



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 27, 1999

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
THE VICTORY '96 JOINT FUNDRAISING ACTIVITIES HELD  
ON BEHALF OF THE DEMOCRATIC NATIONAL COMMITTEE  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL  
AND ACCOUNTING COMPLIANCE FUND

Attached please find a copy of the final audit report and related documents on The Victory '96 Joint Fundraising Activities Held on Behalf of the Democratic National Committee and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund which was approved by the Commission on December 9, 1999.

Informational copies of the report have been received by 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

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**REPORT OF THE AUDIT DIVISION**

**ON**

**THE VICTORY '96 JOINT FUNDRAISING ACTIVITIES HELD ON BEHALF OF THE  
DEMOCRATIC NATIONAL COMMITTEE AND CLINTON/GORE '96 GENERAL ELECTION  
LEGAL AND ACCOUNTING COMPLIANCE FUND**

**Approved December 9, 1999**



**FEDERAL ELECTION COMMISSION**

**999 E STREET, N.W.**

**WASHINGTON, D.C.**

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BEHALF OF THE DEMOCRATIC NATIONAL COMMITTEE  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL &  
ACCOUNTING COMPLIANCE FUND

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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**THE VICTORY '96 JOINT FUNDRAISING ACTIVITIES HELD ON  
BEHALF OF THE DEMOCRATIC NATIONAL COMMITTEE  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL &  
ACCOUNTING COMPLIANCE FUND**

**EXECUTIVE SUMMARY**

An audit was performed of the Victory '96 joint fundraising activities (Victory '96) which had as fundraising participants the Democratic National Committee (DNC) and the Clinton/Gore '96 General Election Legal & Accounting Compliance Fund (GELAC). The audit was conducted pursuant to 26 U.S.C. §9007(a) which requires the Commission to audit committees authorized by candidates of each political party for President and Vice-President who receive Federal Funds.

The findings of the audit were presented to the Committee at an exit conference held on June 25, 1999, and in the Exit Conference Memorandum (ECM). The relevant parts of the Committee's response to those findings are included in this audit report.

The following is an overview of the findings contained in the audit report.

Receipt of Apparent Prohibited Contributions from Possible Foreign Nationals and an Incorporated Entity — 2 U.S.C. §§441(e), 441b(a) and 11 CFR §103.3(b). The audit questioned 26 contributions, totaling \$90,000, as possibly coming from prohibited sources. According to the contribution records, the "DNC Contact" was John Huang for 25 of the 26 items, the "Solicitor" was Charlie Trie for six of the 26 items and one of the 26 items was from Maria Hsia. Messrs. Huang and Trie were indicted on violations of campaign finance laws relative to funneling foreign national contributions to the DNC and other Democratic committees relative to the 1996 elections. Ms. Hsia was indicted on federal charges of laundering contributions from an incorporated Buddhist temple in California to Democratic committees relative to the 1996 elections. Four of the 26 items, totaling \$30,500 were determined to be from permissible sources and one item, in the amount of \$10,000, was determined to have been refunded timely. Of the remaining 21 items, totaling \$49,500, six, totaling \$24,900, were refunded to the contributors (one refund in the amount of \$900 related to a \$1,000 contribution) and another item, in the amount of \$10,000, was forwarded to the U.S. Treasury – the action relative to these seven items was untimely. No information was available nor was any apparent action taken relative to the remaining \$14,600 (\$49,500 - \$24,900 - \$10,000).

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DNC Counsel stated that they had complied with 11 CFR §103.3(b) with respect to the contributions in question because they had conducted an internal review with the assistance of outside counsel and a public accounting firm when questions were raised in October and November of 1996.

Reporting of Receipts and Disbursements as Memo Entries ~ 11 CFR §§102.17(c)(8) and 103.3(b)(3). The DNC, as the fundraising representative for the Victory '96 joint fundraising activities, only itemized the "federal" portions of contributions and did not report the "non-federal" portions, totaling \$450,926, as memo entries pursuant to 11 CFR §102.17(8)(i)(A). The following should also have been disclosed as memo entries: the distribution of joint fundraising proceeds to the DNC, totaling \$1,166,737; a \$250,000 transfer for start-up costs from the DNC to Victory '96; and, the return of the \$250,000 to the DNC. DNC Counsel disagreed that they were required to disclose memo entries relative to these transactions, however, they filed amended schedules which corrected the public record.

Disclosure of Occupation/Name of Employer — 2 U.S.C. §§434(b)(3)(A), 431(13)(A), 432(i) and 11 CFR §104.7(b). The Committee did not disclose the donor's occupation/name of employer for a material number of itemized contributions. The Audit staff located approximately 77% of the missing information in the contribution records. In response to the ECM, the Committee filed amended Schedules A (Itemized Receipts), however, the minimum requirements for reporting this information was still not met for a material number of reported entries.

Disclosure of Debts and Obligations – 2 U.S.C. §434(b)(8) and 11 CFR §104.11(a). The Audit staff identified debts owed by Victory '96, totaling \$332,573, which were not disclosed on Schedules D (Debts and Obligations) as required. In response to the ECM, the Committee filed amended Schedules D which included some of the debts not previously disclosed. For the remaining debt errors, DNC Counsel asserted that these items were included within the larger debt balances already disclosed on Schedules D.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON  
THE VICTORY '96 JOINT FUNDRAISING ACTIVITIES HELD ON  
BEHALF OF THE DEMOCRATIC NATIONAL COMMITTEE  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL &  
ACCOUNTING COMPLIANCE FUND**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the Victory '96 joint fundraising activities (Victory '96) which had as fundraising participants the Democratic National Committee (DNC) and the Clinton/Gore '96 General Election Legal & Accounting Compliance Fund (GELAC). Pursuant to 11 CFR §102.17(b)(2), these two committees agreed that the DNC would act as the fundraising representative. The Audit staff reviewed the activities relative to certain events and telemarketing projects. The audit was mandated by Section 9007(a) of Title 26 of the United States Code which states that "[a]fter each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice-President."

Also, Section 9009(b) of Title 26 of the United States Code states, in part, that the Commission may conduct other examinations and audits as it deems necessary to carry out the functions and duties imposed on it by this chapter. The audit further seeks to determine if the activities materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

**B. AUDIT COVERAGE**

The audit of these joint fundraising activities covered the period from the initial deposit on August 5, 1996 through the final transfer of proceeds on June 9, 1997. The DNC, as the fundraising representative, disclosed the Victory '96 financial activity with its DNC activity, identifying it as "Victory '96." The net proceeds distributed as a result of these joint fundraising activities totaled approximately \$1.2 million to the DNC and \$332,000 to the GELAC.

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### C. CAMPAIGN ORGANIZATION

The two fundraising participants, the DNC and GELAC, both maintain headquarters in Washington, DC. The Treasurers of the DNC during the period covered by the audit were Mr. R. Scott Pastrick from August 5, 1996 through January 28, 1997 and Ms. Carol Pensky from January 29, 1997 through June 9, 1997. The current DNC Treasurer is Mr. Andrew Tobias. The Treasurer of GELAC is Ms. Joan Pollitt, who was also the Treasurer during the period covered by the audit.

Victory '96 utilized two bank accounts for these joint fundraising activities. The one held at NationsBank was entitled "DNC Services Corporation Victory '96 Federal" and will be referred to as "Victory '96 Federal" in this document. This account was maintained by the DNC. The other account held at Boatmen's National Bank of Arkansas was entitled "Victory '96/Democratic National Committee - Telemarketing Account" and will be referred to as "Victory '96 Telemarketing." This account was maintained by the GELAC.

### D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories:

1. The receipt of contributions from prohibited sources, such as those from corporations, labor organizations and foreign nationals (see Finding II.A.);
2. The receipt of contributions or loans in excess of the statutory limitations;
3. Proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed (see Findings II.B. and C.);
4. Proper disclosure of disbursements including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed (see Finding II.B.);
5. Proper disclosure of committee debts and obligations (see Finding II.D.);
6. The accuracy of total reported receipts, disbursements and cash balances as compared to committee bank records;
7. Adequate recordkeeping of committee transactions;

8. Proper reporting and funding of allocable expenses and distribution of net proceeds;
9. Other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, an inventory of campaign records is conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review of records presented, it was concluded that the records were materially complete and fieldwork began immediately.

Unless specifically discussed below, no material non-compliance with statutory or regulatory requirements was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

## II. AUDIT FINDINGS AND RECOMMENDATIONS

### A. RECEIPT OF APPARENT PROHIBITED CONTRIBUTIONS FROM POSSIBLE FOREIGN NATIONALS AND AN INCORPORATED ENTITY

Section 441e of Title 2 of the United States Code states, in part, that it shall be unlawful for a foreign national directly or through any other person to make any contribution of money, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any such contribution from a foreign national.

As used in 2 U.S.C. §441e, the term "foreign national" is defined as a "foreign principal" which includes: (1) a government of a foreign country and a foreign political party; (2) a person outside of the United States, unless it is established that such person is an individual and a citizen of and domiciled within the United States, or that such person is not an individual and is organized under or created by the laws of the United States or of any State or other place subject to the jurisdiction of the United States and has its principal place of business within the United States and, (3) a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country [22 U.S.C. §611(b)]. This section further defines "foreign national" as an individual who is not a citizen of the United States and who is not "lawfully admitted for permanent residence" which means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed [8 U.S.C. §1101(a)(20)].

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

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and that it is unlawful for any candidate, political committee or any person knowingly to accept or receive any contribution prohibited by this section.

Section 441f of Title 2 of the United States Code states that no person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.

Sections 103.3(b)(2) and (4) of Title 11 of the Code of Federal Regulations state, in part, that the treasurer shall refund any contribution determined to be illegal to the contributor within thirty days of the date on which the illegality is discovered. Further, any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

During our review of receipts, the Audit staff questioned 26 contributions, totaling \$90,000, as possibly coming from prohibited sources. These contribution checks were deposited into the Victory '96 Federal account. Of this \$90,000 total, \$300 was distributed to the GELAC. The contribution records included photocopies of the contribution checks along with "Check Tracking Forms" which were internally-generated forms which included contributor information as well as contribution coding data, such as Event Name, DNC Contact, Solicitor and Source Code. The Check Tracking Forms relative to 25 of these 26 items noted John Huang as the DNC Contact person. Six of these 25 items noted Charlie Trie as the DNC Solicitor. The remaining item was a \$2,000 check from Maria Lynn Hsia.

The source of funds relative to the checks for which John Huang was noted as the "DNC Contact" were questioned because Mr. Huang was described in numerous media reports as being the subject of United States Senate and United States Department of Justice (DOJ) investigations as a DNC fund-raiser who in 1995 and 1996 allegedly funneled foreign national contributions to the DNC. Yah Lin "Charlie" Trie, according to media reports, was indicted by a federal grand jury for allegedly collecting money from sources in China and then distributing the money to U.S. citizens to donate to Democratic committees. The contribution check from Maria Lynn Hsia was questioned by the Audit staff because Ms. Hsia, according to several media reports, was indicted on federal charges of laundering campaign contributions by a Buddhist temple in California which allegedly reimbursed the contributors with temple funds. The temple was incorporated in the state of California when these contributions were made.<sup>1</sup>

It appears that action was taken relative to eight of these questionable contributions. The eight items were all initially deposited into the Victory '96 Federal account in August or September of 1996. Seven of the items, totaling \$34,900, were

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<sup>1</sup> It should be noted that \$200 of this \$2,000 contribution was distributed to the GELAC. As of September 9, 1999, no action was taken relative to this contribution.

apparently refunded to the contributors, and funds representing the value of one contribution, in the amount of \$10,000, were forwarded to the U.S. Treasury by the DNC. One of the seven refunds, in the amount of \$10,000, was paid from the Victory '96 Federal account on October 16, 1996 and the other six, totaling \$24,900, were apparently made by the DNC on June 23, 1997.<sup>2</sup> On June 25, 1997, \$10,000 was forwarded to the U.S. Treasury. Neither the refunds nor the payment to the Treasury were made within the 30 days allowed by 11 CFR §103.3(b).

In summary, action was taken relative to eight of these questionable contributions, totaling \$44,900 or approximately 50% of the \$90,000 questioned.<sup>3</sup> However, these actions were untimely. No separate account was maintained relative to questionable contributions but the Committee did consistently maintain a sufficient balance to cover the amounts involved pursuant to 11 CFR 103.3(b)(4).<sup>4</sup>

In the Exit Conference Memorandum (the ECM), the Audit staff recommended that Victory '96 officials provide evidence that the contributions in question were not from prohibited sources. Absent such a demonstration, \$45,100 (\$90,000 - \$44,900) should be paid to the United States Treasury. If funds were not available to pay this amount, the amount should be disclosed as "debts owed" on Schedule D (Debts and Obligations) until such time that funds were available to make the payment. The Audit staff further recommended that Victory '96 officials provide photocopies of the front and back of the six negotiated refund checks, totaling \$24,900, paid by the DNC, as well as any additional information or explanation relative to this matter.

In its response to the ECM<sup>5</sup>, General Counsel, DNC, representing Victory '96 stated that the inclusion of this recommendation was "wholly improper" because "...as the ECM acknowledges, none of the contributions at issue, with the exception of an obviously immaterial \$300, went to the GELAC. Thus there is no basis for the Audit Division to review or challenge these contributions." Counsel further stated that "...the DNC has in any event fully complied with 11 CFR §103.3(b) with respect to all of these contributions" and "...there was no evidence whatsoever of any illegality at the time the contribution was

<sup>2</sup> One of the refunds made on June 23, 1997 was in the amount of \$900 relative to a \$1,000 contribution.

<sup>3</sup> According to a DOJ press release, dated August 12, 1999, Mr. Huang pleaded guilty on August 12, 1999 to a felony violation of campaign finance laws and was sentenced to one year of probation, 500 hours of community service, a \$10,000 fine and was directed by the judge to continue cooperating with the investigation as a condition of his probation. Mr. Trie pleaded guilty on May 21, 1999 to violating federal campaign finance laws by making a political contribution in someone else's name and by causing a false statement to be made to the Federal Election Commission and was sentenced to three years probation, 200 hours of community service, four months of home detention and a \$5,000 fine. Ms. Hsia was indicted in February 1998 on charges of conspiring to defraud the United States and causing false statements to be submitted to the FEC. Her trial is scheduled for January 2000.

<sup>4</sup> This finding relates solely to contributions which were deposited into the Victory '96 Federal account and which were questioned because the Check Tracking Forms included with the Victory '96 contribution records noted John Huang as the DNC Contact, noted Charlie Trie as the DNC Solicitor, or the contribution was made by Maria Hsia. This finding does not relate to possible prohibited contributions arising in other contexts.

<sup>5</sup> Of necessity, certain portions of the response to the ECM were excluded from this report.

received and deposited.” He stated that “...questions about, and indications of illegality regarding, numerous contributions were raised in October and November of 1996” after which the DNC conducted an internal review of several categories of contributions with the assistance of its outside counsel and a public accounting firm and the results of this review were released at the end of February 1997. Counsel added that this review included a review of all contributions attributed to John Huang regardless of amount and as a result, the DNC refunded or disgorged to the U.S. Treasury 124 contributions, totaling \$1,353,800, at the end of June 1997.

Counsel stated that, except for the contribution from Maria Hsia, the following action was already taken relative to the contributions questioned by the Audit staff: (1) refunded prior to the internal review; (2) included in the internal review; (3) included in the subsequent internal review of all contributions solicited by John Huang regardless of amount; or, (4) not included in the internal review because the donor was known to the DNC. Counsel concluded that “...after having had new evidence brought to its attention in October and November of 1996 regarding of [sic] certain of these contributions, and having conducted a thorough review, and having refunded or disgorged all contributions discovered to be illegal, the DNC has complied with 11 C.F.R. § 103.3(b).” Counsel noted that “[w]ith respect to the contribution from Maria Hsia, the DNC is aware of no evidence whatsoever indicating that this contribution was in any way unlawful. The indictment of Ms. Hsia did not include or refer to any contribution she herself made to the DNC.”

The Audit staff notes that in the response to the ECM, no evidence was provided relative to the sources of the 26 contributions in question. As the Audit staff described above, action was already taken relative to 8 items, totaling \$44,900 (seven refunds and one payment to the United States Treasury). No payment of the remaining \$45,100 (\$90,000 - \$44,900) was made to the United States Treasury, nor was a “debt owed” disclosed on Schedule D in this amount relative to the remaining 18 contributions. The Audit staff further notes that photocopies of the six negotiated refund checks, totaling \$24,900, paid by the DNC were not provided.

The Audit staff disagrees with Counsel that this finding is improper. The Audit Division was authorized under 26 U.S.C. §9007(a) and 11 CFR §9007.1(a)(1) to conduct an audit of the activities of the candidates of each political party for President and Vice-President, the candidates’ authorized committees and their agents -- including contributions to the legal and accounting compliance fund. The two fundraising participants, DNC and GELAC, are required to comply with 2 U.S.C. §§441e, 441f and 441b(a) in the context of the Victory ‘96 joint fundraising activities. The Audit staff does not consider the fact that only \$300 of the questionable contributions were transferred to GELAC to be relevant to our review of contributions received as part of the Victory ‘96 joint fundraising activities and the resultant inclusion of this finding in the report.

The Audit staff agrees that pursuant to 11 CFR §103.3(b)(2), the treasurer is required to refund any contributions determined to be illegal within thirty days of the date on which the illegality is discovered. If the eighteen remaining contributions, totaling \$45,100, were determined to be permissible by DNC officials, or by individuals hired by the DNC to

perform the internal review described in the response, documentation verifying such permissibility should have been provided. However, based on other information made available to the Audit staff, four of the remaining 18 contributions, totaling \$30,500, were determined to be from permissible sources. These four items were from three individuals. Also, based on other information made available to the Audit staff, it was further determined that one of the seven contributions refunded, in the amount of \$10,000, was refunded in a timely manner pursuant to 11 CFR §103.3(b)(2).

With regard to the \$2,000 contribution made by Maria Hsia, the Audit staff agrees with Counsel that the indictment dealt with the alleged laundering of contributions from a Buddhist temple to Democratic committees, not contributions directly from Ms. Hsia. However, some of the contributions she allegedly laundered were deposited only a month or so after the \$2,000 contribution she made to Victory '96. As a result, the Audit staff requested documentation relative to the source of funds for the \$2,000 contribution.

In summary, of the 26 contributions, totaling \$90,000, initially questioned as possibly originating from prohibited sources, four items, totaling \$30,500, were determined to be from permissible sources and one item, in the amount of \$10,000, was determined to have been refunded in a timely manner. Of the remaining 21 contributions, totaling \$49,500, six, totaling \$24,900, were refunded to the contributors<sup>6</sup> and funds representing the value of one contribution, in the amount of \$10,000, was forwarded to the U.S. Treasury. The action taken with respect to these seven items was untimely pursuant to 11 CFR §103.3(b)(2). No information was available nor was any apparent action taken relative to the remaining contributions, totaling \$14,600 (\$49,500 - \$24,900 - \$10,000).

#### **B. REPORTING OF RECEIPTS AND DISBURSEMENTS AS MEMO ENTRIES**

Section 102.17(c)(8)(i)(A) of Title 11 of the Code of Federal Regulations requires the fundraising representative to report all funds received in the reporting period in which they are received and to report the total amount of contributions received from prohibited sources during the reporting period, if any, as a memo entry. In addition, 11 CFR §102.17(c)(8)(ii) requires the fundraising representative to report all disbursements in the reporting period in which they are made.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states that any contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, and contributions which cannot be accepted under the net debts outstanding provisions of 11 CFR 110.1(b)(3) and 110.2(b)(3) may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

<sup>6</sup> See Footnote 2/ on Page 5.

The Audit staff reviewed the receipts and disbursements attributed to the Victory '96 joint fundraising activities and determined that some transactions were not disclosed properly. The DNC, as the fundraising representative, only itemized the "federal" portions of contributions deposited into the Victory '96 Federal account and did not report the "non-federal" portions, totaling \$450,926. The "non-federal" portions were redesignated and transferred to the DNC's non-federal accounts because they were either in excess of the 2 U.S.C. §441a limit or were considered prohibited pursuant to 2 U.S.C. §441b.<sup>7</sup> No memo entries were disclosed on Schedules A (Itemized Receipts) relative to the \$450,926, as required by 11 CFR §102.17(8)(i)(A).

In the Audit staff's opinion, the following receipts and disbursements transactions should have also been disclosed as memo entries in order to clarify the disclosure aspect of the Victory '96 joint fundraising activities. The distribution of net proceeds from the Victory '96 Federal Account to the DNC's General account (Federal), totaling \$1,166,737. A \$250,000 transfer from the DNC's General account (Federal) to the Victory '96 Federal account for joint fundraising start-up costs, along with the return of the \$250,000. These memo entries should be included on the appropriate Schedules A or Schedules B (Itemized Disbursements) as warranted.

The Audit staff notes that if a separate reporting entity had been set up for these joint fundraising activities, transfers involving the distributions of net proceeds and involving start-up costs would have required disclosure. A Victory '96 official stated that amended Schedules A and B containing memo entries would be filed.

In the ECM, the Audit staff recommended that amended Schedules A and B be filed as discussed above. In its response to the ECM, Counsel representing Victory '96 stated the following:

"...the DNC disagrees that it is required to disclose, as memo entries, any transfers made from the joint fundraising representative accounts, to other federal accounts of the joint fundraising representative. A review of the regulations, as well as the FEC's Campaign Guide for Political Party Committees make no mention of such requirement, and no such requirement has ever been imposed on the DNC with respect to any other joint fundraising activities that it is [sic] in the past several years.

Nevertheless, the DNC has amended its FEC reports to disclose all internal transfers, as requested by the Audit Division."

The Audit staff notes that the amended Schedules A and B filed have corrected the public record.

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<sup>7</sup> Fifteen such transfers, totaling \$450,926, were made between August 12, 1996 and November 18, 1996.

**C. DISCLOSURE OF OCCUPATION AND NAME OF EMPLOYER**

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such contribution.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" as, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his and her employer.

Section 432(i) of Title 2 of the United States Code states, in part, that when the treasurer of a political committee show that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act.

Section 104.7(b) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer will only be deemed to have exercised best efforts to obtain, maintain and report the required information if for each contribution received aggregating in excess of \$200 per calendar year which lacks required contributor information, the treasurer makes at least one effort after the receipt of the contribution to obtain the missing information. Such effort shall consist of either a written request sent to the contributor or an oral request to the contributor documented in writing. The written or oral request must be made no later than thirty days after receipt of the contribution. The written or oral request shall not include material on any other subject or any additional solicitation, except that it may include language solely thanking the contributor for the contribution.

The Audit staff conducted a sample review of contributions from individuals, which were deposited into the Victory '96 Federal account, to determine if the required information, relative to receipts required to be itemized, was adequately disclosed. Our testing revealed that the minimum requirements for reporting occupation and/or name of employer were not met for a material number of reported entries. For these items, the report entries contained the annotation "REQUESTED."

The Audit staff located approximately 77% of the missing information for these items in the Victory '96 Federal account contribution records or in the Receipts database files relative to the DNC or the GELAC, the two fundraising participants. A Victory '96 official stated that he was surprised that this information was not included on amended Schedules A (Itemized Receipts) filed by the DNC relative to Victory '96 contributions.

In the ECM, the Audit staff recommended that amended Schedules A be filed to disclose the occupation and name of employer information obtained but not yet disclosed. In its response to the ECM, Counsel representing Victory '96 stated that an amended report was filed by the DNC to correct these errors. The Audit staff reviewed the amended

Schedules A filed by the DNC (relative to the Victory '96 contributions) and determined that some of the errors were corrected. However, the minimum requirements for reporting occupation and/or name of employer were still not met for a material number of reported entries.

#### **D. DISCLOSURE OF DEBTS AND OBLIGATIONS**

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished.

The Audit staff reviewed all disbursements made from the two Victory '96 bank accounts to determine if debts and obligations owed were disclosed as required. It should be noted that any disclosure of these debts was included on the DNC's Schedules D (Debts and Obligations) and were not labeled as Victory '96 debts. The records associated with these disbursements were analyzed to determine which payments met the requirements for disclosure as debts on Schedules D; we determined that debts totaling \$332,573 were not disclosed as required. There were 36 checks associated with these errors.

It should be noted that for some of the debt errors, the Audit staff was able to locate debt balances disclosed on the DNC's Schedules D which were larger than the amounts in question but we were unable to verify if these items were included in these balances. A schedule of the debt errors was presented to Victory '96 officials. These officials provided vendor history reports showing vendor transaction activity for five vendors but the Audit staff was unable to verify that the debts in question were included within larger balances relative to these vendors. As a result, no adjustment was made to the original schedule provided to the Victory '96 officials at the close of fieldwork.

In the ECM, the Audit staff recommended that amended Schedules D be filed to correct these debt and obligation errors or provide evidence which demonstrated that these items were disclosed properly. In its response to the ECM, Counsel representing Victory '96 stated that "[t]hese omissions were due to inadvertent computer errors" and that amended reports were filed by the DNC which included the disclosure of these debts. The Audit staff reviewed the amended Schedules D filed by the DNC relative to the Victory '96 debts and determined that the debt errors were materially corrected. The Audit staff notes that no additional information was provided relative to the unverified debt amounts for which debt balances previously disclosed on the DNC's Schedules D were larger than the amounts in question. However, Counsel representing Victory '96 has asserted that these items were covered by these larger balances. All of the remaining items were corrected by the amended Schedules D.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 10, 1999

MEMORANDUM

TO: Robert J. Costa  
Assistant Staff Director  
Audit Division

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

BY: Kim Bright-Coleman  
Associate General Counsel

Rhonda J. Vosdigh  
Assistant General Counsel

RJV  
BY  
JJR

Joel J. Roessner  
Attorney

SUBJECT: Proposed Audit Report On The Victory '96 Joint Fundraising Activities (LRA #538)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report On The Victory '96 Joint Fundraising Activities ("Report") received by this Office on October 8, 1999. Victory '96 was a joint fundraising activity, within the meaning of 11 C.F.R. § 102.17. The Democratic National Committee ("DNC") and the Clinton/Gore '96 General Election Legal and Compliance Fund ("Clinton/Gore '96 GELAC") were the joint fundraising activity participants, and the DNC was the fundraising representative, within the meaning of 11 C.F.R. § 102.17(b)(2). The following memorandum summarizes our comments on the proposed Report.<sup>1</sup> We concur with

<sup>1</sup> The Commission's discussion of this document is not exempt from disclosure under the Commission's Sunshine Act regulations, and the document should be considered in open session. 11 C.F.R. § 2.4.

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the findings in the proposed Report that are not discussed in the following memorandum. If you have any questions, please contact Joel J. Roessner, the attorney assigned to this audit.

## II. RECEIPT OF APPARENT PROHIBITED CONTRIBUTIONS FROM POSSIBLE FOREIGN NATIONALS AND AN INCORPORATED ENTITY (II.A.)

The Audit Division directed the attention of this Office to its finding on contributions possibly received from foreign nationals and an incorporated entity. As set forth in the Report, the Audit Division questioned twenty-six contributions totaling \$90,000 as possibly having been contributed by such prohibited donors. Report at 4-5. The Audit staff concluded that corrective action occurred with respect to eight of these contributions totaling \$44,900. *Id.* Of these eight contributions, the Audit Division concluded that one \$10,000 contribution was disgorged to the United States Treasury, and that the remaining seven contributions, totaling \$34,900 were refunded, but not within the thirty day period of time required by 11 C.F.R. § 103.3(b). *Id.*

In the Exit Conference Memorandum ("ECM"), the Audit staff recommended that Victory '96 provide evidence that the contributions were not received from prohibited sources. *Id.* at 5. To the extent that Victory '96 could not make such a showing, the Audit staff recommended that the amounts should be paid to the United States Treasury or, if funds for such payment were not presently available, reported as debts.<sup>2</sup> *Id.* Victory '96 raises three issues with respect to this finding, which are each addressed in turn, below.

### A. Scope Of The Audit

In its response to the ECM, Victory '96 first asserts that "there is no basis for the Audit Division to review or challenge these contributions" because "none of the contributions . . . with the exception of an obviously immaterial \$300, went into the GELAC." ECM Response at 2, *see also id.* at 3 (referring to "this audit of the GELAC").

The Audit Division was conducting an audit of Victory '96, which was a joint fundraising project of the DNC and the Clinton/Gore '96 GELAC. The Audit Division was authorized under 2 U.S.C. § 9007(a) and 11 C.F.R. § 9007.1(a)(1) to conduct an audit of the activities of the candidate, the candidate's authorized committee and their agents, including contributions to the legal and accounting compliance fund. As the fundraising representative for all participants, the DNC was also an authorized committee of the candidate. 11 C.F.R. § 102.17(a)(1)(i). Both participants therefore were subject to examination under 2 U.S.C. § 9007(a), and this Office agrees with the Audit Division that the Audit staff was not required to limit its investigation to the portion of contributions received by the GELAC.

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<sup>2</sup> Although the ECM recommended disgorging the illegal contributions to the United States Treasury, this Office's opinion is that refunding the amounts to the contributors would also have been appropriate corrective action. 11 C.F.R. § 103.3(b). Furthermore, this Office notes that one court has held that where an illegal contribution should have been refunded to the contributor pursuant to 11 C.F.R. § 103.3(b), but instead was disgorged to the United States Treasury, the contributor may recover the amount from the United States under the "illegal exaction" doctrine. *Fireman v. United States*, 44 Fed. Cl. 528 (1999).

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**B. Amounts Not Refunded Or Disgorged**

With respect to amounts which Victory '96 has declined to refund (or report as a debt), Victory '96 states that "as to any check . . . not already refunded, the Commission already has documents supporting the . . . decision to retain the contribution." ECM Response at 2.<sup>3</sup> The proposed Report rejects this argument, stating that "[i]f the eighteen remaining contributions, totaling \$45,100, were determined to be permissible . . . documentation verifying such permissibility should have been provided." Report at 6. This Office agrees that Victory '96 has not adequately presented the evidence which it contends supports its claim that the eighteen contributions were legal.

However, from other information available to the Commission, it appears that Lucy Ham (who made two of the questioned contributions), Henry Huang and David Hung are in fact United States citizens. These three contributors made four of the eighteen retained contributions in question, in a total amount of \$30,500, out of \$45,100 in question. This Office therefore recommends that the proposed Report be revised to reflect this conclusion.

**C. Timeliness Of Refunds**

With respect to seven contributions which Victory '96 refunded, Victory '96 argues that it has complied with 11 C.F.R. § 103.3(b) and its refunds therefore were timely, stating that:

[Q]uestions about, and indications of illegality regarding, numerous contributions were raised in October and November of 1996. From November 1996 through February 1997, the DNC conducted an internal review of several categories of contributions, with the assistance of its outside counsel, Debevoise & Plimpton, and the accounting firm of Ernst & Young. The results of this review . . . were released at the end of February 1997. As a result of the DNC Internal review, as modified by additional information developed between the end of February and the end of June, 1997, including a review of all contributions attributed to John Huang regardless of amount, the DNC refunded or disgorged to the U.S. Treasury 124 contributions totaling \$1,353,800 at the end of June 1997.

ECM Response at 2.

The Commission's regulations provide:

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<sup>3</sup> With respect to the contribution from Maria Hsia, Victory '96 states that there is "no evidence whatsoever indicating that this contribution was in any way unlawful. The indictment of Ms. Hsia did not include or refer to any contribution she herself made . . ." ECM Response at 3. The Audit staff replies that it "agrees . . . that the indictment dealt with the alleged laundering of contributions from a Buddhist temple to Democratic committees, not contributions directly from Mr. Hsia. However, some of the contributions she allegedly laundered were deposited only a month or so after the contribution she made to Victory '96." Report at 7. This Office agrees that Ms. Hsia's alleged "laundering" of other corporate contributions during the same election cycle is ample reason for the Audit staff to request that Victory '96 provide confirmation of the legality of this particular contribution.

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If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives.

11 C.F.R. § 103.3(b)(2). The Commission's regulations thus require that each contribution discovered to be illegal be refunded "within thirty days of the date on which the illegality is discovered." *Id.*

This Office agrees with the Audit Division's conclusion that the actions of Victory '96 (as described by its counsel) did not satisfy the requirements of this regulation. Rather than refunding each illegal contribution within thirty days of the discovery of illegality, Victory '96 appears to have waited until the DNC had completed its investigation with respect to all of the illegal contributions before making refunds *en masse*.<sup>4</sup> Furthermore, other information available to the Commission indicates that six of the seven contributions in question in fact were made after the limit imposed by 11 C.F.R. § 103.3(b)(2). This Office recommends that the proposed Report be revised to note that other information available to the Commission indicates that these refunds were not timely under 11 C.F.R. § 103.3(b)(2).

The remaining refunded contribution, a \$10,000 contribution for Kyung Hoon Lee, was refunded on October 16, 1996. *See* Report at attachment 1. Unless, with respect to this contribution, the Audit staff challenges the position of Victory '96 that indications of illegal contributions were raised in October and November of 1996, *see* ECM Response at 2, it appears that this contribution was refunded timely, and this Office recommends that the proposed Report be revised accordingly. *See* 11 C.F.R. § 103.3(b)(2).

### III. FOOTNOTE 5

The Audit staff directed the attention of this Office to footnote 5. This Office recommends that the footnote be amended to state: "Of necessity, certain portions of the response to the ECM were excluded from this report."

<sup>4</sup> Indeed, counsel for Victory '96 does not even represent that the refunds were made within thirty days of the completion of the independent investigation. To the contrary, it appears that the investigation was completed no later than the end of February, 1997, at which time the results "were released," while the refunds were not made until four months later "at the end of June 1997." ECM Response at 2. Victory '96 nevertheless claims that it complied with the thirty day limit, explaining that the evidence of illegal contributions was "modified by additional information developed between the end of February and the end of June, 1997, including a review of all contributions attributed to John Huang regardless of amount . . ." *Id.*



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 17, 1999

Mr. Andrew Tobias, Treasurer  
DNC Services Corporation/  
Democratic National Committee  
430 South Capitol Street, S.E.  
Washington DC 20003

Ms. Joan C. Pollitt, Treasurer  
Clinton/Gore '96 General Election Legal  
& Accounting Compliance Fund  
P.O. Box 19584  
Washington, DC 20036

Dear Mr. Tobias and Ms. Pollitt:

Attached please find the Audit Report on the Victory '96 joint fundraising activities held on behalf of the Democratic National Committee (DNC) and Clinton/Gore '96 General Election Legal & Accounting Compliance Fund (GELAC). The Commission approved the report on December 9, 1999. As noted on Page 3 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

The Commission approved Audit Report will be placed on the public record on December 27, 1999. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Marty Favin or Rick Halter of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

cc: Joseph E. Sandler, General Counsel, DNC  
Neil P. Reiff, Deputy General Counsel, DNC  
Eric Kleinfeld, Chief Counsel, GELAC

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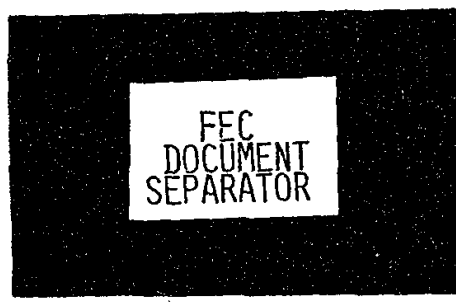
THE VICTORY '96 JOINT FUNDRAISING ACTIVITIES HELD ON  
BEHALF OF THE DEMOCRATIC NATIONAL COMMITTEE  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL &  
ACCOUNTING COMPLIANCE FUND

Audit Fieldwork	6/29/98 – 10/05/98
Exit Conference Memorandum to the Committee	6/25/99
Response Received to the Exit Conference Memorandum	9/09/99
Audit Report Approved	12/09/99

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