee paid any aircraft costs for this trip. There was also no record of the Committee billing the Press for any local ground costs in connection with this trip. The candidate's itinerary showed he entered New Orleans on a riverboat, yet the Audit staff didn't locate any disbursements for this activity in the Committee records.

A summary of what the Committee billed the Press and the adjustments made by the Audit staff was included in the Interim Audit Report. Based on this summary, it was concluded that the Committee received \$218,278.64 in excess of the billable amount. This amount was included on the Committee's Net Outstanding Campaign Obligations as a payable to the various press organizations the Committee billed during the campaign. An adjustment was also made to the amount of offsets the Committee could apply against their overall expenditure limitation. Administration costs of 3% were added to the Committee's billable costs. The total reduction in offsets applied against the overall limit was \$298,046.54. This amount was added to the Committee's expenditures subject to the overall spending limitation.

In the Interim Audit Report the Audit staff recommended that the Committee provide evidence that they did not over bill the Press by \$218,278.64 and that offsets applied against the expenditure limitation should not be reduced by \$298,046.54. It was further noted, in the absence of such documentation, the Committee should submit evidence that \$218,278.64 had been refunded to the Press. This evidence was to include the calculation of the amount paid to each press organization and copies of the front and back of negotiated refund checks.

The Audit staff also recommended that the Committee provide additional information relating to the August 16, 1988 Press Plane and local grounds costs for the New Orleans trip. If the Committee did not pay for these activities, the Committee should provide the names of the organizations that paid, why the other organizations paid, what was paid for, the date paid, and the amounts.

Also related to August 16, 1988 travel, the Audit staff recommended that the Committee submit documentation demonstrating how costs relating to the Candidate's activities in New Orleans aboard the riverboat S.S. Natchez were paid. If other organizations paid these costs, provide the names of the organizations, why they paid the expenses, what was paid for, when it was paid, and the amount paid.

In December, 1989, the Committee provided the Audit staff with the candidate's itinerary for 1987 and 1988. A comparison was performed between the Press Plane manifests and the Air Force II trips taken by the candidate. A list was

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compiled of cities where there were trips made by the candidate but there were no Press Plane manifests. Also on this list were cities in which the candidate appeared but where no local ground costs were paid by the Committee and billed to the press. A list of the different cities were provided to the Committee during the audit, and at the exit conference.

In the Interim Audit Report, the Commission requested information about the previously mentioned cities, where there was no record of local transportation and /or press plane manifests. The Committee was to submit evidence to indicate whether or not a press plane was chartered in connection with these trips and whether ground transportation and services were provided. If a press plane or ground services were provided for the trips, the Committee should demonstrate how the costs were paid. If other organizations paid these costs, provide the names of the organizations, why they paid the expenses, what was paid for, when it was paid, and the amount paid.

In response to the Interim Audit Report, the Treasurer states that "...at no time did the Bush Committee bill the Press more than 100% of the cost of the services provided to the Press despite the fact that it legally could have done so." The Treasurer states that:

[t]he issue with regard to the Press Plane revolves solely around the fact that the pro rata press travel expenses included the travel expenses of four campaign individuals who traveled: 1) at the request of the press; 2) with the explicit understanding that they would be paid for by the press; and 3) to provide certain services requested by the press, which, had the press not requested these services, would not have been provided. Thus, these individuals would not have been on the press plane were it not for the request of the press.

The Committee provided five affidavits, including one from a member of the press who traveled on the press plane, which confirms the above stated points made by the Committee. The other four affidavits were from the Committee staff and outlined their duties as follows: "...to organize arrangements for ground and air transportation, respond to special requests of the press (such as additional press seats), arrange for proper and acceptable food and supplies of beverages requested by the press, and provide additional information regarding the schedule, all in addition to creating and maintaining passenger manifests and credit card payment facilities for the press."

The Treasurer takes exception to the Audit staff's treatment of these individuals as "passengers" on the Press plane. He contends that "these individuals were not 'passengers' any more than the pilot or navigator were

passengers" and that they were on the plane for the purpose of facilitating travel by the press and their costs were borne by the press with the full concurrence of the press. He adds that "... the Commission's own regulations acknowledge that there is no distinction between the Committee's staffers and independent contractors for the purposes of determining costs" (11 C.F.R. §9004.6(d)(2)) and that "... this issue would never have arisen had the Committee contracted with the air carrier for it to provide these services to the press using airline employees (as commercial airlines do for most of these services as a matter of course)." The Treasurer concludes that the Bush Committee does not owe the press \$218,278.64 in reimbursements.

The Audit staff disagrees with the Committee's contention that this issue would not have been raised if the Committee had contracted directly with the air carrier, to provide services to the Press using airline employees. As the Treasurer notes, Commission regulations make no distinction between having campaign personnel or third party personnel perform these administrative services. In neither case can administrative costs be included in the direct costs for purposes of billing persons traveling with the campaign.

The Treasurer's argument that the Committee staff who administer the Press travel program should not be considered as "passengers" is not relevant. The regulations at 11 C.F.R. § 9034.6 specify that an individual's pro rata cost shall be determined by dividing the total number of individuals to whom such transportation was made available by the cost of the transportation. All Committee staff are covered by the term "individual" regardless of their duties.

The Audit staff does not dispute that the Committee staff persons travelled at the request of the press, nor does the Audit staff dispute the Treasurer's statement that these campaign staff persons were on the plane for the purpose of facilitating travel for the press. These facts, however, do not establish that costs associated with these staff persons' travel are direct costs for providing transportation and services to the Press.

It is also the opinion of the Audit staff that the services provided by the Committee staff are administrative costs as defined in the Explanation and Justification (Federal Register, Volume 52, No. 106 Page 20871) for 11 C.F.R. §§ 9034.6(a) and (b) and 9034.6(d)(1). The Audit staff concurs with the Treasurer's reference to 11 C.F.R. §9004.6(d)(2) which states that administrative costs shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

According to the Committee's response, a clerical mistake was made with respect to the cost of the press plane on August 16, 1988. The cost was mistakenly paid for by the Bush-Quayle 88 Committee. The Committee submitted a copy of a check supporting that the Committee paid the General Election Account \$23,520. The Committee supplied no documentation with respect to the costs of this trip paid by the Bush-Quayle 88 Committee. Since the Committee paid for this trip, they are entitled to an increase of \$23,520 in billable costs.

With respect to the list of cities where no press plane manifest was located, the Committee responded, "For eighteen of the twenty trips identified, there was no press plane. For the remaining two trips identified, a press plane was chartered and Committee payments associated with these trips are attached." Though the Committee did not specify which two trips they meant, the documentation submitted was already provided after the close of fieldwork and incorporated in the Interim Audit Report. In the Audit staff's opinion, no information exists that additional press planes were used.

The same issue concerning the correct billable amount to the Press, was addressed by the Commission in the final audit report of the Bush-Quayle 88 Committee. In that report, the Commission permitted the air transportation, travel, and salary of the Committee staff to be added to the billable costs of the Press. To this new total, the Bush-Quayle 88 Committee was entitled to add 3% administrative costs.

The correct billable amount in the Interim Audit Report was \$1,139,541.38. The aforementioned \$23,520 for the August 16, 1988 trip was added for a billable amount of \$1,163,061.38. The costs of the Committee staff who administered the press travel program totaled \$276,330.37, for a revised billable amount of \$1,439,391.05. When 3% administrative costs are added, the amount the Committee would be able to offset against the overall expenditure limitation is \$1,482,573.50. The Committee received a total amount from the press of \$1,471,774.16. As a result, the Committee is entitled to offset the entire \$1,471,774.16 against the overall expenditure limitation.

Recommendation #2

The Audit staff recommends no further action on this matter.

C. Possible "Testing the Waters" Expenditures Made by Other Political Committees

Section 9034.4(a)(2) of Title 11 of the Code of Federal Regulations states that even though incurred prior to the date an individual becomes a candidate, payments made for

the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against the candidate's limits under 2 U.S.C. 441a(b).

Section 100.8(b)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that the term "expenditure" does not include payments made solely for the purpose of determining whether an individual should become a candidate. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

Section 100.7(a) of Title 11 of the Code of Federal Regulations states that a contribution includes a gift, subscription, loan, advance or deposit of money or anything of value by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes in-kind contributions.

Finally, Section 100.5(g) of Title 11 of the Code of Federal Regulations states that affiliated committees include all authorized committees of the same candidate and all committees established, financed, maintained or controlled by the same corporation, labor organization, person or group of persons.

The Fund for America's Future, Inc. (Fund) is a multicandidate committee which registered with the Commission on April 25, 1985. On January 22, 1986, the Fund requested an advisory opinion (AO 1986-6) with regard to expenditures for numerous activities it planned on participating in during the 1986 election cycle. In the request, the Fund states that George Bush is the founder and honorary chairman of the Fund but that the Fund is not authorized by any candidate. As part of the plan to support Republican candidates at the federal, state and local levels, the Fund stated that George Bush was required to make numerous trips to various locales for the purposes of fundraising and candidate support. One of the main areas in which the Fund planned activity was Michigan, in particular, the Michigan 1986 caucuses.

In the advisory opinion request, the Fund characterized the Michigan August 1986 caucuses as an "intra-party election, where those elected will participate in party affairs, such as the nomination of candidates for state office or selection of candidates for party leadership posts." The role of the precinct delegates was to participate in local caucuses for the purposes of selecting delegates to the state convention, who would then select delegates to the 1988

Republican National Convention. The Fund proposed to become involved in the 1986 caucuses by incurring expenses to recruit and encourage individuals to run for party office; and disseminating information, including qualifying petitions, regarding the election for such positions. The Fund would also make donations to these candidates.

In the context of the 1986 caucuses, the Commission concluded that:

the Fund's proposed activity in recruiting, assisting, and donating to individuals seeking election as precinct delegates in Michigan in August 1986 . . . will not, of itself, constitute contributions or expenditures for the purpose of influencing the Vice President's or any candidate's nomination or election to federal office, nor require allocation to any candidacy for federal office nor trigger any such candidacy.

However, the Commission cautioned in AO 1986-6 that activity in conjunction with the aiding of the precinct delegates that would go beyond the proposed activities enumerated in the Fund's letter, "such as the soliciting of support for Vice President Bush's candidacy or potential candidacy for President, or any other campaign activity on behalf of a clearly identified presidential candidate, could warrant a different conclusion by the Commission."

In addition to the Michigan activities, the Fund also described proposed activities in support of Republican candidates across the country. This included travel and appearances by George Bush with Republican candidates at the federal, state and local levels; the creation of steering committees; and a volunteer program. In the context of the activity proposed by the Fund, and its assertion that there would be no discussion of Bush's presidential aspirations, the Commission concluded that payments for such activities would not be considered "testing the waters" activities. However, the Commission noted in AO 1986-6 that:

this opinion is limited to the specific activities as described in your request and as interpreted in this opinion. It does not represent, and should not be read as, a Commission determination that any of the Fund's past or future payments are or are not made for the purpose of either evaluating Vice President Bush's potential 1988 candidacy or assisting him to determine whether he should become a candidate.

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AO 1986-6, fn. 3. In AO 1985-40, the Commission determined that disbursements by a multicandidate committee for activities similar to those described in AO 1986-6, which a former Senator was conducting for the purpose of determining whether to become a Presidential candidate, would constitute "testing the waters" to the extent that the Senator had not made a determination to become a candidate.

At the time of the Interim Audit Report, it was the opinion of the Audit staff that based on our review of reported Fund activity, as described below, substantial questions arose as to whether the activity undertaken by the Fund went beyond that envisioned in the advisory opinion. In order to answer these questions, it was necessary to examine the Fund records.

The Audit staff reviewed the Fund's disclosure reports filed with the Federal Election Commission from its inception, April 25, 1985 through March 5, 1987 to determine the extent of Fund activity in Michigan, Iowa and New Hampshire. The March 5, 1987 cut-off date was selected because the disclosed activity in these three states was immaterial after this point in time, which roughly coincided with the February 19, 1987 registration of the Presidential committee. Operating expenditures disclosed with payees in Michigan, Iowa and New Hampshire were categorized by the auditors in an attempt to determine what types of activities the Fund was involved in and whether possible "testing the waters" activities may have occurred. Michigan payees were included because of the candidate's involvement in the August 1986 Michigan caucuses. Iowa and New Hampshire payees were reviewed because the Presidential committee had apparently exceeded the spending limitations in those states and it appeared that the Fund had set up state organizations in these states which were fairly active until the Presidential committee registered in February 1987.

The Audit staff also reviewed an affiliated committee's reports, the Michigan Fund for America's Future (MI Fund), for the same time period, although the activity disclosed by this committee was minimal. It should be noted that the treasurer of the MI Fund later became a co-Chairman of the Presidential committee's Michigan state office. The MI Fund filed a state report with the state of Michigan and the Fund filed a state report with the state of New Hampshire, but neither of these reports provided the auditors with any additional information.

a. Michigan

The Fund itemized 898 operating expenditures to 251 Michigan payees totaling \$599,842.22 from the inception of the Fund through March 5, 1987. After reviewing these expenditures, it appears that activities were related to the August 1986 Michigan caucuses.

Of the 16 staff on payroll, 9 received their last paycheck on August 29, 1986 and only two received a check after August 29, 1986. Also, of the 15 consultants, only one received their final payment after September 1986. Similar trends occurred in other categories of expenditures. Volunteer expenses were paid to 50 individuals and one organization totaling \$3,204.00. Most of these payments occurred in August and September 1986. There were also expense reimbursements to 49 individuals totaling \$56,410.83.

There were payments for event costs made to 57 organizations totaling \$47,556.41. The period of time for these costs ranged from August 30, 1985 through January 27, 1987. It appears that an office was set up by the Fund in Lansing, Michigan because there were regular rent payments made from October 4, 1985 through December 26, 1986. There were also several payments related to direct mail efforts such as postage, printing, and market research. Six payments were made to Market Opinion Research, totaling \$42,909.90, between June 3, 1986 and September 22, 1986 for direct mail costs and market research. Market Opinion Research is a polling firm operated by Robert Teeter in Michigan, and was also used by the Committee.

It appears that activities associated with direct mail and polling may have gone beyond those deemed as permissible activities in Advisory Opinion 1986-6. The subject of Matter Under Review (MUR) 2133 was that the Republican National Committee authorized Market Opinion Research to conduct a 1985 poll on behalf of George Bush which contained questions related to his possible presidential candidacy in 1988 and whether this poll constituted testing the waters activities pursuant to 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Although MUR 2133 is not conclusive as to the nature of the disbursements at issue, it is questionable as to whether the polls were limited to the Michigan precinct delegate activities or if the polls were conducted in connection with possible testing the waters activities in support of George Bush.

b. Iowa

The Fund itemized 328 operating expenditures to 98 payees in Iowa totaling \$119,678.39. There were only two people that received payroll and consulting payments. However in 1986, the Fund made payments to 51 individuals for temporary services totaling \$12,567.44 and seven payments to a firm supplying temporary workers totaling \$1,836.94. Of the 51 workers paid by the Fund, 5 later received either salary or consulting payments from the Committee.

Payments were made to eight individuals and two firms for expense reimbursements totaling \$12,281.20. One of these individuals, who received \$7,326.20 of these expense reimbursements, later became Chairman of the Committee's Iowa office. Of the eight individuals and two firms who received expense reimbursements from the Fund, six of the individuals and one of the firms later received either salary or consulting payments from the Committee.

It appears that the Fund had an office in Des Moines, Iowa since they made regular rent payments. One of the two firms who received rent payments from the Fund later received rent payments from the Committee. There were also several payments related to direct mail costs, such as postage and printing. The firm who received the majority of payments for printing and direct mail from the Fund also later received direct mail payments from the Committee.

c. New Hampshire

The Fund itemized 203 operating expenditures to 55 payees, totaling \$125,312.57. There was one staff person on the payroll from December 6, 1985 to January 30, 1987. This same person later received salary payments from the Committee. Three individuals received consulting payments from the Fund. One of these individuals later received consulting payments from the Committee and became the Committee's List Development Director for New Hampshire. The Committee also purchased \$1,400.00 of computer equipment from this individual's firm. Another of these individuals was on the Committee's payroll in the first quarter of 1987.

Payments were also made to eight individuals for expense reimbursements totaling \$15,816.29. Two of these individuals later received expense reimbursements from the Committee. The Fund also made payments to 19 payees for event costs totaling \$22,723.54.

An office was apparently maintained in Concord, New Hampshire because regular rent payments were made from March 18, 1986 to December 2, 1986. There were also several payments relating to direct mail activities, such as postage, printing, and voting information lists.

The Audit staff also noted numerous references to the Fund in the Committee's vendor files. Listed below are specific examples.

1) On September 17, 1987, the Committee paid the Fund \$3,347.23 for computer services and office supplies in Iowa. A piece of equipment was bought by the Fund on December 5, 1985 for its Des Moines, Iowa office for \$284.72 and was sold to the Committee in 1987 for \$75. Also, on

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November 25, 1985 the Fund paid the Iowa Voter Registration Commission \$512.84 for microfiche copies of the Iowa voter registration file for its field operations in Iowa. In 1987, the Committee paid the Fund \$98 for these copies.

2) On September 17, 1986 the Committee paid the Fund \$275 for a list of 2,000 names.

3) In June, 1988 the Committee purchased furniture from the Fund totaling \$227.36.

4) On February 18, 1987 the Committee paid the Fund \$14,333.38. As part of this amount the Committee paid \$637.38 for 17,128 names on lists for apparent fundraising, computer equipment apparently located in New Hampshire or sent to New Hampshire, totaling \$9,883, office furniture totaling \$3,470, and miscellaneous office supplies for \$343.

5) On October 29, 1987 the Committee notified a vendor that it was assuming responsibility for an account which previously had been the responsibility of the Fund.

6) In January and February, 1987 Federal Express sent the Fund a bill for charges totaling \$932.25. The Committee paid \$313.20 of this total.

7) The Committee rented a typewriter in its Iowa office and received a bill from the vendor for a additional deposit \$46.80. The invoice states that the vendor requests a deposit of \$46.80 for an IBM typewriter that the Committee was currently renting. When the vendor received the deposit they would refund the old deposit held under the Fund's name. The vendor asked the Committee where to refund the Fund's deposit.

8) On January 28, 1987 an Iowa vendor billed the Fund \$2,163.22 for printing reply cards and envelopes. On February 27, 1987, the Committee paid the entire bill.

9) On November 25, 1986 the Rolm Corporation billed the Fund \$14,602.50 for a CBX II phone system. The billing states, "This letter is to confirm that ROLM Corporation will meet your intended system cutover date of January 5, 1987". The Committee paid the entire amount on November 26, 1986.

10) In March 1987, two hotels in Iowa billed the Fund \$551.54 for hotel rooms, for three people, in January and February, 1987. The three people later became employees of the Committee. The Committee also paid the hotel bills.

11) On January 30, 1987, a vendor billed the Fund \$1,944.25 for 25 hours of consulting services. The Committee paid the entire amount.

12) On an Air Force II itinerary covering January 16 to January 18, 1987 and paid by the Committee, Lee Atwater is listed as traveling for the Fund. Mr. Atwater became a political consultant and Campaign Manager for the Committee on January 1, 1987.

13) A hotel billed the Fund for Rich Bond's room and other expenses incurred January 8 and 9, 1987. Mr. Bond also shipped numerous items to the Fund and the Office of the Vice-President, and had the charges billed to the Fund. The Committee paid Bond and Co., \$10,884.65 for the previously mentioned expenses and his February, 1987 consulting fee. Rich Bond became a political consultant, a Deputy Campaign Manager, and a Political Director for the Committee on February 19, 1987.

14) Starting in July, 1986, Fred Bush billed the Fund for his consulting fees and secretarial services. A billing was done for every month through December, 1986. According to the August and October billing, the services provided included "Fundraising consulting". The September billing was for "Finance consulting", and included \$312.50 to a C.P.A. firm for, "Accounting and FEC compliance services." The Committee paid for all these expenses, totaling \$10,627.50.

15) In January, 1987 the Committee sublet office space from the Fund, and paid the landlord rent for January, 1987.

16) There were numerous common vendors used by the Fund and the Committee. The Fund also paid for the Vice President's travel on Air Force II. However, the Fund's reports do not indicate the destination of that travel.

Based on the Audit staff's review of the Fund's report, a request for supporting documentation of disbursements made by the Fund, was made of the Committee on January 17, 1990. Copies of workpapers, listing these disbursements, were provided to the Committee on the same day. The same request was made at the exit conference of March 5, 1990. The Treasurer stated that the Committee did not have the records because it was not their Committee, and could not provide them to the Commission.

At the time of the Interim Audit Report the activity described above indicated the possibility of a "testing the waters" campaign by the Fund on behalf of the Committee

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beginning in early 1986 and continuing until the first quarter 1987. A review of the Fund's disclosure reports did not enable the Audit staff to make a determination as to whether the activities undertaken by the Fund go beyond those deemed permissible in AO 1986-6.

In the Interim Audit Report, it was recommended that the Committee provide Fund disbursement records, including copies of invoices, bank statements, cancelled checks, debit and credit advices and any other documents related to the expenditures from the Fund's inception through June 30, 1987. The Committee was also encouraged to provide any explanations which it believed would clarify the nature of the disbursements.

In his response, the Treasurer states that the Fund was not connected in any way to the Committee, "they were two distinct entities which never had more than an arms length relationship with one another". The Treasurer also states, that it is "inappropriate" to suggest the Committee is in "possession of Fund documents" and to suggest the Committee can explain the Fund's expenditures.

In a separate letter to the Fund's Treasurer, the Commission requested that the Fund provide the following information:

"receipts and other documentation associated with disbursements made by the Fund which relate in any way to Iowa, Michigan, or New Hampshire from inception through June 30, 1987. These records are to include copies of invoices, bank statements, cancelled checks, debit and credit advices and any other documents related to the expenditures. The Committee is also encouraged to provide any explanations which it believes will clarify the nature of the disbursements."

The Treasurer of the Fund did provide some documentation in response to the letter sent by the Commission. In the response, the Treasurer states that the Fund terminated on June 4, 1990. The Treasurer sent invoices "relevant" to the Commission's inquiry covering the period January, 1987, to June, 1987. The documentation submitted by the Fund supported disbursements of \$23,104.81, in Michigan, New Hampshire, and Iowa.

The Treasurer goes on to state, "All invoices and other documentation prior to this time, other than checks and bank statements, were disposed of when the Fund went out of existence. While I do have original checks and bank statements, these reflect information identical to the information contained on the Fund's FEC reports."

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The Treasurer also states, "during the Fund's existence those associated with the Fund were very conscientious in complying with the Federal Election Campaign Act and its regulations. The Fund complied with both the letter and spirit of Advisory Opinion 1986-6 issued in 1986. As the enclosed documents reflect, the Fund paid only for those expenses permitted by the Advisory Opinion."

In prior audits of Title 26 candidates, the Commission determined that a limited number or type of expenditures could be associated with testing-the-waters expenses of the Presidential candidate. A number of disbursements made by the Fund possibly fall into this category.

The Fund paid a consultant for work performed in January, 1987. The consultant received the same amount from the Committee for consulting work. The first check issued by the Committee was on March 2, 1987. As previously stated, the consultant's job with the Committee was List Development Director for New Hampshire. His job was to update voter files from all over the state for Independents and Republicans in any form available. The Fund paid the same consultant a total of \$11,837.12 from May 15, 1986 to January 28, 1987. The Fund also paid the City of Manchester \$500.00 on January, 20, 1987, for a Manchester voter checklist on magnetic tape, requested by a person who became an employee of the Committee. The total additional expenditures related to New Hampshire based on the above activity is \$12,337.12.

Additional disbursements were made in Iowa in connection with voter lists. A person that was a consultant for the Committee was paid \$464.42 on March 20, 1987 for Iowa Republican and non-affiliated voter tapes. This consultant was reimbursed for similar expenses by the Committee. Another vendor was paid \$55.00 for a Republican activist list and \$160.00 for a tape copy charge, tape deposit, shipping, and programming. As previously mentioned, the Fund paid the Iowa Voter Registration Commission \$512.84 on November 25, 1985. In 1987, the Committee paid the Fund \$98 for these copies. The total additional expenditures related to Iowa based on the above activity is \$1,094.26.

The Fund also paid for telephone costs in Michigan, New Hampshire, and Iowa. In Michigan, the Fund paid a vendor a final bill for a telephone answering service in Lansing, Michigan of \$85.91 on January, 13, 1987. The first payment made to the same vendor by the Committee was on March 26, 1987. There were additional payments by the Fund to the vendor of \$275.26.

According to the documentation submitted, the Fund paid Michigan Bell \$138.18 on February 10, 1987, for telephone charges in November and December, 1986. The balance of the bill

was paid by the Committee on February 19, 1987. Additional payments of \$30,224.96 were made to Michigan Bell by the Fund covering the period from December 3, 1985 to January 5, 1987. Activity related to this vendor, totaled \$30,724.31.

In Michigan, the Fund's disclosure reports also indicate the Fund paid A.T.&T. a total of \$6,583.02 from November 6, 1985, to October 8, 1986, and MCI Telecommunications a total of \$1,059.48 on August 29, 1986, and September 30, 1986, for telephone expenses. Also, the Committee and the Fund did not provide any additional information with regard to the \$42,909.90 paid to Market Opinion Research, as previously mentioned in this finding. In our opinion, direct mail and polling may still go beyond the activity deemed permissible in Advisory Opinion 1986-6.

The Fund also paid additional telephone expenditures in New Hampshire. According to the invoices submitted, the Fund paid a vendor for the telephone expenses in the New Hampshire office of \$2,066.40. According to the Fund reports this vendor was paid additional disbursements for photocopying, conference room, event expense, office supplies, space rental and additional telephone expenses. The telephone expenses paid to this vendor totaled \$5,315.10.

The Fund submitted documentation indicating New England Telephone was paid \$52.39 as the final charges for the Fund's office expense in New Hampshire. According to the Fund's reports, \$2,797.46 in additional telephone expenses were paid to New England Telephone from the period June 10, 1986 to December 26, 1986. The Fund also reimbursed a person, who later became a consultant with the Committee, for his telephone expenses on March 9, 1987 for \$187.87. This person received his first payment from the Committee on February 10, 1987. From the information described above, the additional telephone expenses related to New Hampshire total \$8,352.82.

In Iowa, the Fund submitted information that they had paid Northwestern Bell \$478.20 on January 28, 1987 for the January, 1987 telephone bill. According to the Fund's reports, Northwestern Bell was paid an additional \$ 8,647.22 in additional telephone expenses from December 26, 1985 to December 26, 1986.

According to the documentation submitted, the Fund also reimbursed the consultant's, previously mentioned in the voter list section, law firm \$82.11 on February 10, 1987, as reimbursement for his telephone expenses. According to the Fund's disclosure report, the Fund reimbursed the consultant or his law firm an additional \$1,085.73, for the period December 17, 1985 to March 3, 1987, in reimbursed telephone expenses. From the information described above, the additional telephone expenses related to Iowa total \$10,293.26.

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Presented below is an overall summary for each state of the Fund activity based on the limited records available.

	<u>Total Amount Allocable For Each State</u>
Michigan	\$81,276.71
New Hampshire	20,689.94
Iowa	<u>11,387.52</u>
Total	<u>\$113,354.17</u>

The Office of General Counsel's legal analysis disagrees with the conclusions discussed above. Given the lack of records, it is not possible to demonstrate activity similar to that considered in previous cases. Therefore, in light of the few records available and AO-1986-6, the Audit staff accepts the Counsel's conclusion.

Recommendation #3

The Audit staff recommends no further action

D. Matters Referred to the Office of General Counsel

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

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.

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, 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.

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Also, 26 U.S.C. §9038(b)(3) states, in part, 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 candidate's accounts shall be promptly repaid to the matching payment account.

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

Total Matching Funds Certified through the Date of Ineligibility - 8/17/8
Numerator plus Total Deposits Received through 8/17/88

$$\frac{\$8,393,094.56}{\$8,393,094.56 + \$23,128,833.69} = .266262$$

Therefore, the repayment ratio is 26.6262%.

B. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11, Code of Federal Regulations requires that the candidate submit a Statement of Net Outstanding Campaign Obligations (NOCO) which contains, among other items, the total of 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 date 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.

Also, 26 U.S.C. § 9038(b)(3) states that "[a]mounts 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 candidate's accounts shall be promptly repaid to the matching payment account."

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Section 9033.5(c) and 9032.6(a) of Title 11 of the Code of Federal Regulations defines the date of ineligibility for a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention as the date of such nomination.

On August 17, 1988, President George W. Bush was nominated as the Republican Party's presidential candidate at its national convention. Therefore, that is the date on which President Bush's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Statement of Net Outstanding Campaign Obligations (NOCO) is the basis for determining further matching fund entitlement. The Committee filed a NOCO statement which reflected a \$25,940.00 deficit at August 17, 1988. There were no matching fund requests after the date of ineligibility, therefore, no revised NOCO statements were filed. The Audit staff analyzed the Committee's August 17, 1988 NOCO, and made adjustments to the financial activity as of that date. A review of the Committee's financial records through September 30, 1989, and the Committee's disclosure reports through September 30, 1990 was performed to determine the NOCO figures that appeared in the Interim Audit Report. Further adjustments were made based on the Committee's response and disclosure reports filed through September 30, 1991. The NOCO as adjusted by the Audit staff appears below:

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George Bush for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations as of
August 17, 1988^{a/}

Assets

Cash in Banks	\$1,122,102.92	
Accounts Receivable	585,331.90	b/
Capital Assets	<u>114,371.14</u>	
 Total Assets		 \$1,821,805.96

Liabilities

Accounts Payable		
Campaign Expenses and Winding Down Costs 8/17/88 to 9/30/91	1,902,598.00	c/
Amount Due Bush-Quayle '88	42,519.00	d/
Offset to Payables Unqualified Campaign Expenditures Contained in Accounts Payable at 8/17/88	<u>(214,219.62)</u>	e/
 Total Accounts Payable	 1,730,897.38	
 Estimated Winding Down and Compliance Costs Post 9/30/91	 90,908.58	f/
 Total Liabilities		 <u>\$1,821,805.96</u>
 Net Outstanding Campaign Obligations		 <u>\$ -0-</u>

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Footnotes to the NOCO

- a/ All figures shown were determined as of 8/17/88 unless otherwise noted.
- b/ Accounts Receivable includes refunds, rebates, interest earned and reimbursements received between 8/18/88 and 9/30/91, and excludes what Bush-Quayle '88 paid for Committee Assets. Amounts received between 8/18/88 and 9/30/89 were verified via the Committee's Account Receivable records. Figures between 10/1/89 through 9/30/91 are from reports filed and are subject to audit verification.
- c/ These amounts include adjustments other than the Press Plane and Payables to Bush-Quayle '88 discussed later in the report.
- d/ See Findings II.B Press Plane (\$23,520), III.D.4. Equipment Sold (\$4,140), and III.D.3. Prepaid Insurance (\$14,859).
- e/ This amount is the same as expenditures in excess of the overall limit. All amounts paid in excess of the overall spending limitation were paid after the date of ineligibility. (Finding III.D.)
- f/ Amounts provided by Committee in response to the Interim Audit Report.

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Recommendation # 4

The Audit staff recommends that the Commission make an initial determination that there is no repayment to the United States Treasury pursuant to 26 U.S.C. §9038(b)(3).

C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provide, in part, that no candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000, as adjusted by the change in the Consumer Price Index.

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that except for expenditures exempted under 11 C.F.R. §106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. Further, 11 C.F.R. §106.2(c) describes the various types of activities that are exempted from State allocation.

Section 106.2(c)(5) of Title 11 of the Code of Federal Regulations states, in part, that an amount equal to 10% of campaign workers salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election.

Section 106.2(b)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

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For the 1988 election, the expenditure limitation for the State of Iowa was \$775,217.60 and for the State of New Hampshire was \$461,000.00. Through the Committee's March 31, 1990 report on its FEC Form 3P, Page 3, the Committee's expenditures allocated to Iowa totalled \$775,041.95 and expenditures allocated to New Hampshire totalled \$481,332.45.

The Committee provided the Audit staff a computerized file containing all their expenditures from inception through December 31, 1988. The Committee also provided the Audit staff with allocation worksheets. The Committee's allocation methods were reviewed.

Copies of workpapers and supporting documentation for the Audit staff's allocations were provided to the Committee at the end of fieldwork. In the Interim Audit Report was a recap of allocable costs to Iowa and New Hampshire.

1. Adjustments to Committee's Allocations

On their report covering April, 1988, the Committee included a downward adjustment of their Iowa expenditures subject to the spending limitation. The support for this adjustment was a recalculation of Iowa allocable amounts from inception to April 30, 1988. In reviewing this recalculation, it was noted that refunds which had been previously considered in the Iowa allocations were excluded from the revised amount. In addition, a portion of the refunds received after April 30, 1988 were not considered in the Committee's subsequent allocations. These refunds result in a \$3,091.62 reduction in reported allocations.

It was also noted that the Committee's revised Iowa allocations apparently neglected to calculate a 10% compliance and 10% fundraising exemption on all salary expenses charged to the State. The Audit staff calculated a corrected exemption which resulted in a \$9,354.36 reduction to the reported allocation. The Audit staff also corrected an apparent error in the allocation of equipment purchases charged to Iowa. This correction resulted in a \$2,004.00 allocation reduction.

Finally, a number of other miscellaneous adjustments were made that require a net increase of \$459.45.

The net effect of these adjustments was a \$13,990.53 reduction in the reported allocation.

For New Hampshire, the Audit staff made a \$5,559.93 adjustment to decrease expenditures subject to the limitation, because the Committee did not calculate a fundraising exemption for payroll and overhead in the fourth quarter 1987. Also, the Committee did not provide any workpapers to support their allocations to New Hampshire for the first quarter, 1987 report.

The Audit staff recalculated the amount to be allocated from the automated disbursement file and included telephone installation charges which the Committee had apparently not allocated. These two adjustments cause a \$2,830.36 increase in the allocated amount. There were also miscellaneous adjustments that reduced Committee expenditures subject to the limit by \$1,479.18. Altogether, these adjustments decreased the expenditures subject to the New Hampshire limit by \$4,208.75.

In response to the Interim Audit Report, the Committee agreed with the Audit staff's downward adjustment of the Iowa allocations by \$13,990.53 and the New Hampshire allocations by \$4,208.75.

2. Individuals' Travel and Salary

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that salaries paid to persons working in a particular state for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. For purposes of this section "subsistence" includes only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

Also, the Explanation and Justification for the above regulations in the Federal Register, Volume 48, No. 25 page 5225, states, in part, if an individual is working in a State for four days or less, he or she will be presumed to be working on national campaign strategy and not influencing the primary in that particular state. For purposes of determining the length of time an individual remains in a State, the Commission will generally look to the calendar days or any portion thereof that the person was in a State rather than using 24-hour periods. If an individual works in a State for five consecutive days or more, that individual's salary must be allocated to that State from the date of his or her arrival.

Further, Chapter 1, page 32 of the Financial Control and Compliance Manual, states, "When determining whether a campaign staff person worked in a State for more than 4 consecutive days, the Commission will generally look to calendar days or any portion thereof, rather than 24 hour periods."

Finally, the Explanation and Justification for 11 CFR 106.2(c)(4) (Federal Register, Volume 48, No. 25, Page 5226) states, "Travel across State lines that is occasioned by

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transportation or lodging facilities will not be deemed exempt interstate travel. For example, a candidate or persons campaigning on a candidate's behalf in a particular State may have lodging accommodations in a contiguous State. In such cases, travel across State lines to campaign in a contiguous state would not be considered exempt interstate travel."

The Audit staff reviewed the vendor files related to Committee staff travel in Iowa and New Hampshire to identify travel and salary costs which although allocable were not allocated to these states by the Committee. In most cases, costs of lodging, air travel and vehicle rental were paid from headquarters rather than by the traveler. Further, no receipts for meals were apparently required for per diem paid to travelers. As a result, in order to determine an individual's length of travel and location, it was necessary to create a travel itinerary for such individuals from these various sources.

This review revealed that expenditures for intra-state travel and subsistence had been incurred by staff persons in Iowa and New Hampshire who were in these states on five or more consecutive days, or were Iowa and New Hampshire residents, but were not allocated to the states by the Committee. The related payroll costs for these staff persons was also calculated and included as expenses allocable to these states. The payroll was calculated for the period of time in which these persons were documented as being in these states and was adjusted for the compliance and fundraising exemptions as appropriate.

During the Audit staff's review we noted the Committee on a number of occasions would have a Committee staff person traveling in Iowa or New Hampshire, stay overnight in those states for three consecutive nights, then spend the fourth night in a border state; and return to Iowa or New Hampshire the next day and were therefore in the state on consecutive days. The Committee, did not allocate these travel disbursements, including an employee or consultant's salary, to the Iowa or New Hampshire state limits.

Also, while reviewing the vendor files we noted the candidate and a number of Committee staff stayed at a hotel, in White River Junction, Vermont, from January 13, 1988 to January 17, 1988. The hotel and related costs totaled \$15,804.89. During this period the candidate participated in the debate at Dartmouth College in Hanover, New Hampshire.

According to the candidate's itinerary, Air Force II landed in New Hampshire on January 13. He participated in events in New Hampshire on each day starting January 14, through his departure on January 17, 1988. The Committee paid the hotel bills for 28 people. Of the 28, 22 people stayed 5 days or

longer, and six stayed 4 days or less. Of the 22 people, 3 can be placed in New Hampshire 5 consecutive days, including the candidate. During this time period, the Committee rented five passenger vans and chartered several bus trips, one of which occurred January 16, 1988 from White River Junction to Hanover and return. The purpose of the bus trip was to transport people to the debate. In the Audit staff's opinion, with the exception of expenses for the six persons who traveled 4 days or less, the costs associated with the White River Junction, Vermont trip (hotels, meals, staff salary, staff office equipment, van, and auto rentals) should have been allocated to the New Hampshire expenditure limit. Some of the expenditures for this trip are included in the non-travel section below.

The next month numerous campaign workers stayed at the Lowell Hilton in Lowell, Massachusetts. The period was immediately preceding the New Hampshire primary. The Committee also had individuals, including the candidate, lodged at a hotel in Nashua, New Hampshire. In some cases, portions of the period were spent at both hotels, with some individuals' names appearing on rooms at both hotels. Also, many of the people, including the Candidate, who were staying in Nashua moved to the Lowell Hilton on the evening of February 13, and returned to New Hampshire on February 14 in an apparent effort to avoid the application of the 5 day rule. The current allocations include 15 individuals who traveled for 5 consecutive days in New Hampshire and Massachusetts and stayed at the Lowell Hilton, but can not be placed in New Hampshire for 5 consecutive days.

In the Interim Audit Report, the Audit staff determined that the following travel and salary cost totals should be allocated to Iowa and New Hampshire:

	<u>Iowa</u>	<u>New Hampshire</u>
Travel	\$ 52,152.44	\$ 69,635.51
Salary	<u>39,351.28</u>	<u>56,732.16</u>
TOTAL	\$ <u>91,503.72</u>	\$ <u>126,367.67</u>

The Committee was provided schedules of these travel and salary costs at the exit conference.

In addition to the amounts chargeable to the State spending limitations, the reallocation of salary from the national campaign to a State limitation results in an adjustment to the amount chargeable to compliance for purposes of the overall spending limitation. As a State expense, salary is eligible for a 10% compliance exemption. Compensation charged to the National Office is 5% compliance if part of operating, 85% compliance if part of the accounting office or 100% charged to the legal cost

center and not otherwise allocated (see Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing, April 1987, Pages 22-24).

Adjustments to the compliance exemption for the compensation payments discussed above result in an increase in amounts chargeable to the overall spending limitation of \$8,266.98.

The Committee did not agree with the Audit staff's adjustments regarding individuals' travel and salary. The Treasurer states, "The Audit Division incorrectly relies on the comment of the Compliance Manual that 'the Commission will generally look to calendar days or any portion thereof that the person was in the State rather than using 24-hour periods.' The Audit Division's reliance on this provision is irrelevant, for it is undisputed that the campaign staffers at issue here left the state before the fifth calendar day and also before the fifth 24-hour period. Our only dispute is over the fact that those workers, after being out of the state, returned again at some point during the next day. The Audit Division contends that this re-entry qualifies as the fifth 'consecutive' day, whereas the Committee maintains that the stay was by definition not consecutive (since it was broken by time out of state)."

The Treasurer continues, "...an individual may be in a particular state for only one hour a day for five days with the result being that the individual's salary and travel expenses are counted toward that state's expenditure limits." The report includes "15 individuals who travelled for five consecutive days in New Hampshire and Massachusetts and stayed at the Lowell Hilton, but can not be placed in New Hampshire for five consecutive days." The Treasurer states that these should not be allocated to New Hampshire since "they are clearly not allocable to any state". He continues, that under the regulations there is no "requirement that the Committee allocate that individual's salary or travel expenses to any particular state. It may well be true that the individual was in the state 'on consecutive days,' just as if he had been there for one hour on five consecutive days, but it is certainly not true that the individual was in the state 'for five consecutive days.' The Audit Division has failed to recognize this distinction."

As additional information the Committee included an affidavit from Gary E. Fendler, who according to the affidavit was "the Field Supervisor for the Advance Team of the George Bush for President Committee". According to the affidavit, "A number of rooms would be blocked by the Committee months before an anticipated stay in Iowa or New Hampshire in order to assure that sufficient rooms would be available for the travelling campaign entourage. Further, some of these rooms would be reserved for more than five days to permit Committee staff to arrive and leave the state prior to and following an event, as necessary." Mr. Fendler

continues, "my direction as well as the direction to the advance staff was to adhere to the policy of the campaign not to permit individuals to stay in a state for more than four consecutive days, so that the individual's salary and transportation expenses would not be allocable to that state. Therefore it was campaign policy that no individual was permitted to continuously occupy a room for more than four days. Rather, as the time came, individuals would stay in the rooms on an as needed basis. The hotels, however, would not necessarily have any record of a particular individual's comings and goings."

The Audit staff does not agree with the Committee's interpretation of the regulations at 11 CFR 106.2(b)(2). The references to the Explanation and Justification for that regulation and the similar passage in the Financial Control and Compliance Manual make it very clear that leaving a state for a short period during an otherwise uninterrupted stay of more than 4 days, does not begin a new trip. To follow that interpretation would allow the undesirable result of permitting a campaign worker to cross a state line every few days, buy a newspaper or have lunch to generate a document to prove he was in the other state, and then return to the state in which he is working. This would avoid any allocation of the campaign worker's salary or expenses even though the individual was working in the same state for weeks at a time. By defining consecutive days as a calendar day or any portion thereof, the Commission requires that a person be out of a state for at least one entire calendar day. This requirement serves to insure the underlying assumption stated in the Explanation and Justification. That assumption is as follows, "If an individual is working in a state for four days or less, he or she will be presumed to be working on national campaign strategy and not influencing the primary in that particular state". Therefore, if a person remains in the state for more than four consecutive days, they are presumed to be working to influence the primary election in the state. The Committee appears to argue that a short trip across a state border somehow converts the individuals function from state related to national campaign strategy.

The affidavit from Mr. Fendler serves only to establish that it was the Committee's intention to use the provisions of 11 CFR 106.2(b)(2) to avoid allocation whenever possible and that hotel rooms were not always used as indicated on Committee records. Though the problem with hotel records may be as previously described by the Committee, absent some indication to the contrary, the Audit staff must assume that if the Committee's records indicate that an individual was in a particular location for a specified period of time, that person was in that location.

With respect to those persons who were lodged in Massachusetts during the period immediately preceding the New Hampshire primary, the Committee's response provides no additional information. As noted above and in the Interim Audit Report, the

Explanation and Justification for 11 CFR 106.2(c)(4) makes it clear that lodging in a contiguous state does not preclude the allocations of an individual's salary and expense because such travel is not considered exempt interstate travel. In this case, the expenses are allocable under the general allocation provisions of 11 CFR 106.2(a)(1).

In the Interim Audit Report, the Audit Staff allocated some of Mr. Fendler's salary and travel to Iowa and New Hampshire based on the records provided by the Committee during fieldwork. According to this information, Mr. Fendler was in Iowa from January 18 to January 22, 1988. Mr. Fendler did spend the night of January 19 in Omaha, Nebraska but returned to Des Moines on January 20. Mr. Fendler left Iowa and traveled to New Hampshire on January 22. Regardless, Mr. Fendler was in Iowa for 5 consecutive days.

The next period of time Mr. Fendler was in Iowa was from January 29 to February 8, 1988. From the information provided Mr. Fendler stayed in Moline, Illinois the nights of February 1 and 5, but returned to Iowa the next day. Mr. Fendler had two trips allocated to New Hampshire. The first covered the period of January 11 to January 17. The nights of January 11 and 12, Mr. Fendler stayed in Bedford, New Hampshire. For the period January 13 to the 17, Mr. Fendler was with the group in White River Junction, Vermont that was previously explained in this finding. Mr. Fendler was also in New Hampshire for the period February 8, through February 17, with the group that stayed at the Clarion Somerset in New Hampshire and the Lowell Hilton in Massachusetts.

The affidavit submitted by Mr. Fendler and the information submitted by the Treasurer does not dispute this information. There was an overallocation of \$25.00 in the Interim Audit Report.

The next issue addressed in the Committee's response involved allocating expenses of Iowa residents to the state of Iowa. According to the Treasurer, none of these expenses should be allocated under the four day rule and none of these individuals were employees of the Committee. According to the Treasurer, "each of these individuals volunteered their time on an infrequent basis in order to assist the campaign, generally with a specific event, and they were reimbursed for their expenses. Thus, if an individual worked on an event for fewer than five days, his or her expenses were not allocated to the state, but rather that individual was treated in accordance with the four-day rule. This determination was appropriate because the individuals in question maintained non-Bush related jobs and would continue with their private lives at the end of their volunteer service to the campaign. The rules require that an individual work 'in a particular state for five consecutive days,'...before any travel or salary costs be attributed to that state."

The Audit staff is not able to determine whether a specific individual did volunteer work for the Committee on five consecutive days. Conversely, the Committee submits no evidence that their local campaign workers did not work on five or more consecutive days. However, this issue is not relevant. The Explanation and Justification for 11 CFR 106.2(b)(2) uses the term "remains in a State" when discussing the application of this provision. To use the Committee's standard that required that an individual work on the campaign, whether the person was a resident of the state or not, would require the Committee to keep detailed time records on all individuals that worked on the campaign. Further, it would allow a campaign to avoid any allocation of salary and travel expenses by simply giving each person a "day off" every fifth day.

The Treasurer also disagreed with the Audit staff's allocation of Ralph Brown's and Julie Mashburn's salary and travel expenses to the state of Iowa. The response states that all of Mr. Brown's and Ms. Mashburn's activity should be allocated to exempt compliance. The Treasurer also states that we should not have allocated \$566.02 of Jay Allison's expenses to Iowa for his hotel and rental car for the period April 7 to April 12, 1987. According to the Treasurer this should have been allocated to exempt fundraising.

The Audit staff cited 11 C.F.R. §106.2(c)(5) in the Interim Audit Report. The Committee elected to take 10% of campaign workers salaries as an exempt compliance cost and 10% for fundraising. The Regulation also states that a candidate can claim a larger exemption for any person, if the candidate establishes allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 C.F.R. §106.2(e). The Committee did not provide any documentation supporting allocations for each individual. The Committee can not claim 10% compliance costs for the other campaign workers in Iowa and 100% for Ralph Brown, and Julie Mashburn. The same is true for Jay Allison's travel expenses being totally allocated to the fundraising exemption.

According to the response, the Audit staff made errors of \$892.71. In the Interim Report, the Committee was provided an Attachment for the adjustments to allocations for travel and salaries. The adjustments were listed for each individual person and contains a separate column for salary and expenses. Therefore we are unable to determine what \$892.71 the Committee refers to as "errors in the figures provided by the Audit Division.

Based on the Committee's response the Audit staff concludes that no changes should be made to the \$91,503.72 allocated to Iowa for Travel and Salary expenditures, except for the previously mentioned \$25.00 overallocation to Mr. Fendler.

For New Hampshire, the Treasurer states that \$108,259.64 involved the four-day rule as previously discussed. Another \$4,430.87 was for allocating expenses for New Hampshire residents. As previously mentioned the Committee does not think these expenditures should be allocated. The Committee response also state that \$ 4,971.72 should not be allocated because they involved "individuals who were members of the exempt accounting staff, but who volunteered their time to the campaign while they were on vacation. These individuals were paid for their expenses while they were volunteering their time, and did not stay in the state for longer than four days." No documentation was submitted to demonstrate either the individuals volunteer status or that they were in New Hampshire for less than 5 days. The Committee also stated there was a discrepancy of \$5,238.65 in the figures provided by the Audit Division. As in the case in Iowa the Committee provided no information on how this discrepancy was determined. Also, as with Iowa an attachment was provided with the Interim Audit Report that listed each individual and the adjusted amount for that person's salary and travel. Earlier in the report we stated the Audit staff's position with regard to the five day rule and the New Hampshire residents. With the information in the Committee's response, we do not believe any change in the amount allocated to New Hampshire of \$126,367.67 is warranted.

3. Non-Travel and Salary

During the review of vendor files the Audit staff noted non-travel costs which were allocable to Iowa and New Hampshire but were not allocated to the states by the Committee. The Audit staff determined that non-travel costs, which were allocable to Iowa and New Hampshire, totaled \$39,286.15 and \$96,742.54 respectively. The types of expenditures that make up these adjustments, are as follows:

a) Hotel charges not allocated by the Committee that were not directly associated with the personal living expenses of a particular individual (i.e., banquet expenses and staff offices). The staff office was usually a room rented by the advance team of the Committee prior to the arrival of the candidate. The Committee generally allocated staff offices only if the rooms were rented for five consecutive days. Also included are the costs of incidentals related to groups of campaign workers staying at the Clarion Somerset (Nashua, New Hampshire) and the Lowell Hilton (Lowell, Massachusetts) for a period before the New Hampshire primary.

These miscellaneous hotel charges total \$14,983.31 in Iowa, and \$17,334.41 in New Hampshire.

The Committee's response to the Interim Audit Report did not include any additional documentation. According to the Treasurer, the staff offices were "residential suites - the

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extra hotel rooms associated with the sleeping quarters of campaign workers staying in particular states. The 'offices' were physically attached to these individuals' hotel rooms, and, in fact, were directly associated with the living expenses of Committee personnel while in the state. There should be no difference between renting an adjacent hotel room and renting a suite-like room with a separate living and dining area, as many hotel chains now offer. Thus, as with any room rented by a Committee staffer, if the individual left the state within four days, the costs of his or her rooms - including the staff office - were not allocated to the state." The Committee concludes that none of the \$14,136.59 of staff offices, which includes \$2,006.15 in long distance phone calls should be allocated.

The Committee's response argues only that these rooms were adjacent to accommodations of Committee staff. This proximity does not establish that the expenses were subsistence costs as defined at 11 CFR 106.2(b)(2)(iii) and therefore subject to the 5 day rule. That definition of subsistence "includes only expenditures for personal living expenses related to a particular individual traveling on committee business such as food or lodging". In this case, worksheets associated with most hotel bills show a room for each individual in the party with the associated charges, and a separate charge for "staff office" with no individual assigned to the room. The Audit staff has made no adjustment to the staff office allocation from the amount in the Interim Audit Report.

The Treasurer states, that another \$2,676.91 in expenses were neither incurred in Iowa or New Hampshire, and should not be allocated, but does not specify which expenses he is referring to. The Treasurer also states that \$2,026.08 in expenses were associated with volunteers. As the Treasurer previously stated, volunteer expenses are not allocated "if the volunteers did not work in the state for five consecutive days". As noted above, the Audit staff does not accept the Committee's interpretation. Also, as with the other amounts, no detail is provided to identify the particular expenses included in the amounts provided by the Committee.

Also, the Treasurer does not think that expenditures made to the Holiday Inn Center of New Hampshire should be allocated to New Hampshire. According to the response, the candidate and his guests did not stay five days. Though the Treasurer did not specify, there were two payments to this vendor that the Audit staff allocated to New Hampshire. The first involved miscellaneous charges of \$ 291.50 incurred by Kelly Walker. The travel expenses of Kelly Walker were allocated to the New Hampshire state expenditure limit. Walker was in New Hampshire from 11/11 to 11/18/87, and Lankering was in New Hampshire from 11/14 to 11/18/87. The Committee's invoice originally allocated this amount to New Hampshire.

The second payment to this vendor was \$1,078.75 for the final payment for a ballroom the night of February 16, 1988 and guest rooms at the hotel for the nights of February 15 and 16. The other payments to this vendor totaling \$2,453.00 were allocated to New Hampshire by the Committee. The Vice-President and numerous campaign staff were in New Hampshire from 2/10 to 2/16/88, including an overnight trip to the Lowell Hilton on 2/13 and 2/14. Further, expenses for the rental of a ballroom are not subject to the 5 day rule.

The Committee does not think that the Audit Division should allocate the "hospitality suite for an RNC Convention to the State of New Hampshire." A review of the Audit workpapers indicates that rather than an RNC convention, these expenses relate to the Republican Party's Northeastern Regional Conference. The Commission has determined that such expenses are not allocable. The amount of allocable expenses has therefore been reduced by \$1,951.82.

The Committee does agree that \$7,929.16 should have been allocated to New Hampshire. Based on the Committee's response, the Audit staff recommends no changes from the Interim Report to the allocations for miscellaneous hotel charges of \$14,983.31 in Iowa and an adjustment of \$1,951.82 in New Hampshire, changing the amount allocable to \$15,382.59.

b) Vehicle rental not allocated to New Hampshire and Iowa totaled \$15,800.84. Most of the expenses were for vehicles used in motorcades, events, or the rental was for longer than a 5 day period, including some rentals relating to the White River Junction, Vermont travel discussed in Section 2 above;

The Committee agrees with the Audit staff's allocation of \$227.13 for Iowa and \$10,055.51 for New Hampshire. The Treasurer disagrees with the other \$5,518.20 allocated to New Hampshire. "The buses were used to transport the press to various campaign events around the state. However, due to the high level of activity in New Hampshire, the campaign was not able to bill the press accurately for this transportation." The Audit staff reviewed the documentation in our workpapers and determined that pursuant to 11 C.F.R. 106.2(c)(3), these expenditure should not be allocated to New Hampshire.

c) The Committee had expenditures for a telemarketing program in New Hampshire that were mostly allocated to exempt fundraising. The Committee did not provide scripts in connection with this project, so the Audit staff was unable to determine if the expenditures should be allocated to exempt fundraising. The expenditures totaled \$30,557.14. There were additional amounts for telephone service charges, intrastate calls, and telephone equipment in Iowa and New Hampshire totalling \$6,077.73. In response to the Interim Audit Report the Committee supplied scripts used in the telemarketing program in New

Hampshire as requested in the Interim Audit Report. The Audit staff agrees with the committee's original allocation of \$36,634.87 to exempt fundraising.

d) The auditors identified costs for shipments of materials to Iowa and New Hampshire totaling \$2,621.77 and postage for mailings in Iowa and New Hampshire totaling \$15,139.88 that had not been allocated. The Committee provided additional documentation for \$13,860 in postage costs to support the original allocation to exempt fundraising. After reviewing this documentation the Audit staff agrees that these expenditures should not be allocated to Iowa.

The Treasurer also stated that \$396.58 and \$411.60 should not be allocated to Iowa and New Hampshire. "These payments were primarily for shipments of materials from the Office of the Vice President to the Advance Team in a particular state. Those shipments contained the Vice President's schedules and were not solely related to the destination state." The Treasurer also did not think \$384.25 of Federal Express charges should be allocated to Iowa because "these costs were related directly to exempt compliance". The Treasurer did not supply any additional documentation related to these expenditures and no adjustment to the Interim Audit Report allocations have been made.

e) A consultant wrote 10 speeches at \$1,000 a speech during the month of February and traveled to New Hampshire immediately preceding the New Hampshire primary. The Treasurer responded, "The more appropriate presumption is that Peggy Noonan wrote a series of speeches for the Vice President which he used in New Hampshire and throughout the campaign, including in connection with Super Tuesday which occurred on March 8, 1988. It would be reasonable to assume that she spent time in New Hampshire in order to confer with the Vice President about the contents of his speeches. It is also likely that the speeches were written in great part in Washington where Peggy Noonan lived. However, it is completely implausible that she would have written every speech while she was physically in New Hampshire, or that all ten speeches were given in New Hampshire."

According to the documentation provided by the Committee during fieldwork, Peggy Noonan was in New Hampshire from February 10 to February 17, 1988 and stayed at the Clarion Somerset and the Lowell Hilton. The billing Ms. Noonan sent to the Committee states that it is for services rendered, "Ten speeches for Vice President George Bush February, 1988". The billing was received by the Committee March 22, 1988. Since Ms. Noonan was in New Hampshire for eight consecutive days, it is not unreasonable to assume that the speeches were written in New Hampshire, although the allocation is not necessarily determined by the location of her writing. Also, Ms. Noonan's bill specifically is for February, 1988. The Committee provided no additional documentation, including copies of the speeches or an affidavit from Ms Noonan to support their position.

The Office of General Counsel's legal analysis did not agree with the Audit Division's allocation of the 10 speeches to the New Hampshire state expenditure limit. According to Counsel, "It is unlikely, based on the Committee's response, that Ms. Noonan's speeches were written or delivered to influence only the New Hampshire election. It is more plausible that her efforts were related to national strategy and that her speeches were used in several states."

Based on the Counsel's recommendation, the \$10,000 for Ms. Noonan's speeches have not been allocated to the New Hampshire limit.

f) The remaining adjustments discussed in the Interim Audit Report were for miscellaneous expenses such as supplies, equipment rental and collateral materials.

In the response, the Treasurer stated that they could only account for \$4,145.55 in miscellaneous items. Of this amount the Treasurer does not contest expenses totaling \$2,903.15. He also states that "\$371.86 in expenses were directly related to staff offices and/or fundraising events and are therefore not allocable... Of the remaining \$834.54, in identifiable expenses, \$452.77 relates to equipment that was returned to Washington for use in additional states" and "\$390.77 related to equipment used by either Roger Ailes or George Bush in connection with his media consultation and was correctly charged to Media Equipment Lease." The Treasurer did not provide any additional documentation to support these statements. In the Audit staff's opinion these expenditures should still be allocated to the states, therefore no adjustment to the Interim Audit Report allocation has been made.

The Committee stated there was no corresponding workpapers for \$19,433.19. Copies of all workpapers that related to the Audit staff adjustments were provided to the Committee at the exit conference and during the Committee's response period of the Interim Audit Report. Some of the other expenses that make up the miscellaneous category are additional telephone charges, telephone equipment, campaign posters, and headbands. The Committee also sold a mailing list. Only 80% of the cost was allocated to New Hampshire, but the receipt from the sale was offset 100% against the New Hampshire state limit. This information along with explanations were provided to the Committee. Also, \$1600.00 was allocated in the Interim Audit Report, to New Hampshire for consulting fees. The Audit staff has not allocated these fees based on Commission decisions in earlier audits.

4. Equipment Sold During Campaign

In 1987 the Committee purchased computer equipment and furniture from various sources, including Fund for America's

Future, which was apparently used in, but not properly allocated to New Hampshire. This same equipment was sold to the Sununu Committee in 1988 and an incorrect amount was used to reduce expenditures subject to the New Hampshire expenditure limit. An upward adjustment was made to the state's limit of \$6,300.96. The Treasurer did not contest the Audit staff's adjustment for the equipment sold to the Sununu Committee.

5. Prohibited In-kind Contribution

Under Section 441b of Title 2 of the United States Code, it is unlawful for any corporation to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the forgoing offices, or for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value. The term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 C.F.R. §100.7(b), the provision of goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution.

A corporation in Iowa leased the campaign vehicles in 1987 and 1988. The Committee generally paid for the gas, insurance, and sales tax, but not for the daily rent of the vehicle. The amount of the daily charge was on the bills sent to the Committee. The charges not paid by the Committee totaled \$4,815.95. This amount has been allocated to the Iowa spending limitation, added to the Committee's accounts payable on their Net Outstanding Campaign Obligations and added to the expenditure subject to the overall limitation (Finding III.D.).

The Treasurer did not agree that the Committee received a prohibited in-kind contribution. The Treasurer submitted an affidavit from Martha Charles, the Office Administrator of the Iowa state office for the Committee. According to Ms. Charles affidavit and the Treasurer, the Committee was "required to pay the costs of daily rentals plus mileage and other assessments if a vehicle had been otherwise requested by a renter. However, if no other renter requested a vehicle, then George Bush for President was required to pay only the fees assessed by Chuck Fletcher Ford." The Committee did not submit any contract or an affidavit from Chuck Fletcher's Ford with the response. It does not seem reasonable that a corporation

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in the rental car business, would not charge some fee for the use of it's vehicles in the normal course of business. The Audit staff recommends no change from the Interim Audit Report.

6. Allocation of Polling Expenses

The Committee had two corporations perform polling nationally and in many states. These corporations were associated with one pollster. The Committee paid the corporations a total of \$702,157.09. Of this total, \$240,000 was for consulting payments. The Committee allocated the survey costs correctly including allocation to the states. However, the Committee did not allocate any of the consulting payments to the states. The Audit staff divided the amount allocated to Iowa and New Hampshire by the total non-consulting expenditures totalling \$444,547.09. Approximately 4% of the corporations' work was allocated to Iowa and 2.81% was allocated to New Hampshire. When these were multiplied by the total consulting payments of \$240,000, \$9,600 and \$6,744 respectively are allocable to Iowa and New Hampshire. Based on Commission decisions on earlier audits, the Audit staff agrees with the Committee that consulting fees of \$9,600 and \$6,744 respectively for Iowa and New Hampshire should not be allocated.

During the Commission's consideration of this finding, the Commission could not reach a consensus, whether to include in expenditures subject to the New Hampshire state limit campaign activity related to the Lowell Hilton in Lowell, Massachusetts and activity related to White River Junction, Vermont, in those cases where an individual could not be placed in New Hampshire for at least five consecutive days. See Section 2. (Individual's Travel and Salary) and Section 3. (Non Travel Costs).

A motion was made to approve this finding provided the expenditures relating to Lowell, Massachusetts and White River Junction, Vermont were not included in expenditures subject to the New Hampshire state limit. This motion failed by a vote of 2-3 (Commissioners Aikens and Elliott voting in the affirmative and Commissioners McDonald, McGarry and Thomas voting against.)

A second motion was made to approve the finding as written; that motion failed by a vote of 3-2 (Commissioners McDonald, McGarry and Thomas voting in the affirmative and Commissioners Aikens and Elliott voting against.)

A third motion was made to exclude the amounts for activity relating to Lowell, Massachusetts and White River Junction, Vermont from expenditures subject to the New Hampshire state limit. This motion passed by a vote of 5-0.

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Recap of Iowa and New Hampshire Allocations

Presented below is a recap of allocable costs to Iowa and New Hampshire based on the response to the Interim Audit Report, and the adjustments the Audit staff recommends.

	<u>Iowa</u>	<u>New Hampshire</u>
Amount Allocated by the Committee	\$ 775,041.95	\$ 481,332.45
1) Adjustments Based on Committee Allocation Methods	(13,990.53)	(4,208.75)
2) Travel and Salary Costs	91,478.72	97,714.26
3) Non Travel Costs	25,464.54	35,658.26
4) Purchase and Sale of Equipment	-0-	6,300.96
5) In-Kind Contribution	4,815.95	-0-
6) Allocation of Polling Expenses	-0-	-0-
7) Testing-The-Waters (Finding II.C)	-0-	-0-
8) Void Check (Final Audit Report Finding III.P.)	<u>(2,930.40)</u>	<u>-0-</u>
Total Allocable Amount	\$ 879,880.23	\$ 616,797.18
Less Expenditure Limitation	<u>(775,217.60)</u>	<u>(461,000.00)</u>
Amount in Excess of Limitation	<u>\$ 104,662.63</u>	<u>\$ 155,797.18</u>

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D. Limitation on Expenditures

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code, state, in part, that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000 as adjusted for increases in the Consumer Price Index.

Section 9035.1(a) of Title 11 of the Code of Federal Regulations, states, in part, that no candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which in the aggregate, exceed \$10,000,000 (as adjusted under 2 U.S.C. 441a(c)).

Section 100.8(b)(15) of Title 11 of the Code of Federal Regulations, states, in relevant part, that expenditures for services solely to ensure compliance with the Act made by candidate certified to receive Primary Matching Funds under 11 C.F.R. Part 9034 do not count against such candidate's expenditure limitations under 11 C.F.R. 9035 or 11 C.F.R. 110.8.

The Audit staff's review of FEC Form 3P, page 4 for the period ending March 31, 1990 revealed that the Committee had reported Total Expenditures Subject to Limitation (Overall Limitation) of \$23,020,108.35. The expenditure limitation for the primary is \$23,050,000. In the Interim Audit Report, the Audit staff increased the total by \$617,158.78. As a result of these adjustments, the Committee exceeded the 2 U.S.C. 441a(b)(1)(A) spending limitation by \$587,267.13.

Presented below are the adjustments from the Interim Audit Report, the Committee's response to those adjustments, and the Audit staff analysis of the response. The Audit staff provided detailed schedules of these adjustments at the exit conference.

1. Differences Between Committee's FEC Reports, Committee Worksheets, and Computerized Data Base

A review was conducted to determine if the amounts reported were materially correct. A reconciliation was made for each report period between the Committee's F.E.C. reports, Committee worksheets used to prepare the reports, and the audit data base created from the computer discs provided by the Committee. Material differences were identified for each report. Overall, the Committee understated operating expenditures by \$203,762.14, overstated compliance expenditures by \$200,610.98, and understated total disbursements by \$3,151.16. The main reasons for these adjustments are listed below.

a) Compliance Exemption

11 C.F.R. 9035.1(c) states, in part, that a candidate may exclude from the overall expenditure limitations of 11 C.F.R. 9035.1 an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters as an exempt legal and accounting compliance cost under 11 C.F.R. 100.8(b)(15). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption. If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of their time performing duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage.

The Compliance Manual on pages 22-27 explains two alternative methods of allocating amounts to compliance. The first allows a committee to allocate 85% of the accounting office to compliance (including payroll, overhead, and other expenses). In addition, a Committee may allocate 5% of all payroll, and overhead associated with the national campaign headquarters office, excluding the legal and accounting offices, to exempt compliance. The legal office is then allocated based on percentages developed by the Committee. The second alternative allows the Committee to allocate 85% of the accounting office payroll expenses as well as a percentage of legal payroll developed by the Committee. In addition an amount equal to 10% of all non-overhead expenses of the legal and accounting offices may be considered exempt legal and accounting overhead. As with the previous alternative 5% of other national overhead and payroll, excluding the legal and accounting offices, may be considered exempt.

The Committee used the first alternative from the compliance manual (85% of accounting, 50% of the legal office developed by the Committee and 5% of national payroll and overhead). In addition, the Committee took 10% of legal and accounting payroll and other expenses as additional exempt overhead as provided in the second alternative. This resulted in a double exemption for exempt legal and accounting overhead.

b) Allocation of Legal Payroll

The Committee also, allocated legal payroll, 50% to operating expenditures and 50% to exempt compliance. The Committee then took the part allocated to operating and allocated an additional 5% to exempt compliance.

c) Voided Checks

The Committee generally reported voided checks written in earlier report periods as negative entries on later reports. If a compliance exemption was taken on the earlier report (i.e. the original charge was state or national payroll or overhead) the Committee would, in some cases, apply the entire voided amount against operating expenditures.

d) Refunds

The same problem that occurred with the voided checks mentioned above, occurred with some refunds or rebates received from vendors. If part of the original disbursement was allocated to exempt compliance when the refund was received by the Committee, the entire amount was applied against operating expenditures. In addition, the Committee received interest on deposits which in some cases, were reported as refunds and used to reduce the spending limitation. Also, near the end of 1988 and beginning of 1989 some Bush-Quayle '88 refunds were received and reported by the Committee as offsets against the expenditure limitation. These have been included as a payable on the Committee's Net Outstanding Campaign Obligations.

e) Miscellaneous Adjustments

There were also a number of miscellaneous adjustments, such as unreported disbursements, addition errors, voided checks not charged back against the limitation, expenditures reported twice, and voided checks charged back to operating when they had been originally reported as compliance.

It was noted that though provided for at 11 C.F.R. §9035.2(c)(1) the Committee did not generally charge the entire cost of matching fund submission preparation to compliance. The exception was third quarter 1987 where salaries of certain individuals were allocated 100% to compliance rather than 85% as part of the accounting office. The additional compliance allocation was \$1,937.19. Presumably similar adjustments could have been calculated for other periods. However, to take advantage of the exemption, detailed documentation supporting the calculations would be necessary.

As a result of the above adjustments, \$203,762.14 was added to the overall expenditure limitation.

In response to the Interim Audit Report, the Treasurer did not disagree with the adjustment of \$203,762.14. The Treasurer stated, "review of its accounts indicates that this aggregate figure is likely to be substantially accurate. Accordingly, the Committee has chosen not to expend its resources to identify the exact amount of each of these components, and will not dispute the Audit Division's overall figure."

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However, the Treasurer did not agree with the determination made by the Audit staff that he could not take an additional 5% compliance exemption on the 50% of legal payroll the Committee allocated to the overall limit, in addition to allocating 50% to exempt compliance. The Treasurer also disagreed that he had applied the entire voided check amount against the operating expenditures. However, the Committee did not dispute the calculations of the Audit staff.

2. Vendor Payments Charged to Payroll

During the campaign the Committee contracted with different vendors to conduct various types of campaign activity such as polling, media production, telemarketing programs, etc. Contracts were made between the Committee and these vendors. Part of the contract stipulated that a portion of the payments to each contractor were for consulting fees. These consulting payments were treated like any other person's salary on the Committee's payroll. If the work was performed on the national level, 5% of the fee was allocated to exempt compliance. If the work was performed on the state level, 10% of the fee was allocated to exempt compliance.

Although the Committee had over 200 people and organizations classified as consultants, most performed the same functions as if they were employees of the Committee. However, in the Audit staff's opinion, a number of these consultants were vendors rather than Committee staff, and adjustments totaling \$40,531.89 were made reducing exempt compliance and increasing the overall expenditure limitation.

In response to the vendors not considered campaign staff and not eligible for the 5% compliance exemption, the Treasurer states that although the Audit staff chose to consider the payments at issue as payments to vendors rather than as payments in the payroll category eligible for the 5% compliance exemption, the payments were for the personal services of individuals and therefore appropriately considered payroll. He also states that other committees claimed these exemptions for individuals in similar situations. He continues, "these individuals' personal services were rendered at the campaign or campaign facilities. Each one of these individuals utilized campaign offices and telephones, and several support staff."

The Commission decided to permit the Bush-Quayle '88 Committee to charge similar vendor payments to payroll and thereby take a 5% compliance exemption. Based on this determination, the Audit Division has reversed the Interim Audit Report adjustment.

3. Prepaid Insurance

During the campaign, the Committee paid for a number of insurance policies with one vendor. The coverage dates on these policies carried over into the general election period. In September, 1988, Bush-Quayle '88 reimbursed the Committee for their share of the insurance. An analysis of the Committee's original allocation between Bush-Quayle '88, the Compliance Fund, and the Committee, and a revised analysis provided by the Committee indicates the need for revisions to the recorded allocations. Bush-Quayle '88 over reimbursed the Committee by \$14,859. This amount is included as a payable to Bush-Quayle '88 on the Net Outstanding Campaign Obligations. When comparing the Committee's revised analysis with recorded amounts, it was determined that the compliance portion of the insurance expenses was overstated by \$27,705.87. The Audit staff had adjusted \$14,739 of this amount as a compliance reimbursement offset against the expenditure limitation (Section 1.d. above), leaving \$12,966.87 to be adjusted from compliance to the spending limitation. The total to be allocated to the spending limitation is \$27,825.87 (\$14,859.00 + \$12,966.87).

The Committee agreed with the Audit staff's adjustment for prepaid insurance and has paid Bush-Quayle \$14,859.

4. Equipment

Another issue in the Interim Audit Report concerns the equipment Bush-Quayle bought from the Committee. Bush-Quayle paid for some items which the Committee had previously sold to the Sununu Committee, but failed to remove the items from the Committee's equipment inventory. Therefore, Bush-Quayle paid a total of \$4,140 for equipment that was not in the possession of the Committee.

The Treasurer states that the Audit staff had erroneously relied on an inventory list found in the Committees records and that Bush-Quayle paid full the value of the equipment it received. The Treasurer explained that the Committee "initially did maintain a list of equipment based on serial numbers", but "the Committee ceased to update this list with additions or deletions. While equipment bought and sold by the Committee was carefully accounted for, such accounting was not exclusively by serial number after the initial early days of the campaign because it became impractical to do so." The Treasurer continues, Bush-Quayle did buy equipment from the Committee accounting for the full purchase price of that equipment. "The apparent administrative discrepancy in the clerical recording of the serial numbers does not affect the amount paid by Bush-Quayle '88 for the equipment it did in fact buy from the primary committee." Finally, an affidavit of a former Committee staff member was submitted in support of the Treasurer's explanation.

The Audit staff notes that the Committee did not provide in its response to the Interim Audit Report, any documentation to demonstrate which equipment was transferred to the Bush-Quayle from the Committee or the value of that equipment. The inventory list found in Committee records was, at the time of the audit, unverifiable. It is noted however, that the inventory list was the basis on which the amount of the payment from Bush-Quayle to the Committee for transferred equipment was determined. Absent the submission of more specific information, no change to the Interim Audit Report conclusion is warranted and the amount remains in expenditures subject to the spending limitation.

5. Exempt Legal and Accounting Expenditures

Section 100.8(b)(15) of Title 11 of the Code of Federal Regulations states, in part, that the cost of legal or accounting services rendered solely to ensure compliance with the Act do not count against the candidate's expenditure limitation under 11 CFR 9035.

Section 9035.1(c) of Title 11 of the Code of Federal Regulations states, in part, that a candidate may exclude from the overall expenditure limitation of 11 C.F.R. 9035.1 an amount equal to 10% of salaries and overhead expenditures for his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 C.F.R. 100.8(b)(15). If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of their time to duties which are considered compliance. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

The Audit staff reviewed Committee disbursements allocated to exempt compliance. The auditors noted 86 disbursements, totaling \$70,301.94, to 28 vendors lacking adequate documentation to support the Committee's allocation to exempt compliance. In addition, the Audit staff noted a number of allocations to exempt compliance for the Committee's Treasury Division staff, in connection with the Republican Convention in New Orleans in July and August, 1988. There were 54 of these disbursements totaling \$43,502.33 to 17 payees. Of the 17 payees, 13 were Treasury Division employees, three were for lodging, and one was for telephones.

Finally, between May 1, 1988 and August 31, 1988, the Committee added 40 employees to its Treasury Division. Thirty-eight of the 40 were new employees and two were transferred from other Divisions within the Committee. Payroll expenses for

these individuals through August 31, 1988 totalled \$93,593.93. It was also noted that 37 of these employees later worked for either Bush-Quayle '88 or the Compliance Committee.

Lists of these disbursements were provided to the Committee on January 17, 1990.

In response to the Interim Audit Report, the Committee submitted additional information for most of the disbursements noted above. In the Audit staff's opinion, the Committee's response supported most of the Committee's allocations to exempt compliance except for the following items.

Hilary Chestnut received one \$1,500 consulting payment. According to the Committee's response, Ms. Chestnut provided consulting services to the Treasury Division for the month of February 1987. The authorization form indicates she worked for the Treasury Division, and was signed by Stan Huckaby." The Committee's response provides no additional documentation or information. The authorization form referenced in the response provides for sign-off by the requesting individual, the cost center and the treasurer's office. The initials SH appear under treasurer's office, Ede Holiday, legal counsel signed under cost center, and the requesting individual is illegible. The original "Division" typed is "Administration" which is crossed out and "Treasurer" is written on the "Division" line. No description of work is provided.

The Committee paid \$3,682.32 to a law firm that reviewed "loan documents and related materials. The check authorization form was signed by Ede Holiday as campaign legal counsel." The documentation indicates that the law firm was paid to "prepare and/or review" documents related to a "\$1,000,000 standby letter of credit" with Sovran Bank. It further appears that the Committee paid one-half of the charge and the Bank the other. This disbursement, regardless of the person who approved it, does not appear to be related to compliance with the Act. Another law firm received \$277.25 for what the Treasurer stated were "legal services to the campaign." Legal services are not automatically compliance expenditures. This amount represents monthly billings for out-of-pocket expenses. In some months, they are charged to the spending limitation while in other months, they are charged to exempt categories. One payment which is included in the amount questioned has a note on the documentation which says "legal non-compliance."

Two of the Committee's staff people William Jasien and Julie Mashburn traveled to Michigan and Iowa. According to the Treasurer, Mr. Jasien "was required to go to Michigan to monitor and document campaign disbursements there." Ms. Mashburn's salary and travel was allocated to Iowa for reasons described in Exhibit C and an adjustment has previously been posted to the overall limitation. For the same reasons, Mr. Jasien's salary requires

adjustment for the difference between the allowable compliance charge for a employee at National Headquarters (85%) and a campaign worker in a state (10%). Mr. Jasien also had 10% of his salary allocated to fundraising.

The Committee did not respond to payments to two vendors, the Federal Election Commission for copies of the Dukakis Committee's reports, and C & P Telephone for a 900 phone line.

Also, according to the response, the Committee maintained an adjunct accounting office in New Orleans from about mid July to August 20, 1988. The purpose of the office was to track "campaign expenditures during the convention period, and to issue checks in payment for expenditures directly related to the campaign portion of convention expenses."

In addition, the Committee responded to adding 40 employees to its Treasury Division between May 1, 1988 and August 31, 1988. According to the Treasurer, "These individuals were assigned to data entry of contributor information, matching fund submissions, data entry of expenditures, inventory (including preparation for this audit), accounts receivable billing statements, as well as general filing." He continues, that it was in this same time period that the original accounting staff was "involved with the accounting functions of the treasury office at the convention in New Orleans, ... Thus, an obvious gap had to be filled because all of the preexisting functions of the accounting staff were still to be completed."

The Audit staff concludes that the Committee's response is adequate to support the compliance exemption for both groups of Committee employees. The total adjustments to the overall expenditure limit is \$10,650.17.

6. Secret Service

The Secret Service traveled on the Committee's Press Plane, as well as Air Force II. The total billable costs to the Secret Service that traveled on the Press Plane was \$100,953.35. The Committee received total reimbursements from the Secret Service of \$50,944.80. The billable amounts exceed the reimbursements by \$50,008.55. As the Commission has determined in prior audits, this amount should not be applied against the Committee's overall expenditure limitation.

7. Air Force II

Section 9034.7(b)(2) of Title 11 of the Code of Federal Regulations states, in part, a trip that includes campaign-related and non campaign related stops, that portion of the cost of the trip allocable to campaign activity, shall be determined by calculating what the trip would have cost from the point of origin

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of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin.

Section 9034.7(b)(3) of Title 11 of the Code of Federal Regulations states, in part, for each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

Section 9034.7(b)(4) of Title 11 of the Code of Federal Regulations states, in part, for trips by government conveyance, a list of all passengers, along with a designation of which passengers are and which are not campaign related, shall be made available to the Commission.

Section 9034.7(b)(5) of Title 11 of the Code of Federal Regulations states, in part, if government conveyance is used for campaign-related travel, the candidates authorized committee shall pay the government an amount equal to the first class commercial airfare plus the cost of other services, or the commercial charter rate plus the cost of other services.

Section 9003.4(a)(1) of Title 11 of the Code of Federal Regulations states, in part, a candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 C.F.R. 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with the general election campaign and which are for use during the expenditure report period. Examples include but are not limited to expenditures for establishing financial accounting systems, organizational planning and expenditures for polling.

The candidate used Air Force II for campaign travel. The Office of the Vice-President would bill the Committee for the campaign related portion of the trip at first class airfare plus one dollar. Each billing included a manifest showing the people that traveled on Air Force II and whether they were traveling on official or unofficial business. The unofficial portion of the manifest generally represented people that traveled for political reasons. Beginning in the later part of March, 1988, the Audit staff noted persons who traveled on Air Force II for unofficial reasons but whose airfare was not billed to the Committee by the Office of the Vice-President. Since, the Committee was not billed, they did not pay for these airfares, though the people involved appeared to be traveling for political reasons.

Many of the individuals on the manifests were political figures. According to Committee officials, these political figures or their political committees were probably billed by the Office of the Vice-President for their portion of the trip, and traveled for reasons of their own and not for Committee purposes. However, on a number of the flights people traveling for unofficial or political reasons were either employees or volunteers associated with the Committee, including the candidate.

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The Committee was provided the names of the individuals and asked to provide additional information as to who was billed for this airfare, and why the Committee wasn't liable for these people traveling on Air Force II. According to Committee records, the costs for people traveling on Air Force II from March 24, 1988 through August 16, 1988, for unofficial reasons, not paid by the Committee, totaled \$69,814.00.

Accompanying the billings for Air Force II, the Office of the Vice President would also bill for White House Communications Agency costs. These bills include what percentage or portion of a trip was political. The billings also indicated if another political organization was liable for a portion of the expenses. The invoices indicating other political organizations were billed for part or all the communication costs, totaled \$21,168.98. The Committee paid \$6,506.56 of this amount. There were additional billings not paid by the Committee which indicated 100% political use. These totaled \$16,595, and there was no record of payment by the Committee or any other organization in Committee files. These amounts and the cities the candidate traveled to were provided to the Committee at the close of fieldwork.

Starting on August 2, 1988 through August 9, 1988 the candidate made a number of trips which were paid for by the general election campaign (Bush-Quayle '88), even though the trips were made prior to the party's convention. These trips, including the White House Communications costs, totaled \$30,101.26. In the Audit staff's opinion these expenditures did not meet the requirements of 11 C.F.R. 9003.4(a)(1). Therefore, in the Interim Audit Report, this amount was added to expenditures subject to the overall spending limitation, and included in accounts payable on the Statement of Net Outstanding Campaign Obligations as a liability to Bush-Quayle '88.

In the Interim Audit Report, the Audit staff requested the following information:

a) Additional information about individuals that traveled on Air Force II for unofficial reasons but were not billed to or paid for by the Committee, including:

- i) why the travel was not related to the primary campaign;
- ii) the name of the organization that paid for the trip; and
- iii) the amount paid by the other organization for each trip.

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b) The Committee should provide additional information about White House communication costs, to include why on certain political trips billed by the Office of Vice President, the Committee only paid for a portion of the costs. The Committee should also explain why on other trips they paid for none of the costs. If another organization paid the charges, the Committee should supply information about the organization to include:

- i) why they paid these costs;
- ii) what they paid for; and
- iii) the amount paid.

c) The Committee should also supply additional information as to why it is not liable for the Air Force II and White House Communication costs for the trips in August, 1988, paid for by Bush-Quayle '88.

In the Committee's response to the Interim Audit Report, the Treasurer states that the Campaign served "as a clearinghouse for 'political' travel on Air Force II (including non-campaign related political travel)." Also included is the following explanation by David Nummy, Comptroller of the Bush Committee:

"...the Campaign would receive requests from candidates, committees, and federal, state, and local officeholders requesting the opportunity to travel on Air Force II.... Such requests for political travel on Air Force II were accommodated by the campaign for the benefit of such other candidates, committees, or federal, state and local officeholders whenever possible, to the extent that there were seats available once the campaign's own travel requirements were met. The travel of these individuals was always contingent, however, on the approval of the Office of the Vice President....In these instances of non-Bush campaign travel by officeholders and others, the cost of these segments was billed directly by the Office of the Vice President to these individuals because their travel was not related to the George Bush For President Committee."

The Treasurer adds that "even if an individual on the plane was a 'politician,' there is no reason to assume that that individual was not on the plane to further his or her own political objectives, as opposed to the Bush campaign's" and:

"...even if an individual was on the plane for 'unofficial' (non-governmental) business, this does not mean that he or she was necessarily on the plane for 'Bush campaign' business. Members of the Vice President's family, and personal friends, travelled on Air Force II for reasons related to neither government nor campaign business. If the Vice President had travelled by commercial plane, such costs would have been paid directly by other non-public sources. However, the Vice President

of the United States travels as a matter of course on Air Force II, so that all personal guests are handled through the United States Government. Moreover, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the transportation of the individuals in question, unless that information is publicly available."

The Treasurer continues, "as was the case in the general election Audit Report, several of the federal candidates or office holders identified on Attachment 2 to the Interim Report paid for their transportation as reflected on their FEC disclosure reports on file with the Commission. As to several of the remaining trips identified on Attachment 2 to the Audit Report, the Commission has already been notified that these were not campaign related trips". The Committee provided no additional additional information as to which office holders paid for their transportation expenses.

The Committee goes on to state that several individuals were incorrectly identified as Committee staff on Attachment 2 of the Interim Audit Report. According to the Treasurer, "Every Bush staffer or individual authorized to travel on behalf of George Bush for President was paid for by the Bush Committee." Again, as noted by the Audit staff in the Interim Audit Report, the information relied on by the staff was from the billings to the Committee by the Office of Vice President.

With respect to White House communication costs, the Treasurer explains that, as in the case of the Air Force II costs, "when the Vice-President travelled on non-campaign business, the campaign was not charged for WHCA costs. As can be seen when comparing Attachments 2 and 3 to the Interim Audit Report, for each trip which previously was identified as non-campaign related, no WHCA costs were assessed to the campaign. Again therefore, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the WHCA costs in question, unless that information is publicly available."

The Audit staff researched the Federal Election Commission disclosure reports and identified 18 individuals who were members of or candidates for Congress, whose air travel between March 24 and August 9, 1988, was paid for by their own committees. This included a three spouses of candidates who traveled on Air Force II for unofficial reasons. Of \$18,525.00 billed for these individuals, \$5,854.00 was paid by the candidate committees. Another \$5,992.00 pertained to travel that the Commission determined to be the General Election Committee's activity in August, 1988. An explanation of that activity is presented below. Of the original \$69,814.00 detailed in the interim audit report, \$57,968.00 remains unaccounted for as to which organization paid for this travel. The Audit staff recommended that the \$57,968.00 in transportation costs and the

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White House Communication Agency costs of \$31,257.42 not paid by the Committee be considered contributions in-kind and applied to the overall spending limitation.

On January 30, 1992 the Commission voted to exclude from expenditures subject to the overall limit, people traveling on Air Force II except for the candidate, his spouse, and anyone identified or associated with George Bush for President. White House Communication Agency costs have also been excluded. As a result the total amount considered as an in-kind contribution totals \$13,969.00.

In the next issue addressed, the Treasurer states "the travel in the week of August 2 through 9 were appropriately charged to the General Election Committee." The Treasurer reasons that "by summer, 1988 all of the presidential primaries had been completed, and Vice President Bush was assured of his party's nomination. Thus, the campaign properly undertook to determine whether Vice President Bush's travel during this post-primary period was nomination or general election related. Expenses were paid by either George Bush for President or Bush-Quayle 88 in accordance with this determination." The Treasurer states further, that "the Commission has previously permitted general election committees to pay expenses attributable to the general election which are incurred prior to the general election period", and the Treasurer refers to Reagan-Bush Audit of 1984 as support for this statement.

The Audit staff does not dispute that by August of 1988, all primaries were over or that the Candidate appeared to be assured the nomination. In the Bush-Quayle 88 audit report, the Commission determined that the travel costs discussed above did not meet the definition of permissible pre-expenditure report period expenses and therefore were considered non-qualified campaign expenses on the Bush-Quayle 88 audit report. The Audit staff is of the opinion that no further action, with respect to the Committee, is necessary with regard to the \$30,101.26.

8. Expenditures Subject to Overall Limitation - Recap

The following is a recap of adjustments to Committee's expenditures subject to the overall limitation.

Expenditures subject to the limitation as of March 31, 1990, as reported by the Committee	\$23,020,108.35
Add: a) Overstated compliance and understated operating expenditures (Section 1. above)	203,762.14
b) Insurance reimbursed by Bush-Quayle '88 and the Compliance Fund (Section 3. above)	27,825.87
c) Air Force II costs not paid by the Committee (Section 7. above)	13,969.00
d) Equipment sold to the Sununu Committee (Finding III.D.4.)	4,140.00
e) In kind contribution for automobiles (Finding III.C.5.)	4,815.95
f) Over allocation of equipment in Iowa to exempt compliance (Finding III.C.1.)	100.20
g) Adjustment to amounts charged to compliance for salary allocated to Iowa and New Hampshire from National (Finding III.C.2.)	8,266.98
h) Secret Service (Section 6. above)	(50,008.55)
i) Exempt Legal and Accounting (Section 5. above)	10,650.17
j) Reimbursement to Bush-Quayle '88 for August 16, 1988 Press Plane (Finding II.B.)	23,520.00
k) Voided Checks (Finding III.F.)	<u>(2,930.49)</u>
TOTAL	\$23,264,219.62
Less 2 U.S.C. §441a(b)(1)(A) spending Limitation	<u>23,050,000.00</u>
Total expenditures in excess of limit	<u>\$ 214,219.62</u>

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In the Interim Audit Report the Audit staff determined that the Committee was in excess of the limit by \$587,699.18. As a result of the Committee's response, the overbilling for the press plane was reduced by \$298,046.54 (Finding II.B.), the liability to Bush-Quayle '88 was reduced by \$30,101.26 (Section 7), vendor payments charged to payroll of \$40,531.89 were subtracted (Section 2. above), Secret Service billable costs exceeding reimbursements by \$50,008.55, were deducted (Section 6) and the Committee voided checks totaling \$2,930.49 all of which reduced expenditures subject to the limit. However, the reallocation of exempt compliance expenditures of \$10,650.17, (Section 5. above), paying Bush-Quayle '88 \$23,520 for the press plane (Finding II.B.) and use of air Force II not paid by the Committee of \$13,969.00 (Section 7) increased expenditures subject to the limit. Therefore, the Committee's total expenditures are in excess of the limit by \$214,219.62

E. Use of Funds for Non-Qualified Campaign Expenses

Section 9035(a) of Title 26 of the United States Code states, in part, that no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of Title 2.

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account, were used for purposes other than qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's authorized committee(s), or agents have made expenditures in excess of the limitations set forth in 11 C.F.R. § 9035.

On January 30, 1992, the Audit staff presented a final audit report to the Commission that the Committee had exceeded the state expenditure limitations for New Hampshire and Iowa by a total of \$294,492.54 (Finding III.C.) and the overall limitation by a total of \$289,476.04 (Finding III.D). These determinations were made by analyzing the Committee's expenditures made through December 31, 1989 which were allocable to these states' and/or the overall spending limitation and by adding to these totals the accounts payable relative to the respective limits.

In the case of the state spending limitation, all but \$1,533.78 was paid before the candidate's date of ineligibility. For the overall spending limitation, an amount totaling more than the overage was applied to the limitation after the Candidate's date of ineligibility. Therefore, the entire amount of the overage is assumed to have been paid in the post date of ineligibility period. Only the \$1,533.78 was paid when both sets of limitations had been exceeded and to avoid any double counting, only that amount needed to be adjusted out of the total of the two overages.

Finally, the Committee's NOCO statement, as adjusted, reflected a surplus. It was assumed that the portion of the surplus which the Committee was not required to repay was applied to the amount in excess of the spending limitation. Thus a portion of the overall spending limitation excess was paid with purely private funds. This amount was adjusted out prior to the application of the repayment ratio.

Given the above, the repayment calculation for amounts paid in excess of the spending limitation was as follows:

Amount in Excess of the State Spending Limitation		\$294,492.54
Amount in Excess of the Overall Spending Limitation		289,476.04
Surplus from Finding III.B.	\$25,749.13	
Less Repayment	<u>(6,856.01)</u>	
Non-Federal Funds Portion of the Surplus Applied to Expenditures in Excess of the Spending Limitation		<u>(18,893.12)</u>
Total Amount in Excess of the Spending Limitation Paid with Mixed Pool of Private and Federal Funds		565,075.46
Less: Amount Paid in Violation of Both Limitations		<u>(1,533.78)</u>
Amount Subject to 11 C.F.R. 9038.2(b) Ratio Repayment		\$563,541.68
Times the Repayment Ratio from Finding III.A.		<u>.266262</u>
Repayment Amount		<u>\$150,049.73</u>

In response to the Interim Audit Report the Committee calculated, that they were in excess of the New Hampshire state limit by \$44,262.26 and the overall limit by \$225,316.56, resulting in a repayment of \$71,778.58. The Committee submitted a check in that amount with the response to the Interim Audit Report.

The following recommendation was presented to the Commission on January 30, 1992:

"The Audit staff recommends that the Commission make an initial determination that \$150,049.73 is repayable to the United States Treasury pursuant to 11 CFR 9038.2(b)(2)."

The Commission did not agree with this method for determining the repayment. Instead, it was decided to compute the repayment using the larger of expenditures in excess of the state limits or expenditures in excess of the overall limit and not combine the two excessive amounts.

Based on the changes to Finding III.C. and D. the amount in excess of the state spending limitation totaled \$260,459.81 and the amount in excess of the overall spending limitation totaled \$214,219.62. Multiplying the larger amount by the repayment ratio of .266262 results in a repayment amount of \$69,350.55. Based on the changes to Finding III.D. the Committee's NOCO statement, as adjusted, no longer reflects a surplus.

Recommendation #5

Based on the Commissions decisions described above, the Audit staff recommends that the Commission make an initial determination that \$69,350.55 is repayable to the United States Treasury pursuant to 11 CFR 9038.2(b)(2).

F. Stale-Dated Committee Checks

Section 9038.6 of Title 11 of the Code of Federal Regulations states that if the Committee has checks outstanding to creditors or contributors that have not been cashed, the Committee shall notify the Commission of its efforts to locate the payees, if such efforts are necessary, and to encourage them to cash the outstanding checks. The Committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff reconciled the Committee's reported activity to its bank activity through September 30, 1989 and determined that the total amount of outstanding checks was \$52,663.22. Of this amount \$46,659.64 were for checks dated between March 5, 1987 and January 4, 1989, including 13 totaling \$7,060.00 that are contribution refund checks. The remaining are to individuals and vendors in payment for various obligations.

In the Interim Audit Report the Audit staff recommended the Committee present evidence that:

- a) the checks are not outstanding (i.e., copies of the front and back of the negotiated checks); or
- b) the outstanding checks are void (copies of the voided checks with evidence that no committee obligation exists, or copies of negotiated replacement checks); and

- c) inform the Commission of the Committee's attempts locate the payees to encourage them to cash the outstanding checks or provide evidence documenting the Committee's efforts to resolve these items.
- d) After reviewing the information, the Commission would recommend the amount payable to the United States Treasury.

In response to the Audit Report, the Committee repaid \$33,845.24 to the United States Treasury. The Audit staff reviewed the additional information and agrees with the Committee that there is no obligation for \$2,930.49. The Treasurer stated that two checks for \$153.85, were voided and reissued. However, these two checks were deleted from the stale dated list, prior to the Interim Audit Report by the Audit staff. The Treasurer also stated that two checks, totaling \$208.19, were voided and reissued, and the remaining checks were all voided. The Committee did not submit documentation to establish that no obligation exists for outstanding checks totaling \$9,883.91.

Recommendation # 6

The Audit staff recommends that the Commission make an initial determination that an additional \$9,883.91 be paid to the United States Treasury pursuant to 11 C.F.R. § 9038.6.

G. Recap - Amounts Repayable to the United States Treasury

Presented below is a recap of the amounts recommended by the Audit staff as subject to the repayment provisions of 26 U.S.C. §9038(b)(2) and (3), and 11 C.F.R. §9038.6.

Expenditures in Excess of State and Overall Limitations (See Finding III.E.)	69,350.55
Remaining Stale Dated Outstanding Checks (See Finding III.G.)	9,883.91
Amount Committee Repaid in Response to the Interim Audit Report	(71,778.58)
Total Recommended Repayment	<u>\$ 7,455.88</u>



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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20463

April 9, 1992

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Carmen R. Johnson
Assistant General Counsel

Lorenzo Holloway
Attorney

SUBJECT: George Bush for President Committee, Inc.
Repayment to the United States Treasury
(LRA #358)

The Commission approved the Interim Audit Report on George Bush for President Committee, Inc. ("Committee") on January 15, 1991. The Committee responded to the Interim Audit Report on June 13, 1991. The Committee's response to the Interim Audit Report included two checks totaling \$105,623.82 made payable to the United States Treasury. On February 18, 1992, the Commission approved the Final Audit Report and made an initial determination that the Committee repay \$113,079.70 to the United States Treasury. On March 20, 1992, the Committee submitted a check for \$7,455.88 (\$113,079.70 - \$105,623.82), the remaining amount owed to the United States Treasury. Accordingly, the Committee has made full repayment to the United States Treasury. See 11 C.F.R. § 9038.2(d)(1).

In a letter accompanying the repayment check, the Committee indicated that it would not contest the Commission's initial repayment determination. See attachment 1. Since the Committee will not dispute the initial repayment determination, it is considered a final repayment determination. 11 C.F.R. § 9038.2(c)(1). Therefore, the Office of General Counsel

Memorandum to the Commission
George Bush for President Committee, Inc.
Repayment to the United States Treasury (LRA #358)
Page 2

recommends that the Commission conclude that the initial repayment determination for President George Bush and the George Bush for President Committee, Inc. has become a final repayment determination. Id. The Committee will be notified accordingly.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Conclude that the initial repayment determination for President George Bush and the George Bush for President Committee, Inc. has become a final repayment determination under 11 C.F.R. § 9038.2(c)(1); and
2. Approve the appropriate letter.

Attachment

Committee's Response to the Final Audit Report and the initial repayment determination.

Bush Quayle

Compliance Committee

March 20, 1992

Mr. Robert J. Costa
Assistant Staff Director, Audit Division
Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Mr. Costa:

The George Bush for President Committee, Inc., received your letter of February 18, 1992, which accompanied the Commission's Final Audit Report on George Bush for President Committee, Inc. (the Committee).

The Committee believes it made a full repayment of the proper amount due the US Treasury when the Committee filed its response to the Interim Audit Report in June of 1991. However, in order to avoid needless waste of time and expense both for the Committee and for the government, enclosed with this letter is an additional repayment of \$ 7,455.88.

It is the Committee's understanding that this repayment will close the file regarding all matters referenced in the Final Audit Report.

Sincerely:



J. Stanley Huckaby
Treasurer
George Bush for President Committee, Inc.

encl.

GEORGE BUSH FOR PRESIDENT
COMPLIANCE ACCOUNT

March 20 19 92

3680

15-420
540 D01

PAY TO THE
ORDER OF

United States Treasury

\$ 7,455.88

-----Seven Thousand Four Hundred Fifty - Five & 88/100 -----

DOLLARS

SOVRAN BANK.

Sovran Bank/DC National Washington, DC 20006

Dora J. Ferde
Keith A. Harris

⑈003680⑈ ⑆054001204⑆ 713366 9⑈

GEORGE BUSH FOR PRESIDENT
COMPLIANCE ACCOUNT

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY NO RECEIPT DESIRED

DELUXE - FORM DVCP-3 V-2

DATE	DESCRIPTION	AMOUNT
3/20/92	repayment of stale-dated check amount as per Final Audit Report of George Bush for President, Inc.	\$ 7,455.88



FEDERAL ELECTION COMMISSION
399 B STREET, N.W.
WASHINGTON, D.C. 20541