

MD4/061787



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1987

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF ADDENDUM TO THE
FINAL AUDIT REPORT OF MONDALE FOR
PRESIDENT COMMITTEE, INC.

Attached please find a copy of the Addendum to the Final Audit Report of Mondale for President Committee, Inc., which was approved by the Commission on June 8, 1987.

Informational copies of the Addendum to the Final Audit Report have been received by all parties involved and the Addendum to the Final Audit Report may be released to the public.

cc: FEC Library
RAD
Office of General Counsel
Public Disclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ADDENDUM TO THE FINAL REPORT
OF THE AUDIT DIVISION ON THE
MONDALE FOR PRESIDENT COMMITTEE, INC.

I. Background

A. Overview

On October 28, 1986, the Federal Election Commission issued a final audit report on the Mondale for President Committee, Inc. ("the Committee"). That report was based on an audit of the Committee pursuant to 26 U.S.C. § 9038(a). The audit covered the period November 2, 1982 through August 31, 1984.^{1/}

This Addendum is based on follow-up audit fieldwork. The follow-up fieldwork was conducted pursuant to 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(b)(3) which state in relevant part that the Commission may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to paragraph (b)(1) and (2) of this section.

In addition, 11 C.F.R. § 9038.1(e)(4) states, in part, that Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under paragraph (b)(3) of this section.

The follow-up fieldwork covered the period September 1, 1984 through December 31, 1985, the final coverage date of the most recent report filed with the Commission at the time of the audit. In addition, certain activity was reviewed through March 31, 1986 as Committee records became available. The Committee reported an opening cash balance of \$476,129.84, total receipts of \$4,340,840.37, total disbursements of \$4,452,686.16 and a closing cash balance of \$3 4,284.05.

^{1/} In addition, Committee activity was reviewed through March 31, 1986 relative to the Statement of Net Outstanding Campaign Obligations and allocation to the state and overall expenditure limitations.

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

B. Key Personnel

The Treasurer of the Committee during the period covered by the audit was Mr. Michael S. Berman.

C. Scope

The audit included such tests as verification of total reported receipts and disbursements; limited reviews of individual transactions and required supporting documentation; analysis of debts and obligations (including winding down costs); review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Findings and Recommendations Relating to Title 2 of the United States Code ^{2/}

A. Misstatement of Financial Activity

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

^{2/} There are no Title 26 findings in this report. The results of the follow-up audit fieldwork, with respect to Title 26 findings, were incorporated into the Final Audit Report approved by the Commission on October 23, 1986.

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Our reconciliation of the Committee's bank activity to its disclosure reports for the period September 1, 1984 through December 31, 1984 and calendar year 1985 indicated the following differences:

September 1, - December 31, 1984

Reported beginning cash was understated by	\$118,430.34
Reported receipts were understated by	169,063.04
Reported disbursements were understated by	113,059.45

Calendar Year 1985

Reported receipts were understated by	\$ 35,296.67
Reported disbursements were understated by	361,395.76
Reported ending cash was overstated by	151,699.78

The understatement of September 1, 1984 Cash on Hand was primarily the result of accumulated errors in prior periods' reports, including a failure to report certain refunds, footing errors, and over and under reporting of interest income.

The majority of the September 1 to December 31, 1984 receipt misstatement was caused by the under reporting of contributions. According to the Committee's Assistant Treasurer, the Committee's computer firm may have been back-logged with data and failed to post contributions in a timely manner. As a result, the pre-election report receipts were understated by \$168,614.30.

The understatement of disbursements for the period September 1 to December 31, 1984 was primarily the result of the following:

- Unreported disbursements totaling \$109,428.54 including \$50,000 paid in partial settlement of MUR 1704 and a \$56,383.00 wire transfer to a direct mail firm.
- Unreported bank charges of \$183.00
- Voided checks which were reported totaling \$8,212.38

In 1985, the understatement of receipts was primarily the result of the Committee not having reported activity relative to the Assessment Fund. The Assessment Fund was established in accordance with 11 C.F.R. § 9034.4(b)(4) (amounts received to pay civil or criminal penalties pursuant to the Act). Adjusted

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receipts relative to the Assessment Fund during 1985 totaled \$30,030. In addition, refunds and interest income totaling \$5,375.83 were not reported.

The 1985 understatement of disbursements stemmed from the Committee's failure to report disbursements of \$359,580.31 and \$684.21 in voided checks which were reported. The unreported disbursements included \$348,140.00 paid in settlement of MUR 1704.

The December 31, 1985 Cash on Hand difference was the result of the above receipt and disbursement errors, as well as accumulated discrepancies from the Committee's inception to date.

On April 16, 1986, the Committee filed comprehensive amended disclosure reports materially correcting the identified receipt and disbursement errors, as well as certain prior period adjustments. While these adjustments served to correct the major portion of the December 31, 1985 Cash on Hand discrepancies, there remained an understatement in the Committee's reported Cash on Hand of \$49,543.50.

In the Interim Addendum the Audit staff recommended that the Committee make an (\$49,543.50) adjustment to ending cash on the next report filed to bring reported cash into agreement with Committee bank records.

On January 30, 1987, as part of the Committee's Year-end Report for 1986, beginning cash on hand was adjusted as recommended.

Recommendation

The Audit staff recommends no further action on this matter.

B. Stale-Dated Outstanding Committee Checks

Sections 441b(a) and (b)(2) of Title 2 of the United States Code, state, in relevant part, that it is unlawful for any corporation to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election held to select candidates for any political office. The term "contribution or expenditure" shall include any direct or indirect payment, or any services, or anything of value provided to any candidate, campaign committee, or political party or organization in connection with any election to any of the offices referred to in this section.

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Section 100.7(a)(1)(E)(iii) of Title 11 of the Code of Federal Regulations provides, in part, that the term "anything of value" includes all in-kind contributions. The provision of any 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.

Section 104.13(a)(1) of Title 11 of the Code of Federal Regulations states that the amount of an in-kind contribution shall be equal to the usual and normal value on the date received. Each in-kind contribution shall be reported as a contribution in accordance with 11 C.F.R. § 104.3(a).

During the Audit staff's follow-up fieldwork it was noted that 115 stale-dated checks totaling \$27,809.44 remained outstanding at December 31, 1985. Thirty-three of these checks, which totaled \$19,326.41, were in an amount in excess of \$200. Committee records further indicated that the majority of these checks were issued in 1983 and 1984.

Available records were insufficient to identify the payee or check date for some of these checks; however, the available information suggested that the majority of the checks were made payable to individuals rather than businesses.

Committee officials believed that a portion of these items represented voided checks which were not removed from the Committee's outstanding check list.

Attachment I provided the available detail information on the \$27,809.44 in stale-dated outstanding Committee checks.

The Interim Addendum recommended that the Committee was to provide the following information relevant to its outstanding checks:

1. The identification of the payees for those not identified on Attachment I.
2. The disclosure, except for contribution refunds, of outstanding checks that were \$200 or less as in-kind contributions thereby offsetting the related expenditure previously reported, with the appropriate adjustment to Cash on Hand.

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3. A determination whether those checks greater than \$200 and all contribution refunds were actually outstanding. Those checks which represented a remaining liability of the Committee, were to be reported as an in-kind contribution if permissible, or steps were to be taken to effect payment.

In a letter dated January 21, 1987, the Committee suggested resolving the outstanding check issue by donating the amount (\$27,809.44) involved to charity, arguing that, among other reasons, the substantial time and resources required to provide the information would be a great hardship at this late stage of the audit process; and requested an immediate decision.

By letter dated February 9, 1987 the Committee next requested an extension to respond to the Interim Addendum, stating they had not received a response to their above detailed letter of January 21, 1987.

The Commission approved the Committee's proposed resolution of the outstanding check issue and their request for an extension on February 25, 1987.

On March 20, 1987 the Committee responded by providing photocopies of four checks (tissue copy), totaling \$21,519.14, made payable to different organizations. Additionally, items totaling \$6,290.30 were considered by the Committee to be in-kind contributions.

Recommendation

The Audit staff recommends no further action on this matter.

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Mondale For President Committee, Inc.
December 31, 1985 Outstanding Checks

<u>Payee</u>	<u>Check #</u>	<u>Check Date</u>	<u>Check Amount</u>	
1.	902716		\$ 25.00	
2.	902717		250.00	
3.	902725		200.00	
4.	902737		250.00	
5.	902739		200.00	
6.	902842		400.00	
7.	902852		1,186.56	
8.	902853		134.00	
9.	902854		365.72	
10.	902855		189.55	
11.	902866		500.00	
12.	902867		200.00	
13.	902869		350.00	
14.	902871		500.00	
15.	902872		100.00	
16.	9826		55.56	
17.	10246		306.49	
18.	10381		152.14	
19.	10426		62.92	
20.	10458		200.00	
21.	10603		123.00	
22.	10604		9.35	
23.	Peter D. Hart and Associates	10944	1/7/85	28.60
24.	Las Cruces Sun News	11091	2/22/85	114.30
25.	Michael Sidley	11245	2/25/85	255.00

NOTE: Payees and Check Dates that are not identified above are due to unavailable Committee records.

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Mondale For President Committee, Inc.
December 31, 1985 Outstanding Checks

<u>Payee</u>	<u>Check #</u>	<u>Check Date</u>	<u>Check Amount</u>
26. Democrats of Wisconsin	9625	7/20/84	\$ 3.08
27. Voor Allen Fedder-et al	9617	7/17/84	10.56
28. Richard Gavtrena	9325	7/3/84	180.90
29. Randall Allen	9264	6/28/84	75.00
30. Laleen Collins	8970	6/5/84	57.28
31. Mary Finkbonner	8938	6/4/84	50.00
32. Elaine Ajable	8836	5/31/84	75.00
33. Ann Biser	8641	5/16/84	25.00
34. Ramon Luis	8435	5/3/84	100.00
35. Larry Martinez	8259	4/23/84	100.00
36. Jim Bertrand	7693	3/27/84	50.00
37. Walter Holton	7668	3/26/84	75.00
38. Robin Coats	7487	3/14/84	75.00
39. Peter Scher	7399	3/12/84	75.00
40. Robert Weaver	7273	3/6/84	130.00
41. Linda Rohar	7265	3/6/84	198.00
42. Maura Goodwin	7247	3/6/84	182.00
43. Julie Dwyer	7245	3/6/84	180.00
44. Sheraton Orlando	7230	3/5/84	650.00
45. Marie King	6794	2/16/84	150.00
46. John Sutter	6742	2/15/84	125.00
47. Laurence Reid	6732	2/15/84	125.00
48. Charles Lyman	6717	2/15/84	125.00
49. Jim Jarser	6475	2/8/84	185.00
50. Spurgin Waters	5577	1/11/84	19.50

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Mondale For President Committee, Inc.
December 31, 1985 Outstanding Checks

<u>Payee</u>	<u>Check #</u>	<u>Check Date</u>	<u>Check Amount</u>
51. Starware	5246	1/5/84	\$ 225.00
52. Leon Chaplin	5183	1/5/84	182.27
53. AFSCME Council 93	5168	1/5/84	1,147.35
54. Kart Hain	902249	4/12/84	50.00
55. Arcadia	902194	3/27/84	155.00
56. Allan Shaefer	902179	3/27/84	100.00
57. Doug Michelman	901999	2/29/84	100.00
58. Sheraton Boston	901846	2/13/84	125.00
59. Henry D. Lord	901824	2/9/84	75.00
60. Karin Robinson	901774	2/7/84	75.00
61. Chuck Campian	161	1/21/83	80.00
62. Brothers Printing	171	1/25/83	338.67
63. Xerox	1064	2/1/83	730.00
64. Xerox	1290	2/23/83	410.00
65. Safeway	2012	4/22/83	50.42
66. Sheraton North	2101	4/26/83	107.00
67. Oakland Athletic Club	2132	4/27/83	237.51
68. Xerox	2207	4/29/83	700.00
69. Manchester Employees Credit	900008	5/3/83	305.31
70. Capital Communications	900072	5/9/83	25.00
71. Earl Katz	2255	5/12/83	213.03
72. American International Group	2337	7/1/83	238.00
73. Peter Goetz	900245	5/27/83	1,354.17
74. Karin Shapiro	900652	7/11/83	105.00
75. Roger Freedman	900776	7/21/83	250.00

Mondale For President Committee, Inc.
December 31, 1985 Outstanding Checks

<u>Payee</u>	<u>Check #</u>	<u>Check Date</u>	<u>Check Amount</u>
76. Cheryl Freedman	900777	7/21/83	\$ 250.00
77. Huntsville Hilton	900812	7/25/83	49.68
78. Gaper's	900511	7/1/83	2,000.00
79. David Rosenberg	3107	8/8/83	28.30
80. Brian Cloherty	900944	8/12/83	120.00
81. Sheraton Inn	901034	9/8/83	126.00
82. John Monahan	3715	9/9/83	44.00
83. Visual Communications	3810	9/13/83	200.00
84. Rod Halvorson	3879	9/15/83	875.00
85. Gale Kaufman	3962	9/22/83	200.00
86. Lewis Dischner	4003	9/27/83	750.00
87. Peter Kelly	4226	10/11/83	60.00
88. Jared Stanell	4396	10/28/83	718.75
89. Rayon Productions	901242	11/18/83	35.00
90. Joe Goodman	901355	12/9/83	90.00
91. Kate Sullivan	901356	12/9/83	60.00
92. Spurgin Waters	901365	12/12/83	30.00
93. Bennett Freeman	901530	12/20/83	200.00
94. Rick Rosenthal	901531	12/20/83	200.00
95. Scott Dolley	901532	12/20/83	200.00
96. Jake Frenkel	5009	12/28/83	150.00
97. Carl Ek	5196	1/5/84	9.41
98.	7819		100.00
99. Alvin Malmom	901951	2/23/84	1,000.00
100.	902599		195.00

Mondale For President Committee, Inc.
December 31, 1985 Outstanding Checks

<u>Payee</u>	<u>Check #</u>	<u>Check Date</u>	<u>Check Amount</u>
101.	902602		\$ 45.53
102.	902626		200.00
103.	9508		11.95
104.	9557		8.73
105. Laleen Collins	902146	1/5/84	331.57
106. Jay Monahan	903182	3/1/84	112.17
107. Kevin O'Reilly	903554	3/21/84	120.40
108. Linda Hickman	903821	4/1/84	164.44
109. Larry Martinez	904279		818.59
110. Leslie Larson	904456	5/15/84	163.78
111. Elizabeth Hartley	1393	3/21/84	28.29
112. Joanne McGuire	1458	3/21/84	378.02
113. William J. Fleming	1755	5/1/84	1,041.67
114. James B. Henley, Jr.	1858	5/15/84	86.40
115.	2099		48.52
			<u>\$27,809.44</u>

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1987

MEMORANDUM

TO: Kent Cooper
Assistant Staff Director
Public Disclosure Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele
General Counsel

Daniel J. Blessington
Attorney-Advisor

SUBJECT: Public Disclosure of Final Commission Action
Mondale For President Committee, Inc.

Please find attached copies of documents relating to the final determination made by the Commission relating to the Mondale For President Committee, Inc. We suggest that these materials be placed on the public record. We note that the final audit report is already on file.

Attachments

Certification
Notification/Final Determination

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Repayment Determination for the)
Mondale For President Committee, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 12, 1987, the Commission decided by a vote of 6-0 to approve the Final Repayment Determination for the Mondale For President Committee, Inc. as recommended in the Memorandum to the Commission dated February 9, 1987.

Commissioner Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for the decision.

Attest:

2/17/87

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

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Received in the Office of Commission Secretary: Mon., 2-9-87, 4:23
Circulated on 48 hour tally basis: Tues., 2-10-87, 11:00
Deadline for vote: Thurs., 2-12-87, 11:00



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 20, 1987

Michael S. Berman, Esq.
Kirkpatrick & Lockhart
1800 M Street, N.W.
South Lobby 9th Floor
Washington, D.C. 20036

RE: Mondale For President
Repayment Determination

Dear Mr. Berman:

The Commission acknowledges receipt of Mondale For President's repayment of \$260,500.55 to the Secretary of the Treasury as the portion of non-qualified campaign expenses paid with public funds (\$60,087.64), and the amount of public funds received in excess of the candidate's entitlement (\$200,412.91). Inasmuch as the Committee has made repayment without dispute within the prescribed response period, pursuant to 11 C.F.R. § 9038.2(c)(1), the Commission's initial determination has become final.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott E. Thomas".

Scott E. Thomas
Chairman

cc: Walter F. Mondale
Carolyn U. Oliphant, Deputy General Counsel

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 20, 1987

Carolyn U. Oliphant, Esq.
Mondale For President
2233 Wisconsin Avenue, N.W.
Washington, D.C. 20007

RE: Mondale For President
Repayment Determination

Dear Ms. Oliphant:

The Commission acknowledges receipt of Mondale For President's repayment of \$260,500.55 to the Secretary of the Treasury as the portion of non-qualified campaign expenses paid with public funds (\$60,087.64), and the amount of public funds received in excess of the candidate's entitlement (\$200,412.91). Inasmuch as the Committee has made repayment without dispute within the prescribed response period, pursuant to 11 C.F.R. § 9038.2(c)(1), the Commission's initial determination has become final.

Sincerely,

A handwritten signature in cursive script, appearing to read "Scott E. Thomas".

Scott E. Thomas
Chairman

cc: Walter F. Mondale
Michael S. Berman, Treasurer

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 20, 1987

Walter F. Mondale
c/o Michael S. Berman, Esq.
Kirkpatrick & Lockhart
1800 M Street, N.W.
South Lobby 9th Floor
Washington, D.C. 20036

RE: Mondale For President
Repayment Determination

Dear Mr. Mondale:

The Commission acknowledges receipt of Mondale For President's repayment of \$260,500.55 to the Secretary of the Treasury as the portion of non-qualified campaign expenses paid with public funds (\$60,087.64), and the amount of public funds received in excess of the candidate's entitlement (\$200,412.91). Inasmuch as the Committee has made repayment without dispute within the prescribed response period, pursuant to 11 C.F.R. § 9038.2(c)(1), the Commission's initial determination has become final.

Sincerely,

Scott E. Thomas
Chairman

cc: Carolyn U. Oliphant, Deputy General Counsel
Michael S. Berman, Treasurer

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C. 20463

October 28, 1986

MEMORANDUM

TO: FRED S. EILAND
CHIEF, PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT -
MONDALE FOR PRESIDENT COMMITTEE, INC.

Attached please find a copy of the final audit report on Mondale for President Committee, Inc., which was approved by the Commission on October 23, 1986.

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: FEC Library
RAD
Office of General Counsel
Public Disclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON THE
MONDALE FOR PRESIDENT COMMITTEE, INC.

I. Background

A. Overview

This report is based on an audit of the Mondale for President Committee, 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 January 3, 1983 as the principal campaign committee of Honorable Walter F. Mondale. In addition, the Committee conducted activities of an exploratory nature commencing November 2, 1982. The related receipts and disbursements were included in the first report filed after registration. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period November 2, 1982 through August 31, 1984, the final coverage date of the most recent report filed with the Commission at the time of the audit. In addition, certain activity was reviewed through December 31, 1984 for the Statement of Net Outstanding Campaign Obligations and for allocation to the state and overall expenditure limitations. Subsequently, in follow-up fieldwork conducted pursuant to 11 C.F.R. §§ 9038.1(b)(3) and (e)(4), the limited review was extended through March 31, 1986. The Committee reported an opening cash balance of \$-0-, total receipts of \$33,437,542.51, total disbursements of \$32,893,400.19, and a closing cash balance of \$476,129.84 1/.

1/ The totals do not foot due to math discrepancies.

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The Committee continued to receive contributions and make disbursements. In addition, revised Statements of Net Outstanding Campaign Obligations were submitted with each matching fund submission as required by 11 C.F.R. § 9034.5(d). Under 11 C.F.R. §§ 9038.1(b)(3) and (e)(4), additional fieldwork may be conducted and addenda to this report issued as necessary.

This report is based upon documents and work papers which support each of its 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 during the period covered by the audit was Mr. Michael S. Berman.

C. Scope

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

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

Matters Referred to Office of General Counsel

Certain other matters noted during the audit have been referred to the Office of General Counsel.

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

A. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code and Section 9035(a) of Title 26 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.

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Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that 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. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

In lieu of state office and advance staff checking accounts, the Committee maintained a headquarters' draft account. Drafts of various denominations were issued to Committee staff for their use in making expenditures. Drafts were coded with a cost center (State) and required the date, amount (up to the face value), payee name, and signature of the maker. All other expenditures were drawn on one of several headquarters' checking accounts.

From inception through February 1984, the Committee maintained an accrual basis general ledger system. Expenses were assigned to one of a number of Cost Centers. For example, each state was a separate cost center. In addition, there were a number of headquarters department cost centers such as Finance, Administration, Fundraising, etc. Of particular interest in the following discussion is the Field cost center which was provided for the recording of field expenses not attributable to a state limitation and the Scheduling and Advance cost center for recording all candidate and surrogate travel. Expenses were further assigned to an expense category such as payroll, computer services, travel, polling, etc. To determine the amount to be allocated to a particular State for a reporting period, a cost center report was generated. This report summarized all expenses for the period by cost center. To adjust these figures to a cash basis for reporting purposes, the total of all unpaid items recorded in the ledger and coded to a particular cost center was subtracted. The resulting figure was then adjusted for compliance and fundraising exemptions and posted to the FEC Form 3P, Page 3, Allocation of Primary Expenditures By State (State Allocation Report).

Beginning in March 1984, the Committee maintained a second general ledger on a cash basis. This ledger was prepared from the documentation which accompanied each check request. As with the accrual general ledger, each disbursement was coded to a cost center and expense category. To arrive at the amount allocable to a State, the charges to a particular State cost center were summarized. This figure was then adjusted for salaries and taxes, which were not recorded in the cash basis ledger, and for compliance and fundraising exemptions. The resulting figure was then posted to the State Allocation Report.

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The entries in both general ledger systems were tested during the audit and, with the exception of the adjustments discussed below, were found to be materially correct.

The Audit staff's review of the State Allocation Report as of December 31, 1984 indicated that the Committee had allocated expenditures totalling \$676,344.28 to the Iowa limitation of \$684,537.50; \$388,164.53 to the Maine limitation of \$404,000.00; and \$469,699.61 to the New Hampshire limitation of \$404,000.00. In addition, the Committee's recordkeeping system contained unpaid expenses allocable to Iowa which totalled \$8,548.40, \$5,777.99 to Maine, and \$10,062.75 to New Hampshire, which would be added to these States' reported allocations when paid. (See Finding III.A.3.)

1. Specific Allocation Methods

In addition to the general allocation provisions contained in 11 C.F.R. § 106.2(a), 11 C.F.R § 106.2(b)(2) provides specific allocation methods for various categories of expenses. The categories of expenses requiring adjustments to the Committee's allocations are discussed below.

a. Media Expenditures

Section 106.2(b)(2)(i)(B) of Title 11 of the Code of Federal Regulations requires that expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

The Committee retained the services of a media firm located in Texas. The allocation of radio and television broadcasts was based upon total household estimates contained in the Arbitron Ratings Publication - 1983-1984. The Audit staff analyzed the firm's media time charge allocations and determined that the amounts allocable to Iowa, Maine, and New Hampshire were reasonable. However, based on our review, the Audit staff noted that the Committee had understated media expenditures allocable to Iowa, Maine, and New Hampshire by \$20,034.00, \$6,617.00, and \$4,052.00, respectively. These misstatements apparently resulted from errors made by the Committee when recording the allocations in their automated general ledger, and therefore, in the reported state allocation totals.

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In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to adjust their accounting records to correct the media allocation errors noted above.

b. Intra-State Travel and Subsistence Expenditures

Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states that travel and subsistence expenditures for persons working in a State for five consecutive days or more 2/ shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period.

The Committee's files relating to travel by Committee staff often contained only a per diem request from an individual. In many cases, invoices for rental cars, hotels, etc., were filed under the name of the hotel or rental car agency since charges were billed directly to campaign headquarters, or were filed with the cancelled drafts, by draft number, if paid by draft. As a result, in order to determine if an individual had been working in a State for five or more consecutive days, it was necessary to review these files to locate hotel receipts, car rental bills, per diem requests, etc., to establish the duration of an individual's travel.

In addition to the travel and subsistence expenses discussed above, a law firm performed various services for the Committee during the campaign. A review of certain billings which stated "No items for professional services are included" showed charges for various travel, lodging, and miscellaneous expenses. These billings indicated that \$1,814.70 for automobile rentals in Maine should be allocated to the Maine expenditure limitation rather than to a headquarters' cost center.

In the Interim Audit Report, the Audit staff concluded that, based upon an analysis of the documentation relating to travel and subsistence expenditures, an additional \$7,178.46, \$19,589.89 and \$7,589.65 should be allocated to Maine, Iowa, and New Hampshire, respectively.

2/ The explanation and justification for 11 C.F.R. § 106.2(b)(2)(ii) states that 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 that person was in a State rather than using 24 hour periods. (See Federal Register, Vol. 48, No.25 pg. 5225.)

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In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to "make reallocations for errors in the amounts of \$4,808.84, \$13,880.01 and \$2,383.03 to Maine, Iowa and New Hampshire, respectively, based on the information provided by the auditors." The Committee, however, disputes Audit staff reallocations totalling \$2,369.62 in Maine, \$5,709.48 in Iowa, and \$5,206.62 in New Hampshire. These amounts represent payments to 31 individuals for which the Committee believes the supporting documentation presented by the Audit staff "does not demonstrate that the individuals in question were in the states for more than four days and therefore no state allocation is required".

The Committee has submitted no documentation to demonstrate that the individuals were not in the states indicated in Finding II.B.1.b. of the Interim Audit Report. Rather, in their November 18, 1985 response, the Committee provided a brief summary of their interpretation of the documentation provided by the Audit staff for the 31 individuals whose allocations they dispute. In consideration of the Committee's comments, the Audit staff re-reviewed the documentation which served as the basis for the reallocations contained in the interim audit report. As a result, the travel and subsistence adjustments contained in the interim audit report have been reduced by \$644.55 for New Hampshire (see Attachment I, items 26 and 31), but no adjustments have been made to the Maine or Iowa allocations. In the absence of additional documentation demonstrating that the remaining individuals were not in the states noted in the Interim Audit Report, the Audit staff concludes that a reasonable interpretation of the documentation available supports the allocations contained in this report. Therefore, the Audit staff concludes that travel and subsistence expenditures totaling \$7,178.46 should be allocated to Maine, \$19,589.89 to Iowa, and \$6,945.10 to New Hampshire.

Attachment I contains a listing of the 31 individuals and amount(s) in dispute, the Committee's comments regarding the Audit staff allocations, and the Audit staff's basis for each allocation.

c. Salaries, Employer FICA, and Consultant Fees

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations requires that, except for expenditures exempted under paragraph (c) of this section (relating to compliance costs and fundraising expenditures),

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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.

The Audit staff's review revealed persons incurring expenditures in one State for five or more consecutive days (see l.b. above). Their names were traced to payroll records to determine whether the related salaries and employer FICA or consultant fees had been allocated to the State in which the individuals were working.

In addition to the above, adjustments have been made for the salaries of the Committee's State Coordinators for each of the three States. The Committee exempted 30% of the salaries of such persons, stating that they were involved in "National Policy". However, since these coordinators were assigned to work in these States for extended periods of time, their salaries require allocation to the States pursuant to 11 C.F.R. § 106.2(b)(2)(ii).

In most cases, these salaries and related costs were coded to either the Field or Scheduling and Advance headquarters' cost centers.

Based upon this review, the Audit staff determined that additional salaries, employer FICA, and consultants' fees totalling \$20,174.77 should be allocated to Iowa, \$17,157.14 to Maine, and \$15,788.74 to New Hampshire.

In their November 18, 1985 response, the Committee agreed to "make reallocations of \$9,215.45, \$2,931.81, and \$6,085.48 to Iowa, Maine and New Hampshire, respectively." The Committee disputed the balance of the Audit staff's salary, FICA payment, and consulting fee reallocations for two reasons. First, the Committee disputed the allocation of \$4,434.32, \$3,725.33, and \$4,977.76 to Iowa, Maine, and New Hampshire, respectively, because "the auditors' documentation does not demonstrate that the individuals listed were in the state more than four days." With respect to Iowa and New Hampshire, this argument goes back to the Committee's interpretation of the auditors' intra-state travel and subsistence reallocations which were addressed in section l.b. above. Just as the Committee feels that certain individuals' travel and subsistence expenses do not require allocation to these states, they likewise do not feel that their compensation for the same period requires allocation. As discussed in Finding III.A.l.b., the Audit staff made minor adjustments to its intra-state travel and subsistence reallocations as a result of the information provided by the

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Committee in response to the Interim Audit Report. It was noted that no adjustments were made to the Iowa and Maine totals, but the New Hampshire travel and subsistence allocation was reduced by \$644.55 as can be seen at Attachment I, #'s 26 and 31. As a result, the Audit staff made corresponding reductions of \$240.00 and \$360.00, respectively, to the consulting fee reallocations for these two individuals.

With respect to Maine, the Committee's \$3,725.33 disagreement is not that the auditors improperly allocated travel and subsistence where the documentation does not support travel in excess of four days. Instead, the salary, employer FICA, and consulting fee allocations which the Committee disputes stem from the auditors' allocation of the compensation expenses of individuals for whom the Committee allocated travel and subsistence expenses to Maine, but neglected to allocate the compensation for the same period. The Committee argues that "the auditors did not provide any evidence as a basis" for these individuals' allocation. Given that the basis for this allocation was the Committee's own travel and subsistence allocations for the individuals, the auditors did not provide duplicate copies of what the Committee already had in their possession and had properly allocated. Provided at Attachment II are the payments in dispute and the auditors' basis for allocation.

Secondly, the Committee disagreed with the Audit staff's "reallocation of salaries in the amounts of \$6,525.00, \$10,500.00 and \$4,725.50 in Iowa, Maine and New Hampshire, respectively" on the grounds "...that the key state personnel in these states played an essential national policy role justifying a 30 percent allocation of their salaries to headquarters operating expenditures not subject to state allocation." The Committee refers to 11 C.F.R. § 106.2(c) which exempts national campaign expenditures, including staff expenditures, from state allocation. They also cite 11 C.F.R. § 106.2(b)(2) in which they state "the Commission has... acknowledged that many campaign staff perform an essentially national campaign role, travelling frequently to many states. Under this section, salaries...need not be allocated to a specific state unless those staff are in the state for five or more consecutive days." They then refer to the Explanation and Justification which accompanied 11 C.F.R. § 106.2, in which, they assert, the Commission "...acknowledges that there may be staff, meetings, etc., which perform a 'national strategy' function and therefore need not be allocated to any state. 'While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a state for five days or more to work on national campaign strategy.'"

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The Audit staff offers the following comments. First, that section of the Explanation and Justification to which the Committee refers primarily speaks to the practical difficulties encountered in allocating the salaries of "advance staff" personnel. Second, the general rule for allocating salaries is quite clear in the section of the Explanation and Justification to which the Committee refers. This section begins, "Subsection (b)(2)(ii) governs the allocation of salaries. 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." Later in this same paragraph, it states: "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." Finally, although the Explanation and Justification allows for a candidate to demonstrate that a particular individual or group of individuals is "in a State for five days or more to work on national campaign strategy", it was not meant to provide for a "carte blanche" national policy salary exemption for individuals assigned to states for extended periods. On the contrary, the Explanation and Justification specifically states that "...the Commission expects such exemptions to be the exception rather than the rule", but recognizes "that national campaign strategy meetings, for example, may be held in a centrally located state for an extended period of time" and would not require the allocation of the attendants' salaries to the state in which the meeting is held. Although the Explanation and Justification allows for isolated salary allocation exemptions, given that the Committee has exempted a portion of the salaries of state coordinators assigned to states for periods of three to six months, the Audit staff feels that the Committee has fallen far short of demonstrating that the circumstances surrounding this group of individuals constitute "the exception to the rule."

Though not raised in the Committee's response to the interim audit report, the Audit staff notes that these salaries are eligible for a 10% compliance exemption. (11 C.F.R. § 106.2(c)(5)). As a result of this compliance exemption, and the adjustments discussed above, the revised salary, employer FICA and consulting fee reallocation in Iowa, Maine and New Hampshire are, \$18,157.29, \$15,441.43, and \$13,669.87 respectively.

d. Compliance and Fundraising Expenditures

Sections 106.2(b)(2)(ii) and (iv) of Title 11 of the Code of Federal Regulations require that, except for expenditures exempted under paragraph (c) of this section (relating to national campaign salaries and overhead), salary and overhead expenditures of offices located in a particular State shall be allocated to that State. For purposes of 11 C.F.R. § 106.2(b)(2)(iv), overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

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

The Audit staff reviewed the Committee's calculation of exempt compliance and fundraising costs for overhead expenses related to State offices. Since the Committee generally utilized the 10% exemptions provided in 11 C.F.R. § 106.2(c)(5), the analysis centered on the composition of the overhead pool and adherence to the 28 day fundraising rule.

(i) Telephone and Utilities

In addition to telephone base service charges, the Committee included intra-state long distance charges in overhead. As a result, the allocation of telephone expenses was understated. Also noted was an Iowa water and sewer bill which had been coded to a headquarters' cost center. As a result of these misallocations, additional charges of \$6,498.36 to Iowa, \$1,109.55 to Maine, and \$3,606.53 to New Hampshire are required.

In their response to the Interim Audit Report, the Committee objects to the exclusion of intra-state telephone charges from the overhead pool, and therefore, the disallowance of the overhead compliance and fundraising exemptions. The Committee argues that the definition of overhead, which specifically includes telephone base service charges, does not exclude intra-state charges since it states that "...overhead expenditures 'include, but are not limited to' the items listed..."

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Though the definition of overhead expenses at 11 C.F.R. § 106.2(b)(2)(iv) does not specifically exclude telephone toll calls, 11 C.F.R. § 106.2(b)(2)(v) does specifically address such expenses. In that section, the cost of interstate telephone calls is excluded from allocation to any state, while the cost of intra-state calls is specifically required to be allocated to a state. Given that telephone service base charges are included in overhead, that intra-state calls are specifically required to be allocated to a state, and that interstate calls are exempt from allocation to any state, the inclusion of the cost of intra-state telephone calls in overhead is not appropriate. It is noted that, although the regulations do not contemplate the inclusion of the cost of intra-state telephone calls in overhead, as with any expenditure which may have a compliance or fundraising component, the Committee may document those components and the resulting exemption from the expenditure limitation.

On September 11, 1986, the Commission voted to accept the Committee's argument and to allow the inclusion of intra state long distance in State office overhead. The amounts shown on the Recap of Allocable Expenditures (page 23) have been adjusted accordingly.

(ii) Fundraising Expenditures - 28 Day Rule

In addition to the expenditures noted above, the Audit staff reviewed other expenditures which the Committee charged to fundraising, thus excluding them from state allocation. The purpose of this review was to determine whether any expenditures occurring within 28 days of the Iowa caucus, or the New Hampshire and Maine primary elections, had been improperly excluded from State allocation.

This review revealed that an additional \$16,270.49 should be allocated to Iowa.

In their November 18, 1985 response to the Interim Audit Report, the Committee argues that the 28 day rule does not apply to the Iowa Caucus. The Committee cites Advisory Opinion 1979-71 which held that the 1980 Iowa Caucus was not an "election" as defined by the Federal Election Campaign Act, but stated that the state expenditure limitations do apply. The Committee notes that the Advisory Opinion does not specifically state that the 28 day rule at 11 C.F.R. § 110.8(c)(2) remains in effect.

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In addition, the Committee argues that 11 C.F.R. § 110.8(c)(2) establishes only "a rebuttable presumption that expenditures made within that time frame are not for fundraising. In this instance, MPC held the largest grass roots fundraiser--America for Mondale--in history within 28 days of the Iowa caucus. This was a nationwide fundraiser organized at the local level in every state. This fully rebuts the presumption created in the regulation that the \$16,270.49 was not a genuine fundraising expenditure" (emphasis in original).

As noted in the Committee's response, 11 C.F.R. § 110.8(c)(2) states that "expenditures for fundraising activity targeted at a particular State and occurring within 28 days before that state's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State" (emphasis added). Advisory Opinion 1979-71 does not void this regulation. That advisory opinion was requested by a political action committee and was limited to the issue of whether or not the Iowa caucus required the filing of pre and post-election disclosure reports. The opinion does state that it has no effect on the "application of the expenditure limits to Presidential candidates eligible for matching Federal payments." To reinforce this position, the opinion cites 11 C.F.R. § 110.8(c) and quotes from Section 1 of that regulation. It refers to the language "primary election, convention or caucus." The opinion concludes that "by referring specifically to a convention or caucus in a State, the cited regulation means that the State expenditure limits apply whether or not the convention or caucus is an 'election' within the definitions of 2 U.S.C. § 431(a) and 11 C.F.R. § 100.6(b)." Thus, it is clear that Advisory Opinion 1979-71 has no bearing on the application of the 28 day rule with respect to the Iowa caucus.

The Committee appears to argue that the presumption in the 28 day rule is rebutted by the statement that this was a nationwide fundraiser organized in every state. The Committee informed the auditors that a series of "House Parties" were held at which contributions were solicited. The \$16,270.49 reallocated in the Interim Audit Report represents a percentage of overhead expenses and the salaries of persons who worked in the State organizing the program which occurred within 28 days of the election. Absent documentation that this fundraising effort was ongoing in many states simultaneously rather than targeted at a few states at a time coincident with the primaries in those states, no adjustment to the amounts in the Interim Report have been made.

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e. Public Opinion Polling Expenditures

Section 106.2(b) (2) (vi) of Title 11 of the Code of Federal Regulations states that expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State.

The Committee engaged a Washington, D.C. vendor to conduct public opinion polls. A review of copies of the vendor's statements dated August 8, 1983 identified two surveys, one in Iowa and one in New Hampshire, which had been allocated to the headquarters cost center "Campaign Management" rather than to the appropriate State. The required allocations for these surveys are \$13,500.00 to Iowa and \$12,500.00 to New Hampshire.

In response to the Interim Audit Report the Committee agreed to "reallocate account coding errors of \$13,500.00 to Iowa and \$12,500.00 to New Hampshire."

2. Other Expenditures Requiring Allocation

As noted above, 11 C.F.R. § 106.2(a) (1) states that 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. An expenditure shall not necessarily be allocated to the State in which it is incurred or paid.

a. Automobile Leasing

The Audit staff noted that the Committee leased a number of automobiles for use by campaign workers in the States of Iowa and New Hampshire. The duration of the leases ranged from one to three months. The documentation supporting these disbursements did not associate the name of a particular staff member as the driver of a particular automobile. Shown below are the amounts for each State.

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(i) Iowa

The Audit staff identified 5 vendors in Minnesota from which automobiles were rented. These automobiles were rented for various periods of time beginning in mid-January and, with the exception of one car which was apparently damaged in Iowa, were returned by March 2, 1984. ^{3/} With the exception of one vendor whose invoices did not contain the signature of a Committee representative, the majority of the other contracts were signed by one of two Committee staff persons. Notations on certain of the documents reference specific cities in Iowa or contained phrases such as "Return of unit from Iowa" or "Mondale Presidents' Campaign through Iowa." All of these expenditures were allocated to Minnesota.

Based on the Audit staff's review of the above mentioned documentation, it was determined that an additional \$25,451.38 should be allocated to Iowa.

(ii) New Hampshire

The Committee leased 20 automobiles from a Massachusetts automobile dealer and allocated the cost to Massachusetts. The cars were leased between the end of November and the end of December 1983.

With three exceptions, the cars were returned by March 5, 1984. One was returned on March 7 with no apparent explanation. Rental contracts for the remaining two automobiles indicate that there was some difficulty in locating them. These automobiles were returned on March 9 and 14, 1984. ^{4/} A majority of the documentation indicates a New Hampshire address on the original rental contracts, and associated documentation also notes specific cities in New Hampshire.

^{3/} The Iowa Caucus was held on February 20, 1984. The Minnesota precinct caucuses were not held until March 20, 1984.

^{4/} It should be noted that the New Hampshire primary was on February 28, 1984. The Maine caucus was on March 4, 1984, while the Massachusetts primary was March 13, 1984.

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Based on a review of the documentation, the entire amount of the expenses associated with the rental of the 20 automobiles, \$31,331.71, should be allocated to New Hampshire.

In their response to the Interim Audit Report, the Committee agrees to the reallocation of \$5,278.87 to New Hampshire and objects to the reallocation of \$25,451.38 to Iowa and the remaining \$26,052.84 to New Hampshire. The response also notes that the Audit staff allocated these Minnesota and Massachusetts expenditures to Iowa and New Hampshire, based on notations on rental contracts which suggested that the cars were used in those states.

The Committee argues as follows:

"Since the cars were rented in Minnesota and Massachusetts, the expenditure is clearly allocable to those states. To show otherwise the auditors would have to produce proof showing that the particular cars involved were actually in Iowa or New Hampshire and on which days this occurred.

Evidence presented by auditors consists of rental contracts, parking tickets and damage claims. None of the evidence establishes that the cars were in the state more than four consecutive days. Only one invoice, from Clark Motors, leasing cars to the New Hampshire field office, offers reasonable evidence that the expense is allocable to the state.

Moreover, under the regulations, it is entirely legitimate for these cars to be leased and used for interstate travel and not allocated to any state. 11 C.F.R. Section 106.2(c)(4). While the Committee allocated these expenditures to the states in which leased, in many instances this was not even required, because the cars were used to transport volunteers from Minnesota to Iowa and from Massachusetts to New Hampshire for less than five-day periods. There were major volunteer programs ("Fritz Blitzers") in both Minnesota and Massachusetts designed to bring weekend volunteers to Iowa and New Hampshire. Under the regulations, the Committee need not have allocated those expenditures to any state."

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First, 11 C.F.R. § 106.2(a)(1) states that an expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. Further, the Explanation and Justification for 11 C.F.R. § 106.2(c)(4) states that travel across State lines that is occasioned by transportation or lodging facilities will not be deemed exempt interstate travel. Therefore, the fact that the automobiles were rented from agencies located in states other than Iowa or New Hampshire is not the controlling factor in the allocation of these expenditures.

Second, since no person is listed on the rental contract as the driver of any of these automobiles, and since the rentals are for periods of at least 3 weeks, these expenditures do not represent expenses for a person's travel and subsistence while working in a state for more than four days (11 C.F.R. § 106.2(b)(2)(iii)). Rather, these expenditures are treated as any other equipment rental and are allocable pursuant to 11 C.F.R. § 106.2(a), which provides the general rule for allocation. That section states that 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.

Finally, as noted above, the periods of the rentals in relationship to primary dates and notations on some of the documents supporting these disbursements indicate that the automobiles were used in Iowa and New Hampshire. The Committee has submitted no evidence that these automobiles were used other than as the documentation indicates. Also, for the rentals allocable to New Hampshire, the Committee has agreed to the allocation of \$5,278.84. The Committee notes that these rental contracts show a New Hampshire address indicating use in New Hampshire. This disbursement was for the rental of 14 automobiles. Each contract has a vehicle number shown to identify the particular automobile rented. There is another payment of \$2,262.36 to the same automobile dealer, for the rental of 6 automobiles, supported by a check request form dated the same day. However, there are no rental contracts attached to the check request form. The Committee has not agreed to this allocation. The remaining \$23,790.51 in payments to this automobile dealer was paid in two installments. This amount represented cleaning for 20 automobiles (6 plus 14, as noted above), extra days rental on cars not returned at the conclusion of the rental period, mileage beyond that provided for in the rental agreements, and damages. A review of the documentation supporting these payments indicates that the charges cover 20 automobiles, 19 of which are identified by vehicle number.

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Further, of the 19 vehicles identified, 13 are among the 14 which the Committee acknowledges as having been used in New Hampshire. These follow-up charges were billed after the New Hampshire primary for automobiles rented before the primary, and were addressed to the Committee's headquarters in Washington, D.C. rather than to the New Hampshire office.

Given the above, no adjustments to the allocation amounts shown in the interim report have been made.

b. Telephone and Related Services

The following disbursements for telephone usage and related services were noted. None of these disbursements were allocated to Iowa or New Hampshire.

(i) Iowa

Two labor organizations and two vendors provided various services described as telephone usage; office space, furniture and telephone usage; phone bank for Mondale calling to Iowa; and Intra-state Watts lines in Des Moines. Documentation for these disbursements indicated that amounts totalling \$3,955.00 require allocation to Iowa.

In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to the reallocation of this amount.

During follow-up fieldwork an additional payment to a labor organization for phone bank use in three Iowa cities was noted. This payment (\$4,073 on February 13, 1985) was not previously included in amounts allocable to Iowa. The documentation for this expenditure indicates that the payment has been charged to the Iowa expenditure limitation by the Committee.

The addition of this amount to that discussed above produces a total of \$8,028.00.

(ii) Maine

Follow-up fieldwork also identified a January 14, 1985 payment of \$46.89 to a Maine labor organization for the "Balance due on phone usage." The payment was not previously included in amounts chargeable to the Maine expenditure limitation. The documentation indicated that the Committee has allocated this amount to Maine.

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(iii) New Hampshire

Two labor organizations, a vendor, and the Manchester Municipal Employees Credit Union billed the Committee for services described as telephone usage, telephone answering service, and office space and subsequent clean-up work. The documentation supporting these disbursements indicated that amounts totalling \$4,856.62 require allocation to New Hampshire.

In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to the reallocation of this amount.

During follow-up fieldwork conducted after the Committee's response to the Interim Audit Report, two adjustments were identified to amounts allocable to the New Hampshire expenditure limitation for the use of labor organization telephones and facilities.

The first was a December 1984 payment of \$56,821.95 of which the Committee allocated \$51,139.76 to New Hampshire. This amount is included in the "Amount allocated by the Committee on FEC Form 3P, page 3 as of December 31, 1984" shown on the Recap of Allocable Expenditures below. While researching another expenditure it was learned that the Committee had made an error in their coding of this invoice. Only \$18,068.25 of this payment relates to New Hampshire. The remainder relates to a number of other states. Therefore, the amount chargeable to the New Hampshire expenditure limitation has been reduced by \$33,071.51.

The second adjustment is a payment of \$2,840.53 to a New Hampshire labor organization for "phone banks." This amount had not previously been included in expenditures allocable to New Hampshire. The Committee documentation for this payment indicates that the amount was charged to the Field cost center rather than to the New Hampshire expenditure limitation.

After considering this adjustment and the amounts which appeared in the Interim Audit Report, the revised figure is a \$25,374.36 reduction to expenditures allocable to New Hampshire.

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c. Printing and Shipping Expenditures

The Audit staff reviewed documentation supporting various expenditures to one Maryland and two Maine vendors for the preparation of campaign materials. Invoices contained notations such as "List for Cumberland County", printing services, preparation and shipping of letters, volunteer cards, position papers, canvas sheets, Maine for Mondale Letterhead, and Maine for Mondale Post Cards. In each case a specific State was referenced and the expenditure was coded to a headquarters' cost center.

Based on the Audit staff's review of the documentation, it was determined that the Committee is required to allocate an additional \$15,403.50 to Iowa, \$4,690.69 to Maine, and \$3,550.40 to New Hampshire.

In their November 18, 1985 response the Committee agreed to reallocate the above amounts.

d. Miscellaneous Expenditures

The Audit staff reviewed other documents related to computer services, auto accident claims, clean-up charges, and restaurant costs for a rally which were incurred in and/or made for the benefit of Iowa or New Hampshire. The results of this review revealed that the Committee had allocated those expenditures to Headquarters, although the documentation indicated the allocation should have been to a State.

In addition, a review of Committee allocation worksheets indicated that the Committee had posted an incorrect total to their worksheets for allocation to Iowa and New Hampshire on the February, 1984 FEC Monthly Report. As a result of this clerical error, the Audit staff has charged an additional \$2,079.75 to the Iowa limitation and reduced the amount allocated to the New Hampshire limitation by \$1,726.32.

Based on these reviews, the Audit staff determined that the Committee should allocate an additional \$6,472.66 to Iowa and \$4,482.24 to New Hampshire.

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In their response, the Committee agreed with the allocation of \$6,222.66 to Iowa, and \$4,361.24 to New Hampshire. The Committee objects to the reallocation of a \$121.00 payment to a New Hampshire restaurant and a \$250.00 payment to a Des Moines, Iowa real estate firm.

In the case of the restaurant, the Committee argues that the expense is for a lunch "paid for by Advance Staff not in state for more than four days." The restaurant was paid a total of \$1,312.50 by draft on February 21, 1984. Each draft referenced a rally on that date and was allocated to New Hampshire by the Committee. These drafts are in two groups, the first, \$762.50, and the second, \$550.00. The \$121.00 payment is the balance due on a restaurant bill of \$671.00 against which the \$550.00 group of drafts was applied. The restaurant bill references a luncheon while the advance person refers to the amount owed as "food for rally." This disbursement, though paid by an advance person who may not have been in the State of New Hampshire for more than four days, is not a payment for that person's travel and subsistence. Therefore, the payment is not exempt from allocation under 11 C.F.R. § 106.2(b)(2)(iii).

The Committee makes a similar argument with respect to the payment to the real estate firm. The Committee states that the payment was for "clean-up of a Mondale stop related to interstate travel."

Section 106.2(c)(4) of Title 11 of the Code of Federal Regulations exempts the cost of interstate travel from allocation to any state. However, this payment was for cleaning, guards, and other incidentals relating to the "Victory Celebration" on February 20, 1984. Although interstate travel to attend such a celebration may be exempt from allocation, the cost of the event is not.

No adjustment to the allocation in the Interim Audit Report was made as a result of the Committee's response. However, the following amounts related to Iowa and Maine and were identified during follow-up fieldwork. None of these disbursements were previously included in amounts allocable to these states.

In Iowa a \$400.00 payment for bus rental was noted. The documentation supporting this disbursement indicated that the trip was between two cities in Iowa. In addition, a \$75.00 payment for "Piano rental for Mondale visit at Iowa State Fair" was noted. Both of these disbursements were coded to the Field cost center rather than to Iowa.

A total of \$110.45 in miscellaneous disbursements relating to Maine was identified. Of this amount, \$46.60 represents amounts reported by the Committee as charges to the Maine expenditure limitation for which no specific disbursement was located. The remaining \$63.85 was a payment to a Maine vendor for office supplies.

These adjustments bring total miscellaneous expenditures to \$6,947.66 in Iowa, \$110.45 in Maine and \$4,482.24 in New Hampshire.

3. Debts and Obligations Requiring Allocation When Paid

The Audit staff determined that, as of December 31, 1984, the Committee's recordkeeping system contained unpaid debts and obligations allocable to Iowa, Maine, and New Hampshire. Vendor invoices supporting these outstanding debts and obligations indicated that an additional \$8,548.40 should be allocated to Iowa, \$5,777.99 to Maine, and \$10,062.75 to New Hampshire.

In the response to the Interim Audit Report, the Committee states "The auditors did not provide MPC with any documentation to substantiate their allocation. We are unable to determine whether their allocation is consistent with our own, or if they are contesting our allocation. In the absence of sufficient information we are disputing their allocations."

Prior to the Committee's receipt of the Interim Audit Report, the Audit staff provided a schedule of the payables which make up the amounts allocated. The schedule contained the creditor's name, the Committee's voucher number, the amount and the allocation. This information was to allow the Committee to locate the documentation in their files.

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The Audit staff reviewed the material supporting these allocations and notes that some of the allocations agree with the Committee's, others disagree, and some were not marked by the Committee with any allocation.

No adjustments to the allocations in the Interim Audit Report have been made as a result of the Committee response.

During follow-up fieldwork the Audit staff determined that all of the debts included in the figures noted above had been paid. However, in some cases, the amount paid or amounts chargeable to the state expenditure limitation varied from those included in the Interim Audit Report. The revised amounts are \$8,501.70 5/ in Iowa, \$5,777.99 in Maine, and \$10,312.85 5/ in New Hampshire.

The following is a recap of expenditures allocable to Iowa, Maine, and New Hampshire as delineated in Finding III.A.

5/ A portion of the change in these figures results from a \$328.80 item which was shown as an Iowa expense in the Interim Audit Report that should have been allocated to New Hampshire.

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Recap of Allocable Expenditures

	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Amount allocated by the Committee on FEC Form 3P, page 3 as of December 31, 1984.5/	\$679,988.94	\$389,420.59	\$470,863.17
<u>Adjustments to above Reported Totals:</u>			
III.A.1.a. Media Expenditures	20,034.00	6,617.00	4,352.00
III.A.1.b. Intra-State Travel and Subsistence	19,589.89	7,178.46	6,945.10
III.A.1.c. Salaries, Employer FICA and Consultant Fees	18,157.29	15,441.43	13,669.87
III.A.1.d. (i) Compliance costs and Fundraising Expenditures-Telephone and Utilities	28.47	-0-	-0-
III.A.1.d. (ii) Fundraising Expenditures-28 day rule	16,270.49		
III.A.1.e. Public Opinion Polling Expenditures	13,500.00		12,300.00
III.A.2.a. (i) & (ii) Automobile Leasing	25,451.38		31,331.71
III.A.2.b. (i) (ii) (iii) Telephone and Related Services	8,028.00	46.89	(25,374.36)
III.A.2.c. Printing and Shipping Expenditures	15,403.50	4,690.69	3,550.40
III.A.2.d. Miscellaneous Expenditures	6,947.66	110.45	4,482.24
III.A.3. Debts and Obligations as of December 31, 1984 (Paid 1/1/ to 2/28/85)	8,501.70	5,777.99	10,312.85
Total Amount Paid With Respect To The State Expenditure Limitation As of December 31, 1985	<u>831,901.32</u>	<u>429,283.50</u>	<u>532,332.98</u>
State Spending Limitation	(684,537.50)	(404,000.00)	(404,000.00)
Total Expenditures in Excess of State Limitations	<u>\$147,363.82</u>	<u>\$ 25,283.50</u>	<u>\$128,332.98 1/</u>

5/ Taken from Amended 3P, page 3 filed April 15, 1985.

1/ This amount does not contain expenditures made by any Mondale delegate committee. The Conciliation Agreement in MUR 1704 specifies an additional amount totalling \$92,975.73 which, for the purpose of settling the MUR, is treated as applicable to the New Hampshire expenditure limitation. The Conciliation Agreement also contained a repayment of \$29,640.00 as a result of exceeding this limitation. That amount was paid by the Committee on February 27, 1985.

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Conclusion

The Audit staff concludes that the Committee has exceeded the Iowa expenditure limitation by \$147,363.82, Maine by \$25,283.50, and New Hampshire by \$128,332.98.

For the Commission's initial repayment determination with respect to the above expenditures, see the discussion at Section III.E.2.

B. 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 nomination for election to 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 a 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 December 31, 1984 revealed that the Committee had reported Total Expenditures Subject to Limitation (Overall Limitation) of \$20,047,673.22. Based on the audit procedures performed it was determined that certain adjustments to the above total were required. Accordingly, the Interim Audit Report contained adjustments totaling \$646,752.94. (It was noted that these adjustments were comprised of both amounts paid prior to, and debts owed as of, December 31, 1984). As a result of these adjustments it was determined that the Committee had exceeded the 2 U.S.C. § 441a(b)(1)(A) spending limitation by \$494,426.16.

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In the Interim Audit Report, the Audit staff recommended that the Committee either demonstrate that the expenditure limitation had not been exceeded or amend their disclosure reports to reflect the proper amount subject to the limitation. In their response of November 18, 1985, the Committee contends that they have not exceeded the 2 U.S.C. § 441a(b)(1)(A) spending limitation. In addition to addressing the Audit staff's adjustments contained in the Interim Audit Report, Committee officials advise that "...MPC has reduced its limit spending as of December 31, 1984, by \$507,526.43, by allocating that portion of fundraising costs attributable to compliance costs to compliance" (see Finding III.B.7.). As a result of this adjustment and their comments on the Audit staff's spending limit adjustments, Committee officials conclude that the correct amount subject to limitation at December 31, 1984 was \$19,781,370.04, or, \$418,629.96 under the limitation.

Presented below are the Audit staff's adjustments as contained in the Interim Audit Report, the Committee's comments on those adjustments and the Audit staff's analyses thereof.

1. Fundraising Expenses

Section 100.8(b)(21)(i) of Title 11 of the Code of Federal Regulations states that any costs incurred by a candidate or his authorized committee(s) in connection with the solicitation of contributions are not expenditures if incurred by a candidate who has been certified to receive Presidential Primary Matching Fund Payments, to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation applicable to the candidate.

The Commission's Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing (Compliance Manual) states on page I-15 that fundraising expenses are the costs associated with the solicitation of contributions. It expressly states that costs reasonably related to fundraising activity include the preparation of matching fund submissions. Further, on page I-20, Alternative Allocation of National Campaign Office Payroll and Payroll Taxes, the Compliance Manual states: "A committee may allocate 85 percent of all payroll and payroll tax expenses which relate to the operations of the accounting office as exempt

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[Legal and Accounting] compliance. The accounting office is defined as the cost center responsible for performing the following functions: contribution processing (excluding preparation of matching fund submissions), expenditure processing, payroll..." (emphasis added).^{8/}

Contribution processing and computer services were provided to the Committee by the same firm. The firm retrieved contributions from the Committee's post office box, screened the contributions for acceptability and matchability, prepared bank deposits, photocopied checks, performed necessary data entry, prepared and mailed follow-up letters, prepared the computer generated listings for both reporting and matching fund submissions, and assembled matching fund submissions. In addition to the firm's staff, the firm acquired additional staff, on an as needed basis, from a temporary service. Also, one Committee staff person was assigned to the matching fund and contribution processing functions. The cost of the matching fund submission/contribution system was charged to the Committee's Finance cost center and, therefore, allocated 85% to Exempt Legal and Accounting and 15% to Operating. A review of the billing statements provided by the vendor indicated that certain charges appear to relate to the matching fund function while others relate to contribution processing in general. In addition to these expenses, the Committee was billed for labor costs.

In order to determine that portion of the labor costs which should be charged to fundraising for matching fund preparation, the Audit staff divided the cost of those services which a Committee official agreed were matching funds-related by the total cost of non-labor charges. The resulting percentage was applied to the labor costs of both the primary vendor and the temporary service. Finally, using a description of duties supplied by the Committee for the staff person mentioned above, a portion of the person's salary was allocated. After the labor charges determined as described above were added to the other services which were matching funds related, the Audit staff determined that an additional \$152,339.57 was allocable to fundraising. Since the Committee has exhausted the 20% fundraising exemption, this amount flows to the Committee's overall limitation.

^{8/} It should be noted that the Committee selected this option for allocating expenses to compliance. The Finance cost center, which was responsible for matching fund submissions as well as for the accounting functions, was allocated 85% to compliance.

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In their November 18, 1985 response, the Committee "...objects to the reallocation of \$152,339.57 to fundraising." This objection is based on the following: "(A) The costs incurred to prepare a matching fund submission arise only because of the requirements of Title 2 and the Fund Act and therefore fall within the compliance exemption; (B) The costs of preparation of matching fund submissions do not fall within the fundraising exemption; and (C) The costs of preparation of matching fund submissions are properly allocable to the accounting cost center for which the Committee elected to utilize the standard 85 percent compliance -- 15 percent non-exempt formula and therefore the Commission must accept this allocation."

The Committee goes on to state that "the auditors rely on no statutory or regulatory provision for disallowance of these costs as compliance expenses. Rather, they rely only on the Commission's Financial Control and Compliance Manual... This manual does not have the force of a regulation...." However, later, the Committee states that "MPC elected to follow the Commission's guideline allocation for its accounting cost center. There is no dispute that the costs of preparing the matching fund submissions are properly included within the accounting cost center. MPC allocated only 85 percent of this cost center to compliance. Therefore, the Commission should consider the \$152,339.57 to fall within the 15 percent of accounting costs allocated to general operating accounts and not compliance."

The Audit staff finds the Committee's arguments unpersuasive for the following reasons. 11 C.F.R. § 100.8(b)(15) exempts expenses which are solely to ensure compliance with the Act from the definition of expenditure and expressly exempts such costs from inclusion in the 11 C.F.R. §§ 9035 and 110.8 spending limits imposed upon federally funded presidential primary election candidates. In addition to these exemptions, the Commission has recognized that certain types of expenditures may not be eligible for full limitation exclusion, however, they do relate to some degree to attempting to ensure compliance with the Act. In an attempt to relieve committees from burdensome measurement and allocation procedures, while at the same time establishing a ceiling for judgmental percentage estimation, the regulations at 11 C.F.R. § 9035.1(c) provide for a 10% compliance exemption for salaries and for certain expenditures properly classifiable as overhead. This is the only regulatory recognition of any such (partial) allocation method without the need to keep detailed records on each person's activities. As noted earlier, though, the Compliance Manual offers, as an alternative, the 85%/15% compliance-operating allocation method for the accounting department, but specifically excludes the cost of Matching Fund Submission preparation. This was the method

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used by the Committee - presumably because it resulted in a larger compliance cost exclusion. However, while the Committee availed itself of the percentage exclusion provided for in this alternative, it chose to ignore the provision regarding Matching Fund Submission preparation. That is, it opted for the percentages, but not for the method by which they were to be applied.

In summary, while the Committee questions the force and effect of the Commission's Compliance Manual, they nonetheless implicitly acknowledge its authority by selecting one of its alternative allocation methods. As such, the Audit staff submits that they are bound by its provisions and directions for application. The treatment of the matching fund preparation function is unmistakably clear in the Compliance Manual. If this treatment is unacceptable to the Committee, their alternative is the 10% "across the board" compliance exemption provided for in the regulations.

No change in the amount contained in the Interim Audit Report has been made as a result of the Committee's response. However, as a result of follow-up audit work additional amounts have been identified. These amounts represent the matching funds portion of billings which were not available when the original analysis was performed. These additional billings were treated in the same manner as those included in the original analysis. Further, an adjustment was made to the interim report figures to recognize that bills for computer service paid in 1985 were charged 100% to compliance rather than 85% as had been done previously.

The revised matching fund portion of contribution processing costs is \$162,756.26 or an increase of \$10,416.69.

2. Joint Fundraising Expenses

Section 9034.8(c)(8)(A) of Title 11 of the Code of Federal Regulations states that after gross contributions are allocated among the participants, the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts that each participant had been allocated.

Section 9034.8(c)(9) of Title 11 of the Code of Federal Regulations states, in relevant part, that the fundraising representative shall report all receipts in the reporting period in which they are received and shall report all disbursements in the reporting period in which they are made.

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The Committee engaged in a joint fundraising effort with the Democratic National Committee (DNC). Since the DNC acted as the fundraising representative, the Committee was not in possession of the records for the fundraising activity. Further, the Committee reports contained only the required memo Schedules A-P for its share of the gross contributions and a Schedule A-P for amounts transferred in from the DNC. The Committee was requested to obtain an expense figure from the DNC for use in determining the Committee's compliance with the overall limitation. The Committee declined to make such a request but suggested that by netting the amounts received from the DNC against the amounts shown on the memo Schedules A-P, an expense figure could be calculated. It was further stated that all proceeds from the joint fundraising had been received and reported by December 31, 1984. Employing this method, a figure of \$136,884.36 was derived by the Audit staff as the Committee's share of the joint fundraising expenses. 9/

As noted in III.B.1. above, the Committee's 20% fundraising exemption has been exhausted. Therefore, the Committee's share of the joint fundraising expenses, \$136,884.36, is applied to the overall limitation.

In their November 18, 1985 response, the Committee agreed that the \$136,884.36 in joint fundraising expenses is allocable to the overall expenditure limitation.

3. Debts and Obligations to be Applied to the Overall Limitation

The Audit staff reviewed amounts owed by the Committee as of December 31, 1984. In addition to Debts and Obligations reported on the Committee's Schedule D-P (Debts and Obligations Excluding Loans), a review was conducted of the Committee's December 31, 1984 open items file. The Interim Audit Report noted that debts and obligations totalling \$445,658.68 applicable to the overall limitation were identified.

9/ With the exception of the amounts transferred from the DNC, the information used in determining this cost figure is unaudited. An audit of the joint fundraising activity will be conducted in the future and necessary adjustments to the cost figure made.

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In their November 18, 1985 response, the Committee "agrees that \$414,633.48 in debts and obligations at December 31, 1984 are allocable to the overall limitation. MPC's allocation is based on actual subsequent payments made by the Committee through September 1985. The Report bases its allocation on the audit review of committee files which contained some duplicate and invalid invoices, thereby inflating the debts and obligations by \$31,025.20. The actual amount of allocable debt, as determined by subsequent payment, was \$414,633.48 at December 31, 1984." Although no schedule or summary of the "actual subsequent payments" was submitted with their response, the Audit staff conducted a review of the Committee's disclosure reports covering the period January 1-September 30, 1985. It was noted that the Committee disclosed \$405,796.75 in operating and fundraising disbursements chargeable to the overall expenditure limitation during this period. Further review revealed that \$414,633.48 in operating and fundraising disbursements was included on worksheets accompanying the disclosure reports but this amount had been reduced by an \$8,836.73 reallocation to "exempt legal and accounting." The Audit staff assumes that the Committee intended to include \$405,796.75 as the amount of debts and obligations subject to the overall limit as of December 31, 1984 in their response.

As part of audit follow-up the Audit staff examined the Committee's disbursements between January 1, 1985 and March 31, 1986. It was determined that the correct amount chargeable to the overall spending limitation during that period is \$418,855.67. The difference between the amount in the Committee's response to the Interim Audit Report and the audit figure (\$13,058.92) is explained as follows:

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Committee Reported Amount applicable to the overall spending limitation January 1 to September 30, 1985	\$405,796.75
1985 Disbursements Not Reported	1,493.39
Voided Checks Reported by the Committee	(530.58)
Disbursements Reported as exempt compliance which should be applied to the overall spending limitation	4,778.45
Headquarters and State Overhead exemptions calculated on disbursements not properly included in Overhead	5,275.50
Corrections to Fundraising Payroll Calculations (Payroll charged at net rather than gross, employer FICA, and non-payroll items included in the Fundraising payroll compliance exemption)	1,572.67
Operating Expenditures from the Committee's First Quarter 1986 Report	469.49
	<hr/>
Adjusted Amount Applicable to the Overall Spending Limitation	<u>\$418,855.67</u>

In addition to the amounts discussed above, the Committee either overlooked or did not elect to address the amount of refunds owed to several news organizations for prepayments or overpayments received as a result of having provided air transportation and other services to members of the press throughout the campaign (see Finding III.B.6.).

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The Interim Audit Report, at Finding II.C.6. "Limitation on Expenditures-Accounts Receivable", made note of a Committee liability in the amount of \$30,810.95. This was the amount carried by the Committee (as adjusted by the auditors) as negative accounts receivable. These negative receivables represented amounts owed to the news organizations resulting from unused prepayments and overpayments. This amount was included in the interim audit report's "Debts and Obligations to be Applied to The Overall Limitation" (Interim Audit Report Finding II.C.3.) and on the "Statement of Net Outstanding Campaign Obligations" as accounts payable (Interim Audit Report Finding III.B., NOCO Statement footnote d/). This obligation is being treated as subject to the overall spending limitation because when the (pre)payments were received from the news organizations, they were reported as "Offsets to Expenditures (Refunds/Rebates) - Operating". This served to artificially reduce operating expenditures subject to the limitation. A review of 1985 disclosure reports indicates that the Committee reported making \$33,894.83 in press refunds through September 30, 1985, however, these refunds were reported as "Exempt Legal and Accounting Disbursements", which are not subject to the overall limitation. During follow-up fieldwork the reported refunds were verified and two adjustments noted. One reported payment for \$153.60 was subsequently voided and a \$1,350.70 payment made in 1984 was not reported. In amended reports filed on April 16, 1986, the Committee acknowledged both of these items. Therefore, the corrected amount owed to the press is \$35,091.93. With the exception of the unreported \$1,350.70 noted above, this amount was paid by the Committee during 1985.

The Final Audit Report includes an amount chargeable to the overall spending limitation after December 31, 1984 of \$453,947.60 (\$418,855.67 in vendor payables and \$35,091.93 in press payables). This amount is shown as Accounts Payable as of December 31, 1984. However, as noted above, follow-up audit work has verified that the entire amount has been paid.

4. Apparent Primary Election Campaign Expenses
Paid by the General Election Committee

During the audit of the Mondale/Ferraro Committee, Inc., the Audit staff identified \$28,928.02 in expenditures made by the general election committee which appeared to be related to the primary campaign. The related documentation indicated that \$28,718.75 was in payment of a Democratic Party official's expenses for airfare, lodging, meals, etc., all of which were incurred between May and July, 1984. The remaining \$209.27 related to a utility bill covering 5/2-6/30/84. Pursuant to 26

U.S.C. § 9002(11)(B), the Mondale/Ferraro Committee could incur qualified campaign expenses prior to the July 18, 1984 date of nomination only to the extent that such expenses were for property, services or facilities used during the General Election period.

The Interim Audit Report included a statement to the effect that the Audit staff would treat the \$28,928.02 as a debt owed by the Committee to the Mondale/Ferraro Committee. This debt was to be considered allocable to the Committee's overall spending limitation until documentation supporting a relationship to the general election campaign was provided. In their November 18, 1985 response, the Committee concurred with the reallocation of a \$209.27 utilities expense and \$2,261.00 in travel and subsistence expenses from the general election campaign to the primary election campaign. The Committee objected to a similar reallocation of \$26,457.75 in travel and subsistence expenses. They note that the subject expenses were incurred during late June and early July by the eventual general election campaign chairman. They argue that these expenses were incurred "...after all primaries were over..." and are properly allocable to the general election campaign pursuant to 11 C.F.R. § 9003.4(a) which provides for the incurrence of (general election) expenditures prior to the beginning of the expenditure report period if such expenditures are for "...services... to be used in connection with [the] general election campaign...." As such, they assert that the subject travel and subsistence expenses relate to the general election campaign because "the ultimate outcome of the trips was that [the individual] assumed the role of general election campaign Chairman...."

The Audit staff accepts the Committee's explanation of the relationship of the subject travel and subsistence expenses to the general election campaign. However, the Committee provided no explanation of, or summary to support, which expenditures comprise the \$2,261.00 and the \$26,457.75 which they view as allocable to the primary and general election campaigns, respectively. We have reviewed the documentation supporting these expenditures and have concluded that \$24,768.29 in travel and subsistence expenses could reasonably be considered to have been general election-related. This determination was based on a review of the apparent dates of incurrence of the expenses. All expenses incurred after the date of the last primary election, North Dakota-June 12, 1984, were considered general election-related.

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Based on the above argument and analysis, the Audit staff considers \$4,159.73 (\$3,950.46 in travel and subsistence expenses and \$209.27 in utilities) to be a debt owed by the Mondale for President Committee to the Mondale/Ferraro Committee, subject to the overall expenditure limitation.

5. Refunds/Rebates

During a review of certain receipt records, it was noted that the Committee failed to report \$43,859.52 in refunds and rebates. Given that the Committee's reported expenditures subject to the Overall Limitation is used as a base figure in the limitation calculation, these unreported refunds should be deducted from the overall limitation figure reported as of December 31, 1984.

In their response of November 18, 1985, the Committee agreed that "the \$43,859.52 in refunds and rebates inadvertently omitted from its reports should be deducted from the overall spending limitation figure."

With the exception of amounts due from the press, the Interim Audit Report contained no amounts due the Committee as of December 31, 1984 which would constitute offsets to operating expenditures. However, during follow-up fieldwork, it was noted that the Committee had received refunds and rebates which offset amounts charged to the overall spending limitation in the amount of \$16,886.99. This amount is net of a 10% compliance exclusion on apparent overhead expenses.

Total offsets to expenditures applicable to the overall spending limitation are \$60,746.51.

6. Accounts Receivable

Sections 9034.6(a) and (b) of Title 11 of the Code of Federal Regulations, in part, considers expenditures for transportation, ground services, and facilities made available to media personnel to be qualified campaign expenses subject to the 11 C.F.R. § 9035.1(a) overall expenditure limitation. Reimbursement for such services is limited to an individual's pro rata share of the actual cost of the transportation and services made available, plus an additional 10%. Reimbursements received may be deducted from the amount of expenditures subject to the overall limitation to the extent that the reimbursements do not exceed the amount actually paid by the committee for the services provided.

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Throughout the campaign, the Committee incurred qualified campaign expenses for air transportation made available to Secret Service personnel and for air transportation, ground services, and incidentals for members of the press. The Committee, in turn, billed the passengers an amount equal to their pro rata cost plus 10%. The entire amount in accounts receivable as of December 31, 1984 related to uncollected press billings for these Committee-provided services.

A review of the Committee's December 31, 1984 Schedule D-P (Debts and Obligations Owed To The Committee) was conducted in order to calculate (1) the amount of accounts receivable to be included on the audited Statement of Net Outstanding Campaign Obligations and (2) the amount of accounts receivable to be offset against expenditures subject to the overall limitation. There was some question, however, regarding both the actual value of the receivables and the likelihood of their collection.

On January 19, 1985, a member of the Audit staff discussed the matter of the outstanding press receivables with the Committee's Assistant Treasurer. The staff was informed that twelve of the receivables were to be pursued with the remaining items to be written off. A copy of a Committee-prepared listing of these receivables was provided for staff review. The adjusted total of the twelve receivables was \$143,089.85.

On January 28, 1985, the Committee presented their final matching fund submission. This was accompanied by a NOCO Statement which did not reflect any amounts owed to the Committee.^{10/} Notes accompanying the NOCO Statement indicated that the Committee's legal department had advised that the remaining receivables were being written off after every commercially reasonable effort had been made to collect them. A copy of a January 24, 1985 Committee Finance Department memorandum was included which described the collection efforts.

^{10/} The NOCO Statement showed a Net Deficit of \$769,088.50. The accompanying Matching Fund Submission requested a payment of \$772,126.64.

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Finally, on January 31, 1985, the Committee filed their Year End Report. The Schedule D-P as of December 31, 1984, after adjustment for differences between the reported amounts and amounts in the accounts receivable ledger, reflected \$185,775.21 11/ in amounts owed to the Committee.

Due to (1) the uncertainty surrounding the receivables and (2) to the impact of their exclusion on the Committee's final matching fund submission (see footnote 10/), together with the Committee Comptroller/Assistant Treasurer's earlier statement regarding a decision to pursue certain of the receivables, the audited NOCO Statement in the Interim Audit Report reflected the amount of the twelve receivables that were to have been pursued (\$143,089.85). The report included the recommendation that the Committee provide additional information regarding the status of these twelve receivables.

Having ascribed a value to the Committee's accounts receivables, the portion of receivables to be offset against the overall expenditure limitation was determined. For purposes of offsetting collections and accounts receivable against the amount of expenditures subject to the overall limitation, the amount of the offset is limited to the amount of the costs incurred by the Committee in providing the service (11 C.F.R. § 9034.6(b)). As mentioned earlier, however, the Committee billed the passengers at pro rata cost plus 10%. Therefore, in the Interim Audit Report, the Audit staff calculated that collections as of December 31, 1984 were \$68,105.48 less than cost. The calculation was as follows:

11/ The Schedule D-P for "Amounts Owed to the Committee" also contained negative amounts totaling, after adjustment, \$30,810.95. These represent amounts of overpayments received by the Committee which were to be refunded and are included in Debts and Obligations to be applied to the overall limitation in III.B.3. above.

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1983-84 Press Collections	\$1,574,030.03	
1983-84 Secret Service Billings	423,787.87	
Prepaid Items to be Refunded	(30,810.95)	
Adjusted Accounts Receivable, 12/31/84	<u>185,775.21</u>	
Adjusted Billings		\$2,152,782.16
Divide by: Cost Factor		<u>110%</u>
Derived Cost		\$1,957,074.69
Less:		
Press Collections		(1,574,030.03)
Secret Service Collections		(345,750.13)
Prepaid Adjustment		<u>30,810.95</u>
Uncollected Cost		<u>\$ 68,105.48</u>

Therefore, in the Interim Audit Report, the Audit staff concluded that the amount of accounts receivable at December 31, 1984 which could be offset against the overall expenditure limitation was limited to \$68,105.48. In their November 18, 1985 response, the Committee stated that it "objects to the treatment of Press Receivables in the Report. MPC contends that it should be able to deduct \$263,812.97 in billed press receivables (whether or not collected) from the overall expenditure limit." Later in their response, the Committee states:

"The audit report assumes that the 10 percent was over and above MPC's actual cost. Thus, the report concludes that only \$1,957,074.69 in media collection and receivables of the \$2,152,782.16 billed by MPC to media may be deducted from MPC's expenditures subject to the limitation. In reality, MPC is entitled to deduct \$2,152,782.18 from its expenditures because that amount represents the actual cost incurred for transportation and services, including all required administrative costs."

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In summary, the Committee's argument is twofold. First, they argue that the "actual cost" incurred by the Committee in providing air transportation, ground services, and incidentals to members of the press and the Secret Service was \$2,152,782.18. They assert that the 10 percent "surcharge", which amounted to \$195,707.47, was part of this "actual cost". The Committee provided a narrative description of what was involved in providing these services, including a brief summary of various Committee personnel duties, however, no cost accounting or financial summary of what exactly comprised the \$195,707.47 in "actual" administrative costs or what percentage of these costs have been charged to the overall limitation was provided. Second, they argue that the full amount billed to the members of the press and the Secret Service - regardless of the amount actually collected - is the amount that should be offset against the amount of expenditures subject to the overall spending limitation.

The Audit staff's position is as follows: We do not dispute that the provision of transportation, ground services and facilities, and incidentals to members of the press and Secret Service required a significant utilization of Committee resources. However, we understand that the Committee billed the users at 110 percent of the pro rata cost of the transportation, ground services, and incidentals (these amounts were both easily identifiable and the maximum amount allowed by Commission regulations). At no time were the "administrative costs" similarly accumulated and prorated. Although we appreciate that this would be both difficult and burdensome to do, it nonetheless remains that no cost accounting analysis or summary exists to substantiate that the \$195,707.47 in administrative costs billed was the Committee's "actual" cost. Such an analysis would not only entail application of cost accumulation and allocation techniques, but would have to take into consideration the percentages at which the individual costs were initially charged to the spending limit, i.e., it is unlikely that there would be a dollar for dollar reduction. Irrespective of the magnitude of such an exercise at this time, the Audit staff proposes that in this case it would serve no meaningful purpose for the reasons given below.

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The Commission's regulations at 11 C.F.R. § 9034.6 are the relevant source of authority pertaining to reimbursements for transportation and services made available to media personnel and members of the Secret Service. It views expenditures in connection with providing transportation, ground services and facilities to these individuals as qualified campaign expenses. It sets the guideline for determining the amount that the passengers may be billed in situations where a committee seeks reimbursement for such expenditures. 11 C.F.R. § 9034.6(b) concludes that "reimbursements received ... may be deducted from the amount of expenditures that are subject to the overall expenditure limitation... except to the extent [they] exceed the amount actually paid by the committee for the services provided" (emphasis added). It is the clear intent of this regulation that only the amounts which the Committee actually collects from the passengers may be deducted from the amount of expenditures subject to the overall spending limitation. With all due consideration of the Committee's efforts to collect their past due accounts, "reimbursements received" cannot be construed to include uncollectible or written-off accounts receivable. In their response, the Committee states that "after extensive efforts to collect [press accounts receivable written-off by the Committee], the decision was made in January to consider such debts as uncollectible."

The Committee's reports for the period January 1 to September 30, 1985, include collections from members of the press totalling \$8,561.38. However, during follow-up fieldwork it was determined that collections from January 1, 1985 to March 31, 1986 totaled \$8,848.15. Given this information and assuming that the Committee will realize no further amounts due from these debtors, the Committee has not recovered the \$1,957,074.69 in direct transportation, services, and facilities costs calculated above. Rather, as is shown below, collections have fallen \$63,538.31 short of direct costs.

Derived Direct Costs		\$1,957,074.69
Less:		
Collections through 12/31/84:		
Press	\$1,574,030.03	
Secret Service	345,750.13	
Prepaid Adjustment	(35,091.93)	
Collections 1/1/85 to		
3/31/86	<u>8,848.15</u>	<u>(1,893,536.38)</u>
Difference		<u>\$ 63,538.31</u>

Therefore, for purposes of inclusion in the Final Audit Report, the amount of the reduction to the expenditures subject to limitation at December 31, 1984 for the "Accounts Receivable - Air Charters (at 12/31/84)" category will be \$8,848.15. This is the amount of reimbursements received subsequent to December 31, 1984, and, as such, renders any accounting of the Committee's "actual" administrative costs moot.

The audited NOCO Statement (Section III.C.3.) has been revised to include as accounts receivable only those amounts actually collected between September 1, 1984 and March 31, 1986. If additional amounts are subsequently collected, adjustments will be made in an addendum to the Final Audit Report.

7. Committee Adjustment to Expenditures
Subject to the Overall Expenditure Limitation

Footnote 10 to the Interim Audit Report took note of a downward adjustment to expenditures subject to the overall limitation included in the Committee's April 15, 1985 Quarterly Report. The adjustment was \$507,526.43 and was shown as a reduction to prior years' fundraising disbursements but was not explained further. The Interim Audit Report did not consider this adjustment.

In their response to the Interim Audit Report, the Committee explained the adjustment as follows:

"MPC has reduced its limit spending as of December 31, 1984, by \$507,526.43, by allocating that portion of fundraising costs attributable to compliance costs to compliance. The FEC regulations do not state how these costs are to be allocated in the primary, and this allocation is consistent with treatment of compliance fundraising costs in the general election which must be allocated to compliance. 11 CFR Section 9004.4(b)(5).

"The calculation method used insures that only the costs of raising private contributions spent on compliance are reallocated, since MPC's mixed pool of public funds and private contributions were used to defray these costs. However, it should be noted that over \$7,000,000 of MPC's private contributions were never submitted for matching funds. This \$7,000,000 is substantially in excess of the entire \$2,518,741.57 spent on compliance. Thus, MPC could have defrayed all compliance costs with private contributions that were never matched had these been segregated."

With respect to the Committee's reallocation of \$507,526.43 in fundraising expenses to exempt legal and accounting, the Audit staff offers the following comments.

First, Section 100.8(b)(21)(i) of Title 11 of the Code of Federal Regulations states that the term expenditure does not include costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate if incurred by a candidate who has been certified to receive Presidential Primary Matching Funds. This section also states that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under 2 U.S.C. § 441a(b). In addition, 11 C.F.R. § 100.8(b)(15) states that expenditures for legal and accounting services made by a candidate certified to receive Primary Matching Funds if solely to ensure compliance with the Act or 26 U.S.C. 9032 et seq. do not count against such candidates expenditure limitation under 11 C.F.R. § 9035.

The 20 percent fundraising exemption is provided to give campaigns an additional sum to pay the cost of soliciting contributions for all purposes. No separate exemption is provided for the cost of soliciting contributions to defray legal and accounting costs. Further, those expenditures which may be excluded from the expenditure limitation as legal and accounting costs must be "solely to ensure compliance." Fundraising costs are neither legal and accounting costs nor solely to ensure compliance.

Second, the Committee cites a general election regulation (11 C.F.R. § 9004.4(b)(5)) to justify the reallocation, stating that in the general election compliance fundraising costs "must be allocated to compliance." The cited regulation does not classify the cost of soliciting contributions as a legal and accounting cost to ensure compliance. Rather, it prohibits the payment of expenses associated with the solicitation of contributions to a separate legal and accounting fund from monies received pursuant to 11 C.F.R. § 9005. Therefore, the general election is not comparable to the primary election campaign. In a publicly financed general election campaign, qualified campaign expenses are financed 100% by Federal funds. There is no need for fundraising, except to defray any legal and accounting costs to ensure compliance not paid with public funds. Although a separate fund is required for such compliance costs and public funds may not be used to solicit contributions to the compliance fund, the cost of raising money for such purposes in the general election is not considered a legal and accounting cost solely to ensure compliance. 11 C.F.R. § 9003.3(a)(2)(i) lists the purposes for which compliance fund

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monies may be used. In addition to legal and accounting costs to ensure compliance, such funds may be used for civil and criminal penalties, repayments to the U.S. Treasury, loans to the campaign's general fund before the receipt of the public fund grant, and the solicitation of contributions to the compliance fund. Though these are permissible uses of compliance fund monies, they are not considered legal and accounting expenditures solely to ensure compliance. In the primary campaign all expenditures are considered to have been made from a mixed pool of private and public funds. In addition to qualified campaign expenses, this pool of funds is used to pay legal and accounting costs to ensure compliance and the costs of soliciting funds. Therefore, attempting to draw an analogy between the primary and general election campaigns is not valid. Further, given that all expenses paid by a primary campaign are paid from a mixed pool of private and public funds, the amount of private funds raised in relation to matching funds received, or whether or not certain funds are segregated from the campaign's other monies has no effect on how these disbursements are charged to the expenditure limitation.

Finally, the Commission's Financial Control and Compliance Manual states on page I-19 that "Legal and accounting expenses incurred solely for the purpose of ensuring compliance with the Act do not count against the overall campaign or State expenditure limitation... The costs of raising funds to defray exempt legal and accounting expenses are not considered to be legal and accounting expenses and accordingly may be viewed as fundraising expenses and applied toward the 20% fundraising exemption."

Conclusion

On September 11, 1986, the Commission rejected the Committee's reallocation of \$507,526.43 from fundraising to exempt legal and accounting.

8. Expenditures Subject to Overall Limitation - Recap

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

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Expenditures subject to the limitation at December 31, 1984 as adjusted		\$20,090,751.15 <u>12/</u>
Add:	III.B.1. Fundraising Expenses	162,756.26
	III.B.2 Joint Fundraising Expenses	136,884.36
	III.B.3. Debts and Obligations	453,947.60
	III.B.4. Apparent Primary-Related Expenses Paid by the General Election Committee	4,159.73
Deduct:	III.B.5. Refunds/Rebates	(60,746.51)
	III.B.6. Accounts Receivable-Air Charters	<u>(8,848.15)</u>
	Total	<u>\$20,778,904.44</u> <u>13/</u>
	Less 2 U.S.C. § 441a(b) (1) (A) Spending Limitation	<u>20,200,000.00</u>
	Total Expenditures in Excess of Limitation	<u>\$ 578,904.44</u>

12/ This amount is the figure reported by the Committee at December 31, 1984 (\$20,047,673.22) less a \$5,092.69 error made by the Committee on the 1984 Year End Report related to the calculation of the compliance overhead exemption; plus a \$56,383.00 fundraising disbursement which was not reported by the Committee; less (\$8,212.38) in voided checks which were included in the Committee's reports. On April 16, 1986, the Committee filed amended reports acknowledging the unreported expenditure and the reported voided checks.

In addition, it should be noted that this amount does not reflect the reallocation of prior years' fundraising disbursements to exempt legal and accounting as was included in the Committee's April 15, 1985 Quarterly Report. See Section III.B.7.

13/ This amount does not contain expenditures made by any Mondale delegate committee. Those expenditures are addressed in the Conciliation Agreement for MUR 1704.

Conclusion

The Audit staff concludes that the Committee has exceeded the 2 U.S.C. § 441a(b)(1)(A) expenditure limitation by \$578,904.44.

For the Commission's initial repayment determination with respect to these expenditures, see the discussion at Section III. E.

C. Determination of Net Outstanding Campaign Obligations

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

Section 9034.5(d) of Title 11 of the Code of Federal Regulations requires the candidate to submit a revised NOCO Statement with each submission for matching fund payments filed after the candidate's date of ineligibility.

1. Valuation of Committee Artwork

Sections 9034.5(a)(2)(ii) and (b)(2) of Title 11 of the Code of Federal Regulations state, in relevant part, that the candidate's Statement of Net Outstanding Campaign Obligations should include the fair market value of capital assets and other assets on hand. Other assets include any property acquired by the campaign for use in raising funds or as collateral for campaign loans. These other assets must be included at their fair market value on the candidate's date of ineligibility, or the date on which the item is acquired if acquired after the date of ineligibility, if the aggregate value of such assets exceeds \$5,000.00.

Section 9034.9(b) of Title 11 of the Code of Federal Regulations states that a candidate whose outstanding debts exceed his cash on hand after the end of the matching payment period may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of the Act.

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The Committee received donations of art work from four American artists. A total of 420 prints of three works and "a selection of unique signed working artist proofs at various stages of completion" of the fourth work were used for fundraising purposes. A memorandum provided by the Committee included a valuation of \$1,000.00 each for two of the three sets of prints and \$1,500.00 for the third. No valuation of the "artists proofs" was provided. When the Committee presented their final matching fund submission, the accompanying NOCO Statement (dated January 28, 1985) did not contain any valuation of the artwork. Accompanying that NOCO Statement was a letter which stated:

"Your auditors have requested information concerning the disposition of artwork previously reported as an asset on the Committee's NOCO statement. The Committee originally acquired this art for use as a fundraising device. The Committee's efforts to sell the art were not totally successful. Because of its failure as a fundraising device, the Committee decided during 1984 to distribute the art by giving it to individuals who had previously contributed to the campaign. The artwork was transferred prior to year end 1984 to Art Transport which is responsible for delivering the artwork in accordance with the Committee's instructions. Therefore, the artwork is no longer an asset of the Committee and is not reflected on the NOCO."

At the exit conference held on February 22, 1985, and on one previous occasion, the Audit staff requested more detailed information concerning the artwork. At the exit conference, the Committee informed the staff that if further information is required, it should be requested in the Interim Audit Report.

Since the Audit staff was unable to verify the value of the artwork on the date of ineligibility with the information available, a review of the various NOCO Statements filed by the Committee was conducted. These NOCO Statements contained values ranging from \$149,000.00 to \$244,000.00. The latest NOCO statement on which the artwork was carried as an asset was dated November 28, 1984. That valuation was \$244,000.00 and was footnoted as follows: "Artwork at estimated FMV-This estimate will be adjusted to actual sales prices when sale begins." It was this value (\$244,000.00) that was included on the NOCO statement presented in the Interim Audit Report.

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The Interim Audit Report requested that the Committee provide the following specific information with regard to "Other Assets" so that a proper valuation could be made.

1. Inventory of all "Other Assets" on hand on the candidate's date of ineligibility;
2. The valuation of the inventory in 1. above, to include copies of any appraisals other than that discussed above;
3. All acquisitions of additional artwork and any other item meeting the definition of "Other Asset" made between the candidate's date of ineligibility and 30 days from the date on which the Committee receives this report;
4. An accounting of all Other Assets disposed of, along with the amount realized from the disposal, for each item in the inventories provided in response to 1. and 3. above. This should include all disposals between the candidate's date of ineligibility and 30 days from the receipt of this report;
5. An inventory of all Other Assets on hand as of 30 days from the receipt of this report along with the valuation of each item;
6. A description of, and any supporting documentation for, any attempts to sell Other Assets pursuant to 11 C.F.R. § 9034.9(b); and
7. Any other information which the Committee believes pertinent to the valuation of these items for NOCO Statement purposes.

In the response to the Interim Audit Report, the following arguments were presented:

"Mr. Duane Garrett, National Co-chairman of the Mondale for President Committee, was responsible for liquidating all MPC debts. The artwork fundraising was part of this process and Mr. Garrett was in charge of the program.

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"Four artists volunteered their services and created proofs from which MPC made 420 prints. MPC paid for the cost of producing these prints and used them as fundraising devices. The artists who volunteered their services did so on the specific understanding that MPC would not dispose of the prints in any type of bulk sale. They were concerned that they be protected against such a sale and wished the prints to be sold only on an individual basis.

"The prints and some of the proofs were offered to contributors in return for a \$1,000 contribution, but because many of the prints did not sell, Mr. Garrett offered them for as little as \$250 or \$100 contributions. While almost 300 of the prints were disposed of through this fundraising program, MPC was left with about 125 prints. The total amount of contributions raised in return for the artwork was approximately \$100,000, which more than covered MPC's cost in producing the prints.

"MPC continued to show the artwork as an asset on its NOCO statement, in late 1984 because, at that point, the Committee was still attempting to dispose of the prints through its fundraising program. However, by year-end 1984, it became obvious that no further contributions would be raised on the basis of the prints. Mr. Garrett contacted at least six art dealers who told him that there was no commercial market for the remaining prints either through bulk or individual sale. MPC subsequently gave the remaining prints away to previous contributors and to staff. This was done through Art Transport which sent the prints to individuals whose names and addresses were provided by MPC. Because MPC no longer had any of the artwork in its possession, it was not included as an asset on the January 28, 1985 NOCO.

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"MPC's treatment of its artwork on this final NOCO was completely in accord with FEC regulations. 11 CFR Section 9034.5 (a)(2)(ii) requires a committee to list the fair market value of its "capital assets" and of its "other assets" on hand on its NOCO statement. As properly acquired for fundraising purposes, the art prints would have to be listed as an asset only if their aggregate fair market value exceeded \$5,000 under 11 CFR § 9034.5(b)(2). Since MPC was not in possession of this artwork on January 18, 1985, it could not possibly be considered an asset. Moreover, the regulations speak in terms of "fair market value." When MPC's efforts to dispose of prints in return for contributions became unsuccessful, the prints at that point had no commercial value.

"11 CFR § 9054.9(b) permits candidates whose outstanding debts exceed cash on hand after the end of the matching payment period to make an "arms length" sale of assets acquired for fundraising to a wholesaler or intermediary who then may sell those assets to the public without regard to the Act's limitations or prohibitions. This section would have permitted MPC to sell its prints in bulk to a wholesale art dealer. However, while the regulations permits such a bulk sale, it does not require a committee to make that type of sale. MPC decided not to sell its prints in bulk because the proofs were obtained on the understanding with the artists that no bulk sales would occur and because Mr. Garrett was informed that there was no market even for bulk sale of the remaining prints."

The Committee cites 11 C.F.R. § 9034.5(a)(2)(ii) in arguing that since the artwork was no longer "on hand" it was no longer an asset. While they emphasize the words "on hand" in their interpretation of this regulation, they fail to recognize that the point in time for establishing possession and valuation is the candidate's date of ineligibility. Ineligibility date values may, of course, be adjusted if subsequent experience proves the Fair Market Value of the assets to have been misstated. The Committee argues that the artwork had no value but provides no documentation to support that argument.

Further, the Commission does not suggest that 11 C.F.R. § 9034.9(b) requires a candidate to sell Other Assets in a bulk transaction to a wholesaler. Rather, that option is provided to assist a committee in liquidating its debts. Regardless, the assets are required to appear on the NOCO Statement at their Fair Market Value as of the date of ineligibility, whether the committee chooses to take advantage of this option or not. If committees were permitted to delete assets from a NOCO Statement because they choose, for whatever reason, not to liquidate those assets, they could artificially increase their Net Outstanding Campaign Obligations and hence the amount of Presidential Primary Matching Funds that they are potentially entitled to receive.

The Audit staff acknowledges that the valuation of the Committee's artwork contained in the Interim Audit Report likely exceeds its Fair Market Value on the Candidate's date of ineligibility. However, given that the Committee has, on several occasions, declined to provide sufficient information to permit an alternative valuation, the Audit staff has little choice but to continue to use the most recent valuation placed on these assets by the Committee. It should be emphasized that the Audit staff is of the opinion that the issue is one of valuation, not possession.

At its meeting of September 11, 1986, the Commission considered the valuation of Committee artwork. Two motions were offered. The first to allow the Committee's valuation of \$-0-, and the other to maintain the Interim Audit Report valuation of \$244,000.00 until such time as a documented alternative valuation was supplied. Both motions failed to receive a majority vote. As a result, the artwork has been dropped from the NOCO Statement.

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2. Accounts Payable for Qualified Campaign Expenses

Section 9033(c) (2) of Title 26 of the United States Code states that any candidate who is eligible (under 26 U.S.C. § 9033(c)(1)) to receive payments under section 9037 shall be eligible to continue to receive payments to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible.

Section 9033.5 of Title 11 of the Code of Federal Regulations provides that a candidate may receive matching payments after the date of ineligibility, only if, and to the extent that, he or she has net outstanding campaign obligations (NOCO). Section 9034.5 of Title 11 of the Code of Federal Regulations, in general, defines a candidate's NOCO at a given point in time as: (total obligations for qualified campaign expenses + estimated winding down costs) less (cash on hand + market value of assets + amounts owed to the campaign, i.e., credits, refunds of deposits, rebates, etc.) = net outstanding campaign obligations.

In the Interim Audit Report, the Audit staff concluded that the Committee exceeded the state expenditure limitations by a total of \$337,920.84 and the overall spending limitation by \$494,426.16. These determinations were made by analyzing the Committee's expenditures made through December 31, 1984 which were allocable to these states' and/or the overall limitation and by adding to these totals the accounts payable relative to the respective limits as of December 31, 1984.

The NOCO Statement presented in the Interim Audit Report was as of August 31, 1984 but reflected actual receipts and disbursements through December 31, 1984. The Committee's accounts payable as of August 31, 1984 were divided into two categories under the NOCO Statement's Liabilities section: (1) Accounts Payable for Qualified Campaign Expenses at December 31, 1984 and (2) Disbursements for Qualified Campaign Expenses and Winding Down Costs, September 1 through December 31, 1984. To assure that only accounts payable for qualified campaign expenses were included on the NOCO statement, adjustments to the above categories were required. Accounts payable at August 31, 1984 which relate to non-qualified campaign expenses paid subsequent to the date of the NOCO statement and non-qualified campaign expenses remaining unpaid as of December 31, 1984 were excluded. A separate adjustment was made for those non-qualified campaign expenses made after the date of ineligibility (July 18, 1984) through the date of the NOCO Statement (August 31, 1984).

A calculation was included which demonstrated the derivation of the \$294,609.36 adjustment to the August 31, 1984 NOCO Statement. This amount was explained as follows:

1. \$8,734.93 in non-qualified campaign expenses made between 7/19-8/31/84 was included as an asset on the August 31, 1984 NOCO statement.
2. \$104,979.97 was deducted from disbursements for qualified campaign expenses and winding down costs, 9/1-12/31/84 and so footnoted.
3. \$180,894.46, representing accounts payable which would be in excess of the state or overall expenditure limitations when paid, was excluded from accounts payable for qualified campaign expenses at December 31, 1984 and so footnoted.

As a result of information provided in the Committee's response to the Interim Audit Report and follow-up audit work conducted subsequent to the Committee's response, the amounts by which the Committee exceeded the state and overall expenditure limitations have been revised. The revised totals are \$300,980.30 in excess of the state spending limitations (\$147,363.82 in Iowa, \$25,283.50 in Maine and \$128,332.98 in New Hampshire) and \$578,904.44 in excess of the overall limitation. (See Finding III.A. and B. above.) Therefore, the amount of the adjustment to the August 31, 1984 NOCO Statement has likewise been revised. The calculation shown below explains the composition of the amounts in excess of the state and the overall limitations and the calculation of the related NOCO Statement adjustments. This calculation follows that contained in the Interim Audit Report, but utilizes the revised amounts in excess of the limitations.

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	<u>State Limitation</u>	<u>Overall Limitation</u>
1. Expenses In Excess of the Limitation Paid on or Before the Date of Ineligibility (7/18/84)	\$182,164.89	\$ -0-
2. Expenses Paid 7/19- 8/31/84	8,734.93	-0-
3. Expenses Paid 9/1/84 to 3/31/86	110,080.48	578,904.44
4. Accounts Payable at 3/31/86	<u>-0-</u>	<u>-0-</u>
5. Non-qualified Campaign Expenses in Excess of the Limitation	\$300,980.30	\$578,904.44
6. Less: Non-qualified Campaign Expenses in excess of the IA, ME, and NH limits not allocable to the 26 U.S.C. § 9035(a) limitation		(300,980.30)
7. Less: Non-qualified campaign expenses in IA, ME, and NH paid prior to 7/19/84 (and therefore do not re- quire a NOCO Statement adjustment)	(182,164.89)	<u> </u>
8. Non-Qualified Campaign Expenses as Adjusted for NOCO Statement Exclusion (Total lines 2 and 3 above)	<u>\$118,815.41</u>	<u>\$277,924.14</u>

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The netting of amounts in excess of the State Limitations against amounts charged to the Overall Limitation assures that non-qualified campaign expenses resulting from exceeding the State Limitations do not charge to the 26 U.S.C. § 9035(a) overall limitations on qualified campaign expenses. Accordingly, the amount on line 5 of the State Limitation column on the above chart, which includes all amounts in excess of the State expenditure limitations, regardless of when paid, is deducted from expenditures charged to the Overall Limitation. Also, by excluding the amounts shown on line 3 of the State Limitation column and line 8 of the Overall Limitation column of the above chart from NOCO Statement accounts payable and including the amount on line 2 of the State Limitation column as a NOCO asset, only payables for qualified campaign expenses form the basis for post-ineligibility entitlement. Finally, the netting of amounts in excess of the State Limitations against amounts charged to the Overall Limitation precludes any possibility of duplication in reductions from the NOCO Statement for non-qualified accounts payable related to both the States' and Overall Limitation.

The actual adjustments to the August 31, 1984 NOCO Statement, after considering the Committee's response to the Interim Audit Report and the results of follow-up fieldwork, are as follows:

1. \$8,734.93 in non-qualified campaign expenses made 7/19-8/31/84 has been included as the asset "Non-Qualified Campaign Expenses Paid 7/19-8/31/84" on the NOCO Statement and so footnoted.
2. \$388,004.62 (\$277,924.14 adjusted amount in excess of the Overall Limitation and \$110,080.48 in excess of the State Limitation paid 9/1/84 to 3/31/86) in non-qualified campaign expenses made 9/1/84-3/31/86 has been deducted from "Disbursements for Qualified Campaign Expenses and Winding Down Costs 9/1/84-3/31/86" and so footnoted.

In their response to the Interim Audit Report, the Committee puts forth five separate arguments as to why the Commission should not make these adjustments to the Committee's accounts payable for NOCO Statement purposes, and therefore, should not require a repayment pursuant to 11 C.F.R. § 9038.2(b)(1). Each of the Committee's arguments is discussed below.

1. "The report subtracts from MPC's entitlement the full amount of those expenditures which they allege are over the limit. The effect of this is to penalize the committee 100 percent for non-qualified expenditures which were made with only 33 percent matching funds. This method was declared unlawful by the D.C. Circuit Court in the Kennedy decision."

The court, in the case cited by the Committee, was addressing the Commission's formula for repayment of non-qualified campaign expenses made during the active campaign under 11 C.F.R. § 9038.2(b)(2). That case did not present the issue of candidates' entitlement to additional public funds subsequent to their ineligibility dates. As noted above, it is 26 U.S.C. § 9033(c) that places a limit on post-ineligibility matching fund payments. That section states that post-ineligibility matching fund payments may not exceed the amount owed for qualified campaign expenses incurred before the date of ineligibility. Therefore, establishing a candidate's entitlement in accordance with the limitation contained in the Presidential Primary Matching Payment Account Act and the recovery of payments made in excess of that amount does not represent a repayment of non-qualified campaign expenses, 100% or otherwise. Rather, it represents the recovery of amounts to which the candidate was not entitled.

2. "Most of the expenditures in excess of the limits were incurred before the date of ineligibility and should be subject to a ratio repayment just as other non-qualified campaign expenses (e.g. undocumented expenditures) are. The interim report, however, takes the position that to determine whether an expenditure is nonqualified, the operative date is when the excessive expenditures are paid and not when they are incurred. This is incorrect. Expenditures paid after the date of ineligibility may have been perfectly lawful when incurred. Under the statute, an expenditure occurs at the time of a promise or agreement to make the expenditure, and candidates are prohibited from incurring expenditures over the limit.

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2 U.S.C. § 431(9)(A)(ii); 26 U.S.C. Section 9035. Thus, the only expenditures which might possibly be deducted from MPC's entitlement would be those which were incurred after the date of ineligibility and which were non-qualified when they were incurred. The only expenditures incurred by MPC after the date of ineligibility were for winding down costs or fundraising costs to retire debt. Thus, the expenditures which put MPC over the limit were incurred prior to the date of ineligibility, and there is no basis for subtracting them from MPC's entitlement. The approach taken in the Report creates an enormous repayment for MPC's excessive expenditures. These expenditures should simply be subjected to a standard ratio repayment under Section 9038(b)(2)."

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The Committee is correct when it notes that the Interim Audit Report applies disbursements to the various expenditure limitations in the order in which they are paid. This procedure is consistent with the reporting requirements in 2 U.S.C. § 434 and 11 C.F.R. § 106.2(d). For reporting and repayment purposes, amounts are applied to the various limitations when paid (FEC Form 3P, pp.3-4). Committees are not required to make adjustments to reported amounts subject to spending limitations for amounts incurred but not paid and such amounts may not be used as a basis for a repayment pursuant to 11 C.F.R. § 9038.2(b)(2). Further, committees are not required to record the date on which an obligation was incurred. Rather, 11 C.F.R. § 102.9(b)(1) states that "an account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of:

- (i) the name and address of every person to whom any disbursement is made;
- (ii) the date, amount, and purpose of the disbursement; and"

Therefore, in many cases, the use of the date of incurrence in determining when an expenditure limitation was exceeded is not possible.

3. "In the Kennedy case, the court concluded that the funds of a presidential primary candidate committee must be considered a mixed pool of matching payments and contributions, wherein a public dollar cannot be identified and segregated from a private dollar. The Report, in reducing MPC's entitlement by 100 percent for every non-qualified campaign expense paid after ineligibility, in essence treats those payments made for non-qualified campaign expenses as coming solely from federal funds. This conclusion is premised on the theory that after ineligibility, it is possible to identify which particular bills were paid with federal funds and which were paid with private dollars. Such a theory flies in the face of the Kennedy decision and is contrary to standard accounting practices."

As explained with respect to item 1. above, the Kennedy case did not address the calculation of a candidate's post-ineligibility entitlement to matching funds and is, therefore, not relevant to this situation. Further, the deletion of accounts payable which are for non-qualified campaign expenses from the Committee's NOCO Statement pursuant to 26 U.S.C. § 9033(c)(2) makes no assumptions relative to which funds are used to pay such expenses or whether such expenses are ever paid. It simply limits the candidate's entitlement to amounts required "to defray qualified campaign expenses incurred before the date upon which such candidate becomes ineligible."

4. "26 U.S.C. Section 9038(b)(1), by its explicit terms, allows the Commission to recover 100 percent repayments for payments in excess of entitlement only in two situations: (1) where a candidate received more than his or her \$10,100,000 in 1984 (MPC has received to date only \$9,494,920.93); or (2) where non-matchable contributions were mistakenly matched by the Commission. Neither situation applies in the case of MPC. Rather, the auditors are trying to use the entitlement concept to recoup a 100 percent repayment even after the Kennedy decision."

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Section 9038.2(b)(1)(i) of Title 11 of the Code of Federal Regulations (Bases for repayment - Payments in excess of candidate's entitlement) states that a repayment of amounts received by a candidate in excess of his entitlement is required when payments were made to the candidate after the candidate's date of ineligibility and it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 C.F.R. § 9034.5.

The Committee's argument on this point constitutes an assault on the validity of the Commission's regulations governing post-ineligibility entitlement.

The deletion of accounts payable for non-qualified campaign expenses from the Committee's NOCO Statement and the repayment calculated at III.D. are in accord with this regulation. Here again, the Kennedy decision is not relevant to this repayment situation since it does not represent a recovery of the public funds portion of non-qualified campaign expenses. Instead, it represents an entitlement determination pursuant to 26 U.S.C. § 9033(c)(2).

5. "If MPC had received all of its private contributions prior to the date of ineligibility and had those contributions been matched before that date, it is clear that all expenditures made for non-qualified campaign expenses, regardless of when paid, would be subject only to a ratio repayment. Under the theory used in the Report, those same expenditures are subjected to 100 percent repayment merely because they are being paid from contributions which were received and matched after the date of ineligibility. There is no rational basis for such an approach. Moreover, this approach will result in grave inequity of treatment of candidates based on the timing of their fundraising."

The Committee's final point addresses a hypothetical situation where all matching funds had been received prior to the Candidate's date of ineligibility. Assuming such a situation, the Candidate's maximum entitlement would be equal to the amount payable for qualified campaign expenses incurred prior to the Candidate's date of ineligibility, plus winding down costs, less cash on hand and assets. This is the same formula used to determine the Committee's maximum entitlement in the Interim Audit Report. The result would be either a surplus on the date of ineligibility requiring a repayment pursuant to 26 U.S.C. § 9038(b)(3), or a remaining entitlement equal to the net deficit calculated. In either case, payables for non-qualified campaign expenses would be excluded from the calculation.

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Obviously, if the candidate had remaining entitlement and raised no further contributions or chose not to make any further matching fund requests, a repayment resulting from the receipt of matching funds in excess of the candidate's post ineligibility entitlement would not be possible.

The Audit staff acknowledges that the entitlement to matching funds is determined differently before and after the candidate's date of ineligibility. Before the date of ineligibility, 26 U.S.C. § 9034 places only two limitations on entitlement: (1) 50% of the expenditure limitation at 2 U.S.C. § 441a(b)(1)(A) and, (2) the amount of matchable contributions which the candidate can obtain. After the date of ineligibility, 26 U.S.C. § 9033(c)(2) adds the amount of qualified campaign expenses yet to be paid to the other limitations on entitlement. It is the latter limitation that, in this case, results in a NOCO Statement adjustment and a repayment pursuant to 26 U.S.C. § 9038(b)(1).

For the reasons stated above, except for the adjustments required by the revisions to the amounts charged to the expenditure limitations in Sections III.A. and B. above, no changes to the amount of accounts payable deleted from the Committee's NOCO Statement have been made.

3. Statement of Net Outstanding Campaign Obligations

Sections 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 July 18, 1984, Honorable Walter F. Mondale was nominated as the Democratic Party's presidential candidate at its national convention. Therefore, that is the date on which Mr. Mondale's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee submitted its original NOCO Statement on August 6, 1984 and continued to submit updated NOCO Statements with each matching fund submission. The Audit staff reviewed the NOCO Statement dated August 31, 1984. This was the most recent revision available at the time of the initial review. This NOCO Statement was revised to reflect actual receipt and disbursement activity between September 1 and December 31, 1984. Accounts payable, accounts receivable, and estimated winding down costs were also determined using data available at December 31, 1984.

The NOCO Statement included in the Interim Audit Report reflected Total Assets of \$1,118,245.86 and Total Liabilities of \$4,546,085.45, resulting in Net Outstanding Campaign Obligations of \$3,427,839.59.

In their response of November 18, 1985, the Committee expressed disagreement with the Audit staff's determination of the amount of Net Outstanding Campaign Obligations as of December 31, 1984. The Committee cited four areas in which they objected to either the methodology applied by the auditors or to the calculation of the amounts to be included on the NOCO Statement. The Audit staff offers the following comments on the Committee's objections.

The Committee objects to the Audit staff's inclusion of \$244,000 in artwork as an asset on the NOCO Statement. This issue is discussed at length in Section III.C.1.

The Committee objects to a \$294,609.36 (revised to \$396,739.55 in this report) reduction to liabilities which represents accounts payable related to non-qualified campaign expenses paid subsequent to the Candidate's date of ineligibility. This adjustment is discussed at length in Section III.C.2.

The Committee states that the accounts receivable carried on the NOCO Statement are grossly overstated. The Audit staff included accounts receivable of \$256,079.07 on the NOCO Statement. This was comprised of \$112,989.22 in receivables actually collected between September 1 and December 31, 1984 and \$143,089.85 in receivables outstanding as of December 31, 1984. As discussed in Section III.B.6., the \$143,089.85 was included on the NOCO Statement because the Committee's Comptroller/Assistant Treasurer had advised a member of the Audit staff that the Committee was going to pursue collection of receivables in this amount. However, a NOCO Statement prepared shortly thereafter excluded any such receivables from the assets reflected. As noted in Section III.B.6., the Audit staff has revised the value of accounts receivable as of August 31, 1984 to reflect only those receivables actually collected between September 1, 1984 and March 31, 1986.^{14/} As a result, the Committee and the Audit

^{14/} The coverage date of the most recent disclosure report filed by the Committee at the time of this writing and the close of follow-up fieldwork.

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staff are now in agreement on the valuation of the receivables, although there remains a disagreement regarding their treatment in the calculation of expenditures subject to the 2 U.S.C. § 441a(b)(1)(A) and 11 C.F.R. § 9035.1 limitations (see Section III.B.6.).

Finally, in their November 18, 1985 response, the Committee notes that they object:

"[To the Report's adding] as an asset 100 percent of the amount of allegedly non-qualified expenditures paid between July 20 and August 31, 1984 even though these funds are no longer in the possession of the Committee and only one-third of the \$8,279.58 could have been considered to be matching funds. Similarly, the Report subtracts from the Committee's liabilities \$285,874.43, which are allegedly non-qualified campaign expenses, even though those bills may have been qualified campaign expenses when incurred and even though they were paid with no more than one-third public funds."

Just as the Committee argues that \$285,874.43, (revised to \$388,004.62 in this report) representing accounts payable for non-qualified campaign expenses paid subsequent to the date of ineligibility, should be eligible for inclusion on the August 31, 1984 NOCO Statement, so too they argue that the \$8,734.93 ^{15/} in non-qualified campaign expenses paid between the date of ineligibility and the date of the NOCO Statement should not be included as an asset on the statement.

The justification for excluding post-ineligibility non-qualified campaign expense payments from NOCO Statement liabilities is given at Section III.C.2. It is for the same reason that the \$8,734.93 is included as an asset on the statement: to prevent the payment of non-qualified campaign expenses from increasing the amount of federal matching funds to which a candidate is entitled (26 U.S.C. § 9033(c)(2)). It is shown as an asset rather than excluded from liabilities because the non-qualified campaign expenses were actually paid (subsequent to the ineligibility date, but prior to the date of the NOCO Statement presented) and, therefore, were not liabilities as of the date of the NOCO Statement. The effect, however, is exactly the same.

^{15/} The Committee refers to \$8,279.58 while the amount in the report is actually \$8,734.93.

Presented below is the August 31, 1984 NOCO Statement as determined by the Audit staff. Where appropriate, amounts have been revised to include receipt and disbursement activity through March 31, 1986. If revisions to amounts included on the NOCO Statement are required, they will be presented in an addendum to this Final Audit Report.

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Mondale for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations
at August 31, 1984
as determined at March 31, 1986

Assets

Cash on Hand	\$	-0-
Cash in Bank		593,996.21
Accounts Receivable		121,837.37
Refunds Receivable <u>a/</u>		17,602.30
Other Assets		
Cookbooks		15,435.65
Capital Assets		-0-
Non-Qualified		
Campaign Expenses <u>b/</u>		<u>8,734.93</u>
Paid 7/19-8/31/84		

Total Assets

\$ 757,606.46

Liabilities

Loans Payable	\$1,398,037.58
Press Advances Payable	35,091.93
Accounts Payable	

Disbursements for
Qualified Campaign
Expenses and Winding
Down Costs
between c/ 9/1/84
and 3/31/86 \$2,522,922.74

Contribution Refunds Payable	111,802.00	
Settlement - MUR 1704	<u>350,000.00</u>	\$2,984,724.74

Estimated Winding
Down Costs at
3/31/86 d/

Salaries and Fees	128,433.74	
Office Rent	<u>35,200.00</u>	\$ 163,633.74

Total Liabilities

\$4,581,487.99

Net Outstanding
Campaign Obligations

(\$3,823,881.53)

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- a/ This figure represents collections from 1/1/85 to 3/31/86 which were not included on the NOCO Statement in the Interim Audit Report.
- b/ This amount represents payments chargeable to the state expenditure limitations in Iowa, Maine and New Hampshire between 7/19-8/31/84. Since amounts had been paid in excess of the limitations in these states prior to the July 18, 1984 date of ineligibility, any amounts paid subsequent to this date are non-qualified campaign expenses. The amount is shown as an asset to prevent the making of non-qualified campaign expenses from increasing the net deficit and therefore matching fund entitlement.
- c/ This amount is audited disbursements for Operating, Fundraising and Compliance expenses paid between 9/1/84 and 3/31/86 (\$2,910,927.36) less amounts paid in excess of a State and/or the overall spending limitation during the same period (\$388,004.62).
- d/ The winding down estimates provided by the Committee included a \$32,000 reserve for potential liabilities that would come to the Committee's attention in the future. This amount has not been included in the NOCO Statement. Any adjustments to the NOCO Statement necessitated by changes in estimated amounts will be made as events occur. Winding down estimates are also shown net of a \$47,977.70 prepaid computer expense.

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D. Matching Fund Payments In Excess of Entitlement

Section 9038(b)(1) of Title 26 of the United States Code states that, if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary, an amount equal to the amount of the excess payments.

Further, 11 C.F.R. § 9034.1(b) states that, if on the date of ineligibility a candidate has net outstanding campaign obligations, that candidate may continue to receive matching fund payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that, on the date of payment, there are remaining net outstanding campaign obligations.

As mentioned in Section III.C.3., the NOCO Statement contained in the Interim Audit Report reflected Net Outstanding Campaign Obligations of \$3,427,839.59 at August 31, 1984. The report concluded that this was the amount of the candidate's maximum matching fund entitlement as of that date. The report also presented an analysis which detailed the liquidation of the entitlement by subtracting post-August 31, 1984 deposits of both private contributions and matching funds. The analysis concluded that the Candidate's matching fund entitlement was liquidated prior to the date of the Commission's final matching fund payment. Therefore, the Committee was advised that, absent some showing to the contrary, the Audit staff would recommend that the Commission seek a repayment pursuant to 26 U.S.C. § 9038(b)(1) equal to the amount of the final matching fund payment (\$552,742.60).

In their response of November 18, 1985, the Committee noted that it "objects both to the legal basis of this finding and to the auditor's method for calculating the amount of, and the liquidation of, MPC's entitlement." They state that the Presidential Primary Matching Payment Account Act ("The Fund Act") established an "entitlement program" to subsidize the campaigns of eligible presidential primary candidates. The Committee further argues that as an entitlement program, an eligible candidate's entitlement is qualified by the Fund Act in only two respects: (1) contributions must be matchable and (2) the total amount of payments to a candidate shall not exceed 50 percent of the overall expenditure limitation of 2 U.S.C. § 441a(b)(1)(A). For the 1984 cycle, candidates could receive a maximum of \$10,100,000. They state that since the Committee

received \$9,494,920.93, it is entitled to the full amount of matching funds it received. They assert that 11 C.F.R. § 9034.1(b) is inoperative in that it "add[s] non-statutory qualifications to a candidate's entitlement" by attempting to limit entitlement to the amount of net outstanding campaign obligations as of the date of the matching fund payment.

The Committee further contends that, "even if the interim audit report were correct that MPC's entitlement after the date of ineligibility is limited to qualified debt, the method used in the audit report is incorrect." As justification, they offer two reasons. The first relates to the auditors' NOCO Statement adjustments to delete accounts payable for non-qualified campaign expenses. This issue has been discussed at length in Section III.C.2. and again at Section III.C.3. The second reason relates to the auditors' method of calculating the liquidation of the candidate's (post-ineligibility) entitlement. The Committee argues:

"The report begins with an August 31 [1984] entitlement figure of \$3,427,839.59 which has been adjusted to exclude nonqualified campaign expenses. The report then subtracts from this amount, contributions and matching funds as received. The Committee objects to the premise of this method which presumes that MPC's matching fund entitlement is liquidated by receipt of private contributions. Even assuming the validity of the auditor's figures... the Committee had an entitlement to \$3,427,839.59 16/ in public funds as of August 31, 1984, yet received only \$1,907,164.25 in public funds after August 31, 1984."

16/ Including the \$1,907,164.25 received by the Committee after August 31, 1984, the Committee's matching fund payments totaled \$9,494,920.93. Hence, their maximum remaining entitlement could not exceed \$605,079.07 (\$10,100,000 - \$9,494,920.93).

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In response, the Audit staff notes that the Committee's main objection is to the use of private contributions, in addition to matching funds, to reduce the candidate's post-ineligibility entitlement. The Audit staff agrees that the candidate's entitlement is to an amount of matching funds, as determined by operation of the NOCO Statement. However, we would argue that the candidate is entitled to exactly this pre-determined amount of "public funds" only if no private contributions have been received (or for that matter, no "other receipts" not originally reflected on the NOCO Statement have been realized) subsequent to the date of ineligibility. Commission regulations relative to candidate entitlement state that, assuming the candidate has net outstanding campaign obligations on the date of ineligibility, he/she may continue to receive matching payments provided that, on the date of payment, there remain net outstanding campaign obligations, "i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations" (emphasis added). 11 C.F.R. § 9034.1(b).

The Audit staff's interpretation of the Act and the Commission's regulations with respect to establishing post-ineligibility entitlement to matching funds and monitoring the amount of this entitlement can be summarized as follows: (1) a candidate is entitled to post-ineligibility receipt of matching funds only to defray qualified campaign expenses incurred prior to ineligibility (26 U.S.C. § 9033(c)(2)) including winding down costs, (2) the NOCO Statement is the vehicle to establish and measure this entitlement (11 C.F.R. §§ 9034.1 and 9034.5), (3) only accounts payable for qualified campaign expenses or winding down costs may be included on the statement as the basis for (further) entitlement (26 U.S.C. § 9033(c)(2) and 11 C.F.R. § 9034.5(a)(1)), (4) entitlement is always equal to the lesser of the amount of contributions submitted for matching, the amount of remaining net outstanding campaign obligations on the date of payment (11 C.F.R. § 9034.1(b)(1) and (2)), or the difference between payments received and the maximum allowable amount established by 26 U.S.C. § 9034(b), and (5) the amount of entitlement remaining on the date of a matching fund payment is limited to the amount of net outstanding campaign obligations as determined at the date of ineligibility less all contributions and matching funds received from the date of ineligibility through the date of payment (11 C.F.R. § 9034.1(b)).

As noted at Section III.C.3. of this report, the Audit staff revised the calculation of net outstanding campaign obligations included in the Interim Audit Report. The revised NOCO Statement reflects net outstanding campaign obligations at August 31, 1984 of \$3,823,881.53. Shown below is the Audit Division's calculation of how those obligations were liquidated with contributions and matching funds:

August 31, 1984 Net Outstanding Campaign Obligations	\$3,823,881.53
Less: Net Contributions Deposited 9/1 to 9/30/84	(279,421.49)
September 1984 Matching Fund Payment	(244,463.71)
Net Contributions Deposited 10/1 to 10/31/84	(701,656.41)
October 1984 Matching Fund Payment	(352,271.86)
Net Contributions Deposited 11/1 to 11/30/84	(486,254.18)
November 1984 Matching Fund Payment	(296,704.68)
Net Contributions Deposited 12/1 to 12/28/84	(591,946.77)
December 1984 Matching Fund Payment	(460,981.40)
Net Contributions Deposited 12/29/84 to 2/21/85	(<u>57,851.34</u>)
Remaining Net Outstanding Campaign Obligations As of 2/21/85	(\$ <u><u>352,329.69</u></u>)

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Therefore, the Committee's remaining entitlement on February 21, 1985 was \$352,329.69. On February 21, 1985, the Committee received a matching fund payment in the amount of \$552,742.60 17/. This payment was \$200,412.91 in excess of the Candidate's entitlement (\$552,742.60 less \$352,329.69).

Conclusion

On October 23, 1986, the Commission made an initial determination that \$200,412.91 in matching funds certified on February 19, 1985 represents matching funds received by the Candidate in excess of his entitlement and, therefore, an equal amount must be repaid to the U.S. Treasury within 90 days of receipt of this report in accordance with 26 U.S.C. § 9038(b)(1).

If the Candidate does not dispute this determination within 30 calendar days of the receipt of this report, the initial determination will be considered final.

Repayment Amount: \$200,412.91

17/ On January 28, 1985, the Committee made their final matching fund submission. This submission was accompanied by a NOCO Statement with net outstanding campaign obligations of \$769,088.50. This statement contained a math error which was corrected on a NOCO Statement filed February 11, 1985. When the amount to be certified was calculated, it mistakenly considered the net outstanding campaign obligations of the original statement. Therefore, the amount certified on February 19, 1985, was overstated by \$20,464.77. Irrespective of the outcome of the repayment recommendation included in this report, the Commission reserves the right to a repayment determination of \$20,464.77 pursuant to 26 U.S.C. § 9038(b)(1) with respect to this error.

E. Apparent Non-Qualified Campaign Expenses

1. Calculation of Repayment Ratio

Section 9038(b)(2) 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 purposes other than to defray qualified campaign expenses or to repay loans the proceeds of which were used to defray qualified campaign expenses, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such an amount.

The Commission, in a Notice of Proposed Rulemaking published in the Federal Register on June 28, 1984, set forth a pro rata formula which would base repayments for non-qualified campaign expenses on the proportion of federal funds to total funds received by the candidate. The final version and the Explanation and Justification was published in the Federal Register on August 22, 1984 and transmitted to Congress.

On March 5, 1985, the revised regulations were resubmitted for publication. The proposed regulations were before the Congress for 30 legislative days as of May 20, 1985 and were approved by the Commission for publication in final form on June 11, 1985.

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

Total Matching Funds Certified Through Date of Ineligibility (7/18/84)	=
Numerators + Private Contributions Received through 7/18/84	
<hr style="width: 100%; border: 0.5px solid black;"/>	
\$7,567,893.66	=.329853
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\$7,567,893.66 + \$15,375,296.95	

Thus, the repayment ratio for non-qualified campaign expenses is 32.9853%.

In the response to the Interim Audit Report, the Committee accepted the Audit staff's calculation of the repayment ratio.

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2. 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, or contributions received by the candidate, 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.

The Interim Audit Report concluded that the Committee had exceeded state expenditure limitations by a total of \$337,920.84 and the overall limitation by \$494,426.16. In order to determine the total amount to which the repayment ratio should be applied, a calculation was presented which (1) assured that only qualified campaign expenses were applied to the 26 U.S.C. § 9035(a) overall limitation, (2) precluded any possibility of duplication in the repayment of Federal funds for non-qualified campaign expenses, and (3) assured that the repayment ratio was applied only to the non-qualified campaign expenses which had been paid by December 31, 1984. The Interim Audit Report further noted that a separate repayment determination would be required for non-qualified campaign expenses paid after December 31, 1984 and before the Committee's disbursement of their final matching fund payment. The amount of the repayment calculated in the Interim Audit Report was \$103,419.37 ($\$313,531.70 \times 32.9653\%$).

In their response to this section of the Interim Audit Report, the Committee again argues that the exclusion of amounts payable for non-qualified campaign expenses from the Committee's NOCO Statement when determining maximum post-ineligibility matching fund entitlement represents a 100 percent repayment for those amounts contrary to the Kennedy decision.

The Committee also argues that, given this, the application of the repayment ratio to non-qualified campaign expenses paid after the date of ineligibility, but while the campaign is still receiving matching fund payments, constitutes a total repayment of 133%. The Committee also notes that in 1976 and 1980, the Commission adjusted a candidate's entitlement for such expenditures, but sought no repayment pursuant to 26 U.S.C. § 9038(b)(2).

The Committee is correct that, prior to the Kennedy decision, with the exception of amounts incurred in excess of an expenditure limitation, no non-qualified campaign expense repayment pursuant to 26 U.S.C. § 9038(b)(2) was sought for non-qualified campaign expenses paid after the date of ineligibility. Rather, the candidate's maximum post-ineligibility matching fund entitlement determination excluded payables for non-qualified campaign expenses as required by 26 U.S.C. § 9033(c). However, 100% repayments were sought in relation to amounts incurred in excess of an expenditure limitation, regardless of when paid.

As noted by the Committee in footnote 6 to their response, the explanation and justification of the revisions to the regulations necessitated by the Kennedy decision described the repayment methods to be used by the Commission after the Kennedy decision.

With respect to the argument that the repayment calculation in the Interim Audit Report represents a 133% repayment of non-qualified campaign expenses paid after the candidate's date of ineligibility, the Audit staff makes the following comments. As noted in several places above, the exclusion of amounts owed by the Committee for non-qualified campaign expenses on the date of ineligibility from the calculation of the candidate's maximum post-ineligibility matching fund entitlement does not represent a repayment, 100% or ratio, of the amount of any non-qualified campaign expenses. It is the method required by 26 U.S.C. § 9033(c) for determining the maximum amount the candidate may receive to assist in the liquidation of "qualified campaign expenses incurred before the date upon which such candidate becomes ineligible..." Once this amount is determined, it may be compared to amounts paid to and contributions received by the candidate. If amounts in excess of this entitlement have been received by the candidate, the excessive amount must be returned to the Treasury.

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On October 9, 1986, the Commission determined that the matching fund ratio repayment pursuant to 26 U.S.C. § 9038(b)(2) would be limited to those non-qualified campaign expenses paid on or before the Candidate's date of ineligibility. As is shown on page 52 above, no amounts in excess of the overall limitation had been paid by that date. However, of the \$300,980.30 in excess of the State limitation, \$182,164.89 had been paid by the Candidate's date of ineligibility. Given this situation, no netting calculation similar to that shown on page 52 is required for the calculation of a repayment pursuant to 26 U.S.C. § 9038(b)(2). The repayment calculation is as follows:

Amount in excess of the State expenditure limitation paid on or before the Candidate's date of ineligibility	\$182,164.89
Times the Repayment Ratio from III.E.1.	<u>.329853</u>
Repayment Amount	<u>\$ 60,087.64</u>

Conclusion

On October 23, 1986, the Commission made an initial determination that \$60,087.64 (\$182,164.89 x .329853) must be repaid to the U.S. Treasury within 90 calendar days of receipt of this report in accordance with 11 C.F.R. § 9038.2(d).

If the Candidate does not dispute this determination within 30 calendar days of the receipt of this report, the initial determination will be considered final.

Repayment Amount: \$60,087.64

Repayment Summary

III.D. Payments in Excess of the Candidate's Entitlement	\$200,412.91
III.E.2. Non-Qualified Campaign Expenses	<u>60,087.64</u>
Total Initial Repayment Determination	<u>\$260,500.55</u>

Intra-State Travel and Subsistence
(Finding III.A.1.b.)

The following are the 31 individuals for whom the Committee disagrees with the Audit staff's travel and subsistence expense allocations contained in the Interim Audit Report. All but the Audit staff's comments is taken verbatim from the Committee's November 18, 1985 response to the Interim Audit Report.

MAINE

1. Jim Blair \$ 36.67
\$340.00

Committee comments:

Auditors rely on a document showing that he received per diem for August 28 through August 31, and a document referring to an expense reimbursement for a Mondale trip of August 31 to September 1. Nothing presented to us by the auditors shows that Blair was in the state for more than four days.

Audit staff comments:

According to Committee check request forms, per diem was requested for the individual for August 28 through August 31, 1983 and, in addition, the individual was reimbursed for miscellaneous travel expenses covering August 31 through September 1, 1983. Based on these Committee notations, the per diem and reimbursed expenses cover five days (August 28-September 1).

Audit Adjustment: \$-0-

2. Jim Farrell \$994.66

Committee comments:

Auditors' evidence consists of an automobile rental contract from a Boston rental agency for the period February 22 to March 27, 1984. Although the car was impounded in Maine, there is no evidence that Jim Farrell was in Maine for more than four consecutive days.

Audit staff comments:

The documentation in question consists of a car rental agreement with miscellaneous memoranda attached indicating that the car was towed and impounded in Maine, was returned to Boston, and damages that were sustained were repaired.

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The following facts were considered: (a) the rental customer listed his employer as "First District Delegates" (presumed to be a New Hampshire delegate committee), (b) the car was rented February 22, 1984 and prepaid for the week ending February 28. The contract was renewed for the week of February 29-March 7 (the car was towed March 5) with a prepayment on February 29. Therefore, the rental period was inarguably more than four days. This would indicate that the expenditure likely required state allocation. The Committee allocated it to a non-state allocable cost center (#105-Field), (c) although the car was rented from an agency located in East Boston (this agency services Logan International Airport), it was expressly not restricted to Massachusetts usage (as denoted on the agreement by "NE use only", presumed to mean restricted to New England usage), (d) the car was towed from a private lot in Portland, Maine and was impounded by the Portland Maine Police Dept., (e) the driver was reimbursed for gas and lodging expenses incurred in Maine covering March 2-4, which the Committee did allocate to Maine, and (f) the allocation dollars in question relate to the period March 7-27 and cover additional rental charges, retrieval and towing charges, and damages.

In consideration of the above facts, the Audit staff submits that the individual likely rented the car on February 22, 1984 in conjunction with work on the New Hampshire primary (February 28). The rental contract was renewed on February 29 to extend through March 7, likely for use in the Maine primary (March 4). There is evidence that the car and/or its driver was in Maine at least March 2-5. Since the allocation dollars in question relate to the period March 7 through March 27 and since the car was ostensibly last used in Maine, the Audit staff finds it reasonable to consider these expenses state-allocable and to have been incurred in connection with the Maine primary election.

Audit Adjustment: \$-0-

3. Ned McCann	\$190.00
	\$300.00

Committee comments:

Auditors refer to a consulting payment for August 15 to August 31, 1983 and travel reimbursement payment on February 16, 1984. None of the documents indicate he was in Maine more than four days. His home address is given as Portland, Maine, but that is no basis for assuming he worked there. We do not allocate expenditures based on the permanent address of the payee.

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Audit staff comments:

a. The Committee's adjustment of \$300 represents the consulting fee portion of a check for \$490; the balance of \$190 was coded as a travel advance and is addressed in b. below. The \$300 was not included in the Audit staff's \$7,178.46 intra-state travel and subsistence allocation, but can be found in Finding III.A.1.c., "Salaries, Employer FICA and Consultant Fees", where the Committee again makes this \$300 adjustment (see p.23 of their November 18, 1985 response).

b. The Committee disputes the allocation of the \$190 travel advance portion of the check referred to in a. above. With respect to the allocation of this expenditure, the Audit staff would not suggest that expenditures be allocated on the basis of the payee's permanent address either. However, the check request form accompanying the \$490 consulting fee/travel advance payment indicates that the consulting fee covers August 15-31, 1983, or, more than four days. This expenditure was coded to cost center #105 (Field), not to one of the national or headquarters cost centers. Taken together, these suggest that state allocation would likely be required, i.e., a travel advance coded to "Field" for a period in excess of four days. Since there is no indication on the check request form to indicate the state in connection with which the expense was incurred and given (i) that the Maine "straw poll" took place on October 1, 1983 and (ii) that the payee's address on the check suggests that the check was mailed to the individual in Portland, Maine, the Audit staff finds it reasonable to assume that Maine is the state to which the expenditure should be allocated.

Audit Adjustment: \$-0-

4. Dennis O'Neil \$ 56.39

Committee comments:

Drafts cited as evidence are accompanied by receipts which do not show O'Neil was in Maine more than four consecutive days. Some receipts have no date or location.

Audit staff comments:

The documentation consists of miscellaneous receipts for gas, meals, and tolls. Not all receipts bear dates or addresses, however, there are definitive receipts for gasoline at Maine service stations on July 16 and July 18-21, 1983. The Audit

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staff finds it as reasonable, to assume that there was no gas fill-up on July 17 (or just no receipts kept) as it is to assume that this individual was in Maine on July 16, elsewhere for July 17, and back in Maine July 18-21.

Audit Adjustment: \$-0-

5. David S. Rosenberg \$451.00

Committee comments:

Auditors provided a copy of a check request for auto rentals in Portland, Maine, evidence which does not establish that he or the cars were in Maine for more than four consecutive days.

Audit staff comments:

As opposed to car rental agreements, this documentation consists of three credit card charge records and a billing statement which list the point of origin and the point of return of the vehicles. It seems that three vehicles were rented on separate days from a Portland, Maine Avis agency. All were rented for periods exceeding four days. Two of the three were returned to a Maine location and were allocated to Maine by the Committee. The third was returned to Boston and was allocated to cost center #105 (Field) (rather than to Massachusetts or Maine). It would appear that state allocation was required for the latter rental as well. The auditors chose Maine due to the association with the other two rentals (which were apparently used in and allocated to Maine) and to the occurrence of the "straw poll" in Maine on October 1, 1983.

Audit Adjustment: \$-0-

IOWA

6. Jonathan Blum \$172.70
\$100.00

Committee comments:

Auditors provide as evidence a copy of a check request for four days per diem for advance work, and copies of drafts written on three consecutive days. The documents do not establish that he was there more than four days.

Audit staff comments:

Documentation consists of: (a) a check request of \$100 for per diem for an Iowa trip to cover February 11-14, 1984 and (b) four drafts accompanied by numerous receipts for gas, parking, meals, and supplies. The majority of these receipts bear Iowa addresses and dates covering February 8-14. Together, these documents evidence expenses incurred with respect to a trip to Iowa, totaling \$172.70.

Audit Adjustment: \$-0-

7. Lynn Christensen	\$ 50.00
	\$144.88

Committee comments:

Auditors provide copies of documents that indicate she was in Iowa February 10-13. No evidence she was there for more than four days. They refer to a per diem for February 9 and 10, but there is nothing to demonstrate that she was in Iowa on February 9.

Audit staff comments:

Documentation consists of a check request for \$50 for per diem in Iowa February 9-10, 1984 and a hotel receipt for \$144.88 for lodging in Iowa February 10-13, 1984. The Committee's own notations, together with these documents, evidence expenses incurred in Iowa totaling \$194.88 covering February 9-13, 1984.

Audit Adjustment: \$-0-

8. Marthena Cowart	\$493.69
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Committee comments:

The auditors provided as evidence copies of check requests and drafts, none of which indicate she was in the state more than four days.

Audit staff comments:

Documentation consists of: (a) a check request of \$75 for per diem in Iowa January 14-16, 1984, (b) an Iowa hotel receipt for January 15-18, 1984, (c) a draft with receipts covering January 15-17, 1984, only one of which bears the state location of the vendor, but that location is Iowa, and (d) a draft for per diem for January 17-18, 1984 with no state indication.

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Since (a) and (b) above support expenses incurred in Iowa covering January 14-18 and since the expenses incurred in (c) and (d) are within the same period, the auditors view these four expenditures totaling \$718.69 as reasonably requiring allocation to Iowa.

Audit Adjustment: \$-0-

9. Kathleen Doria \$216.12
\$ 50.00

Committee comments:

Copies of check requests provided as evidence do not bear any indication that she was in the state more than four days.

Audit staff comments:

A hotel receipt by itself indicates the individual was in Iowa from February 9-13, 1984. In addition, there is a check request for per diem for February 9-10, 1984.

Audit Adjustment: \$-0-

10. Don Foley \$200.56
\$ 56.38

Committee comments:

Copies of check requests provided by auditors bear no indication that Foley was in the state more than four days.

Audit staff comments:

The expenditures in question are related to two lodging expenses incurred in Iowa. For the first, the hotel bill indicates Mr. Foley had a room for the nights of January 30-February 2, 1984 (Monday through Thursday). Since Mr. Foley checked out apparently on Friday, February 3, he was in the state for more than four days, therefore, his expenses require allocation. (The Explanation and Justification accompanying 11 C.F.R. § 106.2 states that "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 that person was in a State rather than using 24-hour periods.")

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The second expenditure is for lodging in Ottumwa, Iowa on February 12-13, 1984. What places Mr. Foley in Iowa for more than four days around these dates is a Des Moines hotel receipt indicating Mr. Foley had a room there from February 6-16, which the Committee properly allocated to Iowa.

Audit Adjustment: \$-0-

11. Michael Ford \$151.41

Committee comments:

The auditors provided copies of check requests, none of which bear any indication that Ford was in the state more than four consecutive days.

Audit staff comments:

The expenditure in question is a travel expense reimbursement for which the documentation consists solely of the check request form indicating that the expenses were related to an "Iowa trip (Jan 24-28)". Although the period exceeded 4 days, the expenditure was allocated to cost center #105 (Field).

Audit Adjustment: \$-0-

12. Vicki Hartman \$183.66

Committee comments:

Auditors allocated \$383.66 in expenses to Iowa when the Committee only reimbursed her for \$200.00.

Audit staff comments:

In this situation, the individual was not "reimbursed" at all. In actuality, the expenditures in question relate to drafts that Ms. Hartman wrote for "petty cash." The documentation consists of a recap of expenses prepared by Ms. Hartman which is accompanied by miscellaneous receipts. Her recap indicates that she issued or cashed drafts with a combined denomination of \$450 (five \$50 drafts and two \$100's), however, all the drafts were not written or cashed for their full face value. Her accounting indicates that she incurred expenses of, and was accountable for, \$383.66. The receipts are for expenses on February 9, and 11-13, 1984, although not every receipt bears a date. In addition, not all receipts identify a state, but those that do are for Iowa vendors, and the drafts were cashed in Iowa.

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The Committee's filing system for draft documentation was different than that for the documentation supporting expenditures made by check. Documentation for expenditures by check was filed alphabetically by vendor. With respect to drafts, the drafts themselves were filed sequentially within a denomination with the supporting documentation attached to the draft. Where more than one draft was written to cover an expense, the documentation would be affixed to one of the drafts and the bottom of that draft would be annotated to indicate the additional draft(s) to which the documentation relates. In the situation at hand, however, the \$50 drafts did not include the cross-reference to the \$100 drafts to which the recap and supporting receipts relate. Therefore, the auditors could only assume that the \$100 drafts were allocated to cost center #108 (Scheduling and Advance) as were the \$50 drafts.

Audit Adjustment: \$-0-

13. Larry Martinez \$353.97

Committee comments:

Martinez rented a car in Omaha on January 16 and returned it on January 21. He was in Iowa January 19. There is no evidence he was in Iowa any other time in January.

Audit staff comments:

For Mr. Martinez, the Audit staff reallocated to Iowa seven expenditures totaling \$1,176.60. The Committee takes exception to a car rental/office supply reimbursement in the amount of \$353.97. They contend that the car was rented from an Avis dealer located in Omaha, Nebraska and used January 16-21, 1984, but Mr. Martinez was only in Iowa on January 19. This is apparently based on the fact that Mr. Martinez' reimbursement request is accompanied by documentation for rental of the car (\$335.75) and for office supplies (\$18.22). The office supplies were purchased on January 19 from an Iowa vendor, but there is no evidence (at least contained in this reimbursement) that he was in Iowa January 16-18 or January 20-21.

In addition to this one expenditure, however, the documentation consists of: (a) an expenditure for a hotel room in Sioux City, Iowa January 16-20, (b) an expenditure for per diem in Sioux City, Iowa for January 17-20, and (c) an expenditure for per diem in Iowa City, Iowa January 20-23. These expenditures cover January 16-23, 1984 and, although not originally allocated to Iowa, the Committee does not contest the Audit staff's Iowa

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reallocation. This documentation places Mr. Martinez in Iowa for January 16 to at least the 21st and supports the allocation of the \$353.97 for car rental and office supplies to Iowa.

Audit Adjustment: \$-0-

14. Ellen Schneider \$ 75.00
\$182.98

Committee comments:

Copies of documents provided by the auditors as evidence do not bear any dates indicating that this expenditure would be allocable.

Audit staff comments:

Documentation consists of: (a) a check request for per diem in Iowa for February 5-7, 1984 and (b) an expenditure for a hotel room in Iowa February 8-11, 1984. Together, these cover February 5-11, 1984 or more than four days.

Audit Adjustment: \$-0-

15. Bart Chilton \$400.00
\$388.03

Committee comments:

Copies of rental car documents used as evidence by the auditors show a car rented in Illinois to this driver, but no evidence that a driver or car were in Iowa more than four consecutive days.

Audit staff comments:

Included in the Interim Audit Report was an adjustment allocating \$5,849.25 in car rental expenses to Iowa. Ten cars were rented from an agency located in Moline, Illinois, which is on the Iowa/Illinois border. The \$5,849.25 was paid in two payments: \$3,449.25 was allocated to Illinois and the balance of \$2,400 to Minnesota (this was apparently a coding error, Illinois is cost center #129, Minnesota is cost center #139). It is noted that the car rental agency also has an office in Davenport, Iowa.

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The documentation is comprised of: (a) a copy of the rental agency's accounts receivable ledger detailing the dates and amounts of the charges and the rental agreement numbers and (b) copies of the rental agreements which list, among other items, the name of the customer (and driver, if different), the customer's employer and the dates of the rental.

The cars were rented for varying periods which generally covered mid-January through late February, 1984. The Audit staff felt it reasonable to assume that the rentals were all related to the same field effort. Given (1) the proximity of Moline, Illinois to Iowa and (2) the periods of the rentals in relation to the dates of the Illinois and Iowa primaries (of the ten cars, seven were returned on February 21 and, three on February 28; the Iowa primary was February 20, Illinois on March 20), the Audit staff felt the car rentals were more likely related to the Iowa than the Illinois primary election.

Further inspection revealed that, of the seven drivers named, five were on the Committee's payroll during the car rental period. According to the Committee's payroll records, the salaries of three of the five were allocated to Iowa for the period in question. A fourth driver was paid per diem for the period; the Committee allocated this to Iowa. Also, one of the vehicles received a traffic summons from the City of Clinton (Iowa).

Based on the above information, the Audit staff found it reasonable to view the full \$5,849.25 in car rental expenses as allocable to Iowa (rather than to Illinois or Minnesota). In response to the Interim Audit Report, the Committee took exception to the allocation of the car rental expenses of three of the seven individuals, including Mr. Chilton (Ms. Alksne and Mr. Handler, #'s 16 and 18 below, are the others). These are the three individuals whose salaries were not allocated to Iowa by the Committee for the period (one of the three was not on the payroll) and the salaries of the remaining two were allocated by the Committee to Michigan and Oklahoma. Since (a), as mentioned earlier, the car rentals were likely all in relation to the same field effort, and, this effort ostensibly was the Iowa primary election and (b) since there is better reason to believe these three individuals were involved in this effort (being named as drivers on the rental agreements) as opposed to the Oklahoma or Michigan primary elections, it is also noted that the Committee's

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response merely questioned the Audit staff allocation as opposed to providing documentation supporting the Committee's allocation to Oklahoma or Michigan. The Audit staff submits that the expenses of these three individuals were also in conjunction with and should be allocated to the Iowa campaign.

Audit Adjustment: \$-0-

16. Cynthia Alksne	\$485.60
	\$ 43.20
	\$ 34.50

Committee comments:

Copies of rental car documents used as evidence by the auditors show a car rented in Illinois to this driver, but no evidence that a driver or car were in Iowa more than four consecutive days.

Audit staff comments:

See #15 above.

Audit Adjustment: \$-0-

17. Gary Kelleher	\$128.46
	\$289.71

Committee comments:

Kelleher, in Iowa as an advance person, rented two 15-passenger vans and a press car for a Mondale stop and returned them the next day. Neither his salary nor these vehicles, which were used by the candidate and press for one day, are allocable to the state.

Audit staff comments:

The documentation consists of: (a) a check request for per diem in Iowa for January 15-19, 1984, (b) copies of drafts and a rental agreement for a van in Iowa, January 18-19 and (c) a check request accompanied by Mr. Kelleher's request for reimbursement of expenses (including a press van) for his Iowa trip of January 15-19.

Mr. Kelleher's salary is not allocated to Iowa because he was not on the payroll for the period. Had he been, it would be allocable to Iowa based on his and the Committee's representations that he was in the state for five days, not just the two days covered by the van rental.

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Regarding the rental of the vehicles for the press, it is unclear on what basis the Committee is asserting that they do not require allocation. On the one hand, they mention that the vehicles were used only two days, implying that they fall under the intra-state travel and subsistence provisions, including the "five day rule". On the other hand, since the rentals related to press vehicles, they may be asserting that they are not classifiable as expenses for travel and subsistence, but rather fall under equipment rental. The Audit staff is of the opinion that since the vehicles were used in conjunction with a press event(s), they are properly classifiable as equipment rental, and not subject to a "five day rule" test. Their primary usage was to transport members of the press and/or related equipment, not for the intra-state travel and subsistence of Committee personnel. For that reason, the Audit staff feels that the press vehicle rental expenses are properly allocable to Iowa.

Audit Adjustment: \$-0-

18. Peter Handler \$400.00
\$511.63

Committee comments:

Copies of rental car documents used as evidence by the auditors show a car rented in Illinois to this driver, but no evidence that a driver or car were in Iowa more than four consecutive days.

Audit staff comments:

See #15 above.

Audit Adjustment: \$-0-

19. Terry Leftgoff \$468.00

Committee comments:

Copies of rental car documents used as evidence by the auditors show a car rented in Illinois to this driver, but no evidence that a driver or car were in Iowa more than four consecutive days.

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NEW HAMPSHIRE

21. Bob Bosch \$612.02

Committee comments:

Documents provided by the auditors do not establish that Bosch was in the state more than four days. A check request for lodging for the advance party gives dates for a Mondale visit February 23 through February 27, 1984, but there is no indication on the face of the document that Bosch was there for more than four days.

Audit staff comments:

Included in the documentation is the check request form referred to by the Committee. This is accompanied by the hotel room receipt indicating the room was rented to Mr. Bosch for February 24-28, 1984, or more than four days. The Audit staff is unsure what is meant by "...no indication on the face of the document".

Also included in the documentation are check requests for per diem and drafts for taxis, all of which fall within the period February 24-28, 1984, which, therefore, likewise require allocation.

Audit Adjustment: \$-0-

22. Walter Holton \$602.47

Committee comments:

Documents provided by the auditors include a per diem request for a February 22 through February 24 trip to New Hampshire and a copy of a check request to pay a Howard Johnson's in Manchester, New Hampshire for a Mondale trip of February 23 through February 27, 1984. This documentation on the face does not establish that Holton was in the state for more than four consecutive days.

Audit staff comments:

The hotel room receipt is actually for February 24-28, 1984, otherwise the Committee's summary of the documentation is accurate. The per diem request and the hotel room receipt cover February 22-28 or more than four days.

Audit Adjustment: \$-0-

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23. Stuart Ishimara \$150.00

Committee comments:

Documents provided by the auditors do not bear any evidence that Ishimara was in the state of New Hampshire.

Audit staff comments:

The documentation consists of two drafts totaling \$150 which were accompanied by miscellaneous receipts covering February 22-27, 1984. These receipts bear the names of Bedford and Manchester, New Hampshire.

Audit Adjustment: \$-0-

24. Elaine McLaughlin \$619.57

Committee comments:

Documents provided by the auditors consist of a check request for McLaughlin's per diem of February 1 through February 3, 1984 for a Mondale trip to New Hampshire, a hotel bill check request indicating lodging for the Mondale travel and advance party for 2 of those days, and an expense reimbursement request for the Mondale trip of February 2, 1984. None of the documents have any evidence on the face to indicate McLaughlin was in New Hampshire more than three days.

Audit staff comments:

The Committee's summary is correct except that the check request for the hotel payment referring to a "WFM Concord Trip 2/2/-2/3/84" is accompanied by the bill for Ms. McLaughlin's room which indicates she had the room from 1/30-2/3/84. The auditors suspect that the reference on the check request relates to the duration of the candidate's trip, not the length of the advance personnel's stay. Regardless, the duration of Ms. McLaughlin's New Hampshire stay was January 30-February 3, 1984, or five days.

Audit Adjustment: \$-0-

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25. Doug Michelman \$463.10

Committee comments:

Evidence presented by the auditors consisting of a copy of a check request for lodging for advance and field staff for a Mondale visit to New Hampshire trip, and copy of a request for four days per diem in connection with a WFM New Hampshire trip. There is no indication that Michelman was there more than four consecutive days.

Audit staff comments:

Documentation consists of: (a) a check request for per diem in New Hampshire February 12-13, 1984, (b) a New Hampshire hotel room receipt for February 14-16, (c) a check request for per diem in New Hampshire for February 18-21 and (d) a New Hampshire hotel room receipt for February 18-21. The Committee appears to feel that no five consecutive days are involved. However, the individual had a motel room from February 14 through 16 with an apparent checkout date of February 17, 1984. He also had a room at the same motel for February 18-20 with a checkout date of February 21, 1984. Therefore, the documentation indicates that the individual was in the state for 10 consecutive calendar days from February 12-21, 1984.

As was noted at item 10 above, the Explanation and Justification accompanying 11 C.F.R. § 106.2 states that for purposes of determining the length of time an individual remains in a state, the Commission will generally look to calendar days or any portion thereof rather than using 24 hour periods.

Audit Adjustment: \$-0-

26. Jim Mulhall \$636.69

Committee comments:

Documents provided by the auditors include copies of check requests for per diem payments in connection with Mondale trips to New Hampshire at various times, plus a copy of a check request for lodging for the travel and advance party for Mondale for two days. None of the documents establish on the face that Mulhall was in the state for more than four consecutive days.

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Audit staff comments:

Included in the documentation is a per diem request for a New Hampshire trip January 21-24. In addition, there are two check requests for consultant fees related to Keene, Lebanon, and Claremont, N.H., which cover January 21-25. Although not included in the travel and subsistence section, the five day consultant fees make the January 21-24 per diem allocable.

Also, the check request for advance party lodging refers to a "...WFM Concord Trip 2/2-2/3/84", however, the statement for Mr. Mulhall's room indicates he was there from January 30-February 3, 1984. There is also a per diem request covering January 30-February 1, 1984 related to the Concord, N.H. trip. The per diem and hotel room are for January 30-February 3, 1984, or, more than four days.

The Audit staff agrees that \$238.77 in per diem, meals and lodging for January 10-13, 1984 do not require allocation in that the period is less than five days.

Audit Adjustment: \$238.77

27. John O'Leary \$308.09

Committee comments:

The auditors provided as evidence copies of check requests for lodging for a February 8, 1984 Mondale visit to New Hampshire and a February 17 to February 20 visit to New Hampshire, and a copy of a draft dated February 15 to a New Hampshire payee. There is no indication on the face of the documents that O'Leary was in New Hampshire more than four consecutive days.

Audit staff comments:

The documentation consists of: (a) a check request for a "...WFM Visit Manchester 2/8/84", which is accompanied by room receipts for Mr. O'Leary for February 8-9 with check out February 10, (b) a draft accompanied by a hotel receipt for February 11-12 with apparent check out on February 13 and on the same receipt, room charges for February 14-15 with apparent check out on February 16. The Committee allocated this to cost center #154 (Pennsylvania), a likely transposition of cost center #145 (New Hampshire), but, nonetheless recognized that it exceeded four days, and (c) a check request for "...WFM Visits of 2/17/84 and 2/20/84 to Manchester" which is accompanied by Mr. O'Leary's room receipt covering February 16-20, 1984. Together these cover February 8-20, 1984 and require allocation to New Hampshire.

Audit Adjustment: \$-0-

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28. Kevin O'Malley

\$361.11

Committee comments:

The auditors' evidence consists of a copy of a check request for reimbursement for rooms for staff and advance for a Mondale trip of January 8, 1984, a copy of a check request for per diem January 4 through 7, 1984 in connection with a Mondale trip to New Hampshire on January 7, and a copy of the check request for payment of a hotel bill for a Mondale trip on January 8, 1984. There is no evidence on the face of the documents to establish that O'Malley was in the state more than four consecutive days.

Audit staff comments:

The documentation consists of: (a) a check request for per diem in New Hampshire for January 4-7, 1984, (b) a check request for lodging for a "...WFM 1/8/84 trip to Manchester" which is accompanied by Mr. O'Malley's room receipt for January 5-6 and (c) a check request for "...rooms for WFM trip to Manchester 1/8/84" which is accompanied by Mr. O'Malley's room receipt for January 6-7 with a January 8 check-out. Together these expenses cover in excess of four days and require allocation to New Hampshire.

Audit Adjustment: \$-0-

29. David Van Iderstine

\$847.79

Committee comments:

The evidence provided by the auditors consists of a copy of a check request for per diem February 4 through 6 in connection with a Mondale trip to New Hampshire, copies of drafts cashed in New Hampshire on February 9, 1984 for auto rental in connection with a Mondale trip to New Hampshire on February 8 and 9; and a copy of a check request for lodging for the travel and advance party for the Mondale visit of February 8. This does not establish that Van Iderstine was in the state for more than four consecutive days.

Audit staff comments:

The documentation consists of: (a) a draft dated February 9, 1984 for "petty cash-Manchester" accompanied by receipts for gas and supplies between February 2-9, (b) two drafts dated February 9 for "car rental-WFM to NH, 2/8-2/9/84" which is accompanied by

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a rental agreement for February 4-9, (c) a check request for per diem for Manchester, N.H., February 4-6, (d) a check request for lodging for "WFM Visit Manchester 2/8/84" which is accompanied by Mr. Van Iderstine's room receipt for February 6-7 and (e) a check request for lodging for "WFM 2/9-10/84 Visit to Manchester" which is accompanied by Mr. Van Iderstine's room receipt for February 7-8. Together these expenses cover February 2-9, 1984 and require allocation to New Hampshire.

Audit Adjustment: \$-0-

30. Kate Varney \$200.00

Committee comments:

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The auditors provided as evidence copies of drafts cashed in New Hampshire on February 17, 1984, January 23, 1984 and January 24, 1984, a copy of a check request for four days consulting fees for the period January 21 through 24, 1984, in connection with a Berlin, New Hampshire trip; and a copy of a per diem request for the same period for the Mondale trip to Berlin on January 24, 1984. The evidence as presented does not establish Varney's presence in the state for more than four consecutive days.

Audit staff comments:

The documentation consists of a check request for per diem in New Hampshire for January 21-24, 1984 and copies of two drafts, dated January 23 and 24, for petty cash which were made payable to an entity in Shelburne, N.H. The drafts are accompanied by receipts for a rental car, gas, and supplies covering January 21-25. Together these cover January 21-25 and require allocation to New Hampshire.

Audit Adjustment: \$-0-

31. Steve Werbel \$405.78

Committee comments:

The evidence presented by the auditors consists of a check request for advance salary for a Massachusetts trip on January 8 and 9, and New Hampshire on January 10 through 13, 1984, copies of drafts written for per diem for January 12 and January 13, a copy of a check request for expense reimbursement for January 13, and a copy of a check request for four days per diem on January 8

through 11 in connection with a Mondale trip to New Hampshire on January 12-13. The last per diem request is for the same period as the advance salary request which was clearly described as part Massachusetts and part New Hampshire. There is no evidence that Werbel was in New Hampshire more than four days.

Audit staff comments:

The Audit staff agrees that \$405.78 in expenses for per diem, air fare, car rental, and gas are not allocable to New Hampshire.

Audit Adjustment: \$405.78

	<u>Summary</u>		
	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Interim Audit Report amount of intra-state travel and subsistence	\$19,589.89	\$7,178.46	\$7,589.65
Adjustments:			
Mulhall, #26			(238.77)
Werbel, #31			(405.78)
	_____	_____	_____
Revised total of intra-state travel and subsistence	<u>\$19,589.89</u>	<u>\$7,178.46</u>	<u>\$6,945.10</u>

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**Salaries, Employer FICA, and Consultant Fees
(Finding III.A.1.c.)**

The following are the individuals for whom the Committee disagrees with the Audit staff's Maine salary, employer FICA, and consultant fee Interim Audit Report allocations. Also provided are the amounts in dispute and the Audit staff's bases for allocation.

1. John Bell \$849.84

Basis for allocation:

Mr. Bell received a \$295 travel advance for the period July 19-August 2, 1983 which the Committee allocated to Maine. Mr. Bell's salary for this period, however, was allocated to the Field cost center (#105). The Audit staff's adjustment reallocates the individual's salary for the period July 19-August 2, 1983 to Maine.

2. Lynn Cribari \$519.42

Basis for allocation:

Ms. Cribari received a \$100 travel advance for August 9-August 26, 1983 which the Committee allocated to Maine. Ms. Cribari's salary for this period, however, was allocated to the Field cost center. The Audit staff's adjustment reallocates the individual's salary for the period August 9-26, 1983 to Maine.

3. Scott Dolley \$344.48

Basis for allocation:

Included in drafts #200587-200601 was a \$243.88 car rental expense incurred by Mr. Dolley in Maine from July 23-August 1, 1983. The Committee allocated these drafts to Maine, however, Mr. Dolley's salary for this same period was allocated to the Field cost center. The Audit staff's adjustment reallocates the individual's salary for July 23-August 1, 1983 to Maine.

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4. Bill Tapella \$687.50

Basis for allocation:

Mr. Tapella received a \$165 travel advance for the period July 22-31, 1983 and a travel expense reimbursement of \$1,626.26 for the period July 22-August 1, 1983, both of which the Committee allocated to Maine. Mr. Tapella's salary for this period, however, was allocated to the Field cost center. The Audit staff's adjustment reallocates the individual's salary for the period July 22-August 1, 1983 to Maine.

5. Mike Fangor \$300

Basis for allocation:

Mr. Fangor received a \$125 travel advance for the period February 22-26, 1984 which the Committee allocated to Maine. His salary for this period, however, was allocated to the Scheduling and Advance cost center (#108). The Audit staff's adjustment reallocates the individual's salary for the period February 22-26, 1984 to Maine.

6. Don Lesser \$500

Basis for allocation:

Mr. Lesser received a travel advance and a travel expense reimbursement, for \$150 and \$280.97, respectively, covering the period February 21-27, 1984. The Committee allocated these expenditures to Maine. His salary for the period, however, was allocated to the Scheduling and Advance cost center. The Audit staff's adjustment reallocates the individual's salary for the period February 21-27, 1984 to Maine.

7. The Committee disputes the allocation of the employer FICA payments which correspond to the reallocation of the above six individuals' salaries. The Committee questions \$224.09 in such FICA tax payments. (The correct amount is \$216.88. The Audit staff used a FICA rate of 6.7% for 1983 and 7.0% for 1984. The Committee's adjustment apparently was based on 7.0% for both 1983 and 1984). However, for the reasons stated in numbers 1 through 6, the Audit staff has made no adjustment to the \$216.88 in employer FICA payment reallocations.

8. Ned McCann \$300

The Committee objects to the allocation of a \$300 consulting fee covering August 15-31, 1983. For the reasons given at Attachment I, #3, no adjustment to this allocation has been made.

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Material requested to be made public by
Commissioner Elliott.

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**REASONS COMMISSIONER LEE ANN ELLIOTT
VOTED ON THE FINAL AUDIT REPORT
OF THE MONDALE FOR PRESIDENT COMMITTEE (PRIMARY)
OCTOBER 9, 1986**

On October 9, 1986, the Federal Election Commission granted the Mondale Presidential Committee an exception from our established repayment formulas for presidential primary candidates. This exception deducts over \$110,000 (30%) from the amount the Mondale Committee owes the United States Treasury for improperly receiving and spending federal funds in the primary election campaign, as normally computed by the auditors applying the formula used throughout the 1984 presidential election cycle.

The Mondale primary committee was the final 1984 presidential primary committee to be audited by the Federal Election Commission. The Commission's "Mondale exception" was put forward on the belief that the established repayment formula "double counted some violations." The Audit Division demonstrated, to my satisfaction, that no double counting occurred in this or any other presidential audit.

The exception was accomplished by changing, on a one-time basis, an established repayment formula that had been applied to every other 1984 presidential candidate audited by the Commission. I strongly objected to this Commission action which effectively changes the rules for one candidate after all other 10 presidential candidates in the same election cycle had finished the audit process. The motion to keep established audit procedures failed to carry by a vote 3-3.

Since that motion did not carry, I moved that the Commission apply the "Mondale exception" to the Hollings and McGovern primary committees, whose audits contained the same repayment issues presented in the Mondale Committee audit. This motion would have permitted the Hollings Committee to recapture \$5,929 (38% of their payback) and the McGovern Committee to recapture \$14,189 (21% of their payback). The Commission rejected this motion by a 2-4 vote.

A third motion to apply the exception only to the Mondale Committee passed by a vote of 4-2. The Commission subsequently adopted the entire Mondale Committee audit, containing the repayment exception, on October 23, 1986.

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Statement of Reasons Page 2
Final Audit Report of the Mondale for President Committee (Primary)

In my opinion, if the Commission feels compelled to change important repayment formulas for presidential candidates, it should change them for all candidates and not just one. Government agencies that disburse the public's money, as the Federal Election Commission does, should consistently apply the same rules and not create exceptions that prejudice some and benefit one. The Federal Election Commission should abide by this principle and treat all candidates within the same election cycle in the same way.

10-24-86
Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

Attachment

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**DESCRIPTION OF THE PRIMARY AUDIT PROCESS
AND THE "MONDALE EXCEPTION"**

Under the Primary Matching Payment Account Act, the federal government matches a presidential primary candidate's private contributions up to a maximum dollar amount. If a candidate receives federal matching payments in excess of what he is entitled to, or spends federal money on items that do not qualify as permissible campaign expenditures, that candidate is required to reimburse the government for any amounts impermissibly received or spent.

The Federal Election Commission audits each presidential primary campaign committee which receives public funds to see if any money must be repaid to the government at the end of the campaign. In all previous 1984 election cycle audits, the Commission made two decisions: (1) did the campaign committee receive more federal money than it was entitled to; and, (2) did the committee spend the federal money to which it was entitled on permissible campaign expenditures. From this audit review, a committee is charged with a repayment determination that requires reimbursement to the government for all extra federal money received and federal money misspent.

The Commission departed from this established repayment formulation and crafted an exception for the 1984 Mondale Primary Committee. This exception reduces the Mondale Committee's repayment from \$372,216.23 as figured under the normal repayment formula, to \$260,500.55 as figured under the exception.

The Mondale exception was created on the belief that the Commission's current repayment formula "double counted" the same federal money in a committee's repayment calculation. Accordingly, the "Mondale exception" considers most of the federal money the Mondale Committee spent on impermissible expenditures to be the same federal money it received in excess of its entitlement. The "Mondale exception" assumes that any federal money impermissibly spent after the date of ineligibility is somehow recovered by the repayment of federal funds received in excess of entitlement. In other words, the Mondale Committee's repayment of improperly spent federal funds is limited to only those expenditures paid before the date Mondale became ineligible to receive federal funds.

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DESCRIPTION OF THE PRIMARY AUDIT PROCESS
AND THE "MONDALE EXCEPTION"
Page 2

The effect of the "Mondale exception" is to reduce a committee's repayment from an amount calculated under the normal repayment formula. For the Mondale Committee, the figures are:

	Normal Repayment Formula	Applying "Mondale Exception"
*(1)	\$200,412.97	\$200,412.91
** (2)	<u>171,803.16</u>	<u>60,087.64</u>
Total		
Repayment	372,216.23	260,500.55

The Hollings Presidential Committee and the McGovern Presidential Committee audits presented the same two repayment issues as presented in the Mondale Committee audit. Applying the "Mondale exception" to these two committees yields the following figures:

HOLLINGS COMMITTEE

	Normal Repayment Formula	Applying "Mondale Exception"
(1)	\$9,676.11	\$9,676.11
(2)	<u>5,929.48</u>	<u>0.00</u>
Total		
Repayment	15,605.59	9,676.11

McGOVERN COMMITTEE

	Normal Repayment Formula	Applying "Mondale Exception"
(1)	\$40,440.85	\$40,440.85
(2)	<u>27,285.66</u>	<u>13,095.87</u>
Total		
Repayment	67,726.51	53,536.72

The Federal Election Commission voted not to apply the "Mondale exception" to these two committees, so their repayment determinations will remain at the original, higher amounts.

* Federal funds received in excess of entitlement.

**Federal funds impermissibly spent.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MEMORANDUM TO: THE COMMISSION
FROM: MARJORIE W. EMMONS/ JOSHUA MCFADDEN *JM*
DATE: NOVEMBER 3, 1986
SUBJECT: RESPONSE TO COMMISSIONER ELLIOTT
Re: Mondale Final Audit
Dated October 31, 1986

The attached has been circulated for your
information.

Attachment

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RESPONSE TO COMMISSIONER ELLIOTT

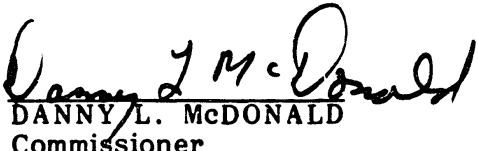
RE: MONDALE FOR PRESIDENT COMMITTEE FINAL AUDIT REPORT


The undersigned wish to respond to Commissioner Elliott's statement of reasons regarding the Mondale for President Committee Final Audit Report and the "Description of the Primary Audit Process and the 'Mondale Exception'" apparently also issued by Commissioner Elliott through the Commission's Press Office.

Unlike the other presidential committees previously audited, the Mondale for President Committee objected to being, in essence, penalized twice for the same excessive expenditures. The Commission thus was called upon for the first time to resolve a difficult legal and policy issue. Though there were several different approaches available, the Commission had to select just one in order to issue a final audit report. After careful consideration and deliberation, a majority of the Commission voted to take the action it did.

To characterize the calculations utilized in other audits dealing with different facts as an "established formula" seems unwarranted, especially since the issue at hand was not raised by other campaigns for consideration by the Commission. Further, to state that the majority "crafted" a "'Mondale exception'," is to lose sight of the unique procedural, factual, and legal circumstances of this matter.


JOHN WARREN MCGARRY
Vice Chairman


DANNY L. McDONALD
Commissioner


SCOTT E. THOMAS
Commissioner

DATED: October 31, 1986

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