



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20546

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December 29, 1994

MEMORANDUM

TO: RON HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA *2nd FOR RJC -*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
CLINTON FOR PRESIDENT COMMITTEE

Attached please find a copy of the Final Audit Report and related documents on Clinton for President Committee, which was approved by the Commission on December 27, 1994.

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

Attachment as stated

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

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REPORT OF THE AUDIT DIVISION
ON
Clinton for President Committee

December 27, 1994

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FEDERAL ELECTION COMMISSION
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WASHINGTON, D.C.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

FINAL AUDIT REPORT
ON
CLINTON FOR PRESIDENT COMMITTEE

EXECUTIVE SUMMARY

Clinton For President Committee ("Committee") registered with the Federal Election Commission on August 21, 1991, as the Clinton Exploratory Committee. The Committee was the principal campaign committee of then Governor Bill Clinton, a candidate for the 1992 Democratic presidential nomination.

The audit was conducted pursuant to 26 U.S.C. §9038(a), which requires the Commission to audit committees that receive matching funds. The Committee received \$12.5 million in matching funds.

The findings were presented to the Committee at an exit conference held at the conclusion of audit fieldwork (October 19, 1993) and in the Interim Audit Report approved by the Commission on April 4, 1994. The Committee's response to the Interim Audit Report and other information received from the Committee are included in this report. The Committee disagreed with most of the Interim Audit Report findings.

The Final Audit Report required the Committee to pay \$1,383,587 to the U.S. Treasury.

The findings contained in the Final Audit Report are summarized below.

Misstatement of Financial Activity - 2 U.S.C. §§434(b)(1), (2), and (4). The Committee overstated its 1992 receipts and disbursements by \$116,489 and \$322,476, respectively, and understated its 1992 ending cash by \$206,717. The Committee filed amended disclosure reports in July 1993 to correct misstatements.

Itemization of Receipts - 2 U.S.C. §434(b)(3)(A). The Committee failed to itemize a number of contributions from individuals and in-kind contributions but corrected the irregularities in its July, 1993 amendments.

Disclosure of Occupation and Name of Employer - 2 U.S.C. §434(b)(3)(A), 2 U.S.C. §431(13)(A), 11 C.F.R. §104.7(a) and (b). A sample of contributions from individuals the Committee received revealed that the Committee's itemized entries for such

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contributions failed to disclose the donor's occupation and name of employer for 49 per cent of the items tested. In addition, several of the Committee solicitations did not meet the "best efforts" standard for notifying recipients of the information on contributors that must be reported by law. The Committee disclosed additional information in amended reports filed in July, 1993.

Itemization of Refunds and Rebates - 2 U.S.C. §434(b)(3)(F). The Committee failed to identify various press organizations and the Secret Service as the sources of over \$2.5 million in travel reimbursements paid to the Committee through its travel vendor. The Committee filed a series of amended reports on October 14, 1994. These reports materially correct the public record. (The Committee also failed to itemize \$11,898 in other refunds and rebates but corrected this problem in its July 1993 amended reports.)

Excessive Contributions Resulting from Staff Advances - 2 U.S.C. §441a(a) and 11 CFR §116.5. Based on information provided by the Committee it was determined that five individuals made excessive contributions totaling \$58,482.

Contributions, Extensions of Credit by Commercial Vendors, and Use of Corporate Facilities - 11 CFR §100.7(a)(1), 11 CFR §114.9, and 11 CFR §116.3. The auditors concluded that the Committee received a total of \$246,162 in apparent excessive or prohibited contributions resulting from advances or extensions of credit made outside the ordinary course of business.

Apparent Non-qualified Campaign Expenses - 11 CFR §9032.9(a) and 11 CFR §9034.4(a). The Commission made an initial determination that the Committee repay the U.S. Treasury \$270,384 for making the non-qualified campaign expenses listed below:

1. Duplicate Payments or Overpayments - For making a total of \$39,742 in overpayments to vendors and to the candidate's general election committee, the Committee was required to make a pro rata repayment of \$16,861.

2. General Election Expenditures - The Committee was required to make a \$154,740 pro rata repayment for spending \$598,964 to benefit the candidate's general election campaign. The general election payments were made for equipment, facilities, polling, direct mail, media services, and other miscellaneous expenses. The amount represents an allocation of the amount originally recommended by the Audit staff.

3. Other Non-qualified Campaign Expenses - The Committee also had to make a pro rata repayment of \$98,783 for other non-qualified campaign expenses totaling \$382,366 including staff bonuses, an unexplained settlement, traveler's cheques, and other expenses.

Matching Funds in Excess of Entitlement - 26 U.S.C. §9038(b)(1). The Commission could not reach a conclusion on the Audit staff's recommendation that \$3.4 million was repayable. Also the Commission could not reach a decision on the matchability of certian post convention contributions. As a result the Candidate will be required to repay the U.S. Treasury \$1,072,344 in matching funds that exceeded entitlement. This determination was based on an analysis of the Committee's Statement of Net Outstanding Campaign Obligations relevant post-convention contributions up until the Committee ceased requesting matching funds and matching funds received after the convention.

State-dated Committee Checks - 11 CFR §9038.6. Finally, the Committee was required to pay the U.S. Treasury \$40,859, the value of state-dated Committee checks still uncashed.

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REPORT OF THE AUDIT DIVISION
ON
CLINTON FOR PRESIDENT COMMITTEE

I. Background

A. Audit Authority

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This report is based on an audit of Clinton For President Committee ("the Committee"). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section 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." Also ~~Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may~~ conduct other examinations and audits from time to time as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act of 1971, as amended ("the Act").

B. Audit Coverage

The audit covered the period from the Committee's inception, August 21, 1991, through June 30, 1993. During this period, the Committee reports reflect an opening cash balance of \$-0-, total receipts of \$45,341,630, total disbursements of \$43,871,664, and a closing cash balance of \$1,686,273.^{1/} In addition, a limited review of transactions and a review of disclosure reports through June 30, 1994 was conducted to gather information used in the evaluation of the Committee's financial position and matching fund entitlement.

^{1/} Reported totals do not foot. These amounts were revised via amended disclosure reports filed on July 2, 1993. (See Finding II.A.) All figures in this report have been rounded to the nearest dollar.

C. Campaign Organization

The Committee registered with the Federal Election Commission as the Clinton Exploratory Committee on August 21, 1991. On October 10, 1991 the Committee filed an amended Statement of Organization to change its name to the Clinton For President Committee. The Treasurers of the Committee during the period covered by the audit were Bruce R. Lindsey from August 21, 1991 to September 4, 1991 and Robert A. Farmer from September 4, 1991 to the present. The campaign established its national headquarters in Little Rock, Arkansas.

To handle its financial activity, the campaign had a general operating account from which most disbursements were made, a payroll account; a draft account; a media account; a collateral account used for the deposit of Federal funds; a suspense account used for the deposit of contributions from individuals awaiting redesignation to the Clinton/Gore '92 General Election Compliance Fund ("Compliance Committee") and a direct mail account which was inactive. In addition, the Committee maintained a New York operating account and two fundraising accounts, one located in Jonesboro, Arkansas and the other in Blytheville, Arkansas.

The campaign made approximately 29,000 disbursements and received 241,000 contributions from 181,000 persons. These contributions totaled \$25,197,422.

In addition to contributions, the campaign received \$12,536,135 in matching funds from the United States Treasury. This amount represents 90.78% of the \$13,810,000 maximum entitlement that any candidate could receive. The candidate was determined eligible to receive matching funds on November 27, 1991. The campaign made 10 matching funds requests. The Commission certified 99.2% of the requested amount. For matching fund purposes, the Commission determined that President Clinton's candidacy ended July 15, 1992. This determination was based on Section 9032(6) of Title 26 of the United States Code which states that the matching payment period ends "on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, ..." see also 11 CFR §9032.6. The campaign continued to receive matching fund payments through October 2, 1992, to defray expenses incurred before July 15, 1992, and to help defray the cost of winding down the campaign.

Attachment 1 to this report is a copy of the Commission's most recent Report on Financial Activity for this campaign. The amounts shown are as reported to the Commission by the campaign.

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D. Audit Scope and Procedures

In addition to a review of the qualified campaign expenses incurred by the campaign, the audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.E.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.F.);
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.B., C. and D.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;

5. proper disclosure of campaign debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.A.);
7. adequate recordkeeping for campaign transactions (see Finding III.B.);
8. accuracy of the Statement of Net Outstanding Campaign Obligations filed by the campaign to disclose its financial condition and establish continuing matching fund entitlement (see Finding III.C. & D.);
9. the campaign's compliance with spending limitations; and
10. other audit procedures that were deemed necessary under the circumstances.

As part of the Commission's standard audit process, an inventory of the Committee's records was conducted prior to the audit fieldwork. This inventory was to determine if the Committee's records were materially complete and in an auditable state. The inventory showed that a material portion of the Committee's records were missing or incomplete. On December 28, 1992, the Committee was sent a letter requesting records supporting or relating to several areas to be covered by the audit that had not been provided to the auditors for review during the

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pre-audit inventory. These records included bank records; workpapers and documentation relating to the Committee's direct mail and telemarketing programs; workpapers and documentation detailing the billing and collection for press and Secret Service travel, as well as, all corporate and charter airline invoices to include costs for each flight leg and the related passenger manifest; and, records and workpapers for media purchased by the Committee. The Committee was afforded 30 days to provide the additional records. At the end of the 30 day period the records were judged adequate to commence the audit.

It should be noted that the Committee did not allow the auditors to have direct access to Committee records. Although adequate arrangements were negotiated, this restriction added unnecessary time to the audit process.

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

II. Findings and Recommendations - Non-repayment Matters

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 shall disclose the amount of cash on hand at the beginning of each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff reconciled the Committee's reported activity to its bank records for the period August 16, 1991 through June 30, 1993. The reconciliation revealed the following misstatements relative to calendar year 1992.

1. Beginning Balance

The Committee reported a beginning cash balance at January 1, 1992 of \$1,885,699 which was understated by \$3,731. The correct beginning cash balance was \$1,889,430.

2. Receipts

The Committee reported total receipts of \$41,785,176 for calendar year 1992. This amount was overstated by a net amount of \$116,489. The correct receipt total was \$41,668,687. Part of the net overstatement resulted from the Committee's failure to report in-kind contributions totaling \$16,291 (see Finding II.B.)

3. Disbursements

The total amount of disbursements reported for calendar year 1992 was \$40,944,408 which was overstated by a net amount of \$322,476. The correct disbursement total was \$40,621,932. Although the Committee stated during the pre audit inventory that all disbursements were itemized on Schedules B-P; the summary page schedules and the Schedules B-P (Itemized Disbursements) for the reports filed covering May, 1992 and July, 1992 were significantly different. Reported disbursements were overstated by \$349,922 for May and were understated by \$217,831 for July when compared to bank activity.

4. Ending Balance

The reported ending cash balance at December 31, 1992 of \$2,729,468 was understated by \$206,717. The correct ending balance was \$2,936,184. This misstatement was primarily due to the effects of the receipt and disbursement misstatements noted above.

The Committee did not maintain workpapers, bank reconciliations or other records which demonstrated how the amounts contained on its disclosure reports were prepared. Absent such information, the Audit staff was not able to identify the reasons for the misstatements described above.

On July 2, 1993 the Committee filed amended disclosure reports for each reporting period in calendar year 1992 which materially corrected the misstatements.

In the Interim Audit Report the Audit staff recommended no further action regarding this matter.

In its response to the Interim Audit Report, the Committee states that "these misstatements were essentially due to errors by one of the Committee's computer vendors who failed to reconcile her records to the accounting data and bank reconciliation [sic] provided to her by the Committee's accounting department."

Although the Audit staff had requested all workpapers and bank reconciliations during the pre-audit inventory and during fieldwork, none was provided which related to the original reports filed with the Commission.

B. Itemization of Receipts

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each person who makes a contribution to the reporting committee during the reporting period whose contribution

or contributions have an aggregate amount or value in excess of \$200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

During a sample review of Committee contributions it was noted that 8% of the dollar value of contributions tested from individuals that required disclosure on Schedules A-P were not itemized. Twelve of the 26 contributions not itemized on Committee disclosure reports identified in the sample were received near the end of reporting periods. In addition, 17 of the sample errors involved contributions received in the June, July or August, 1992 reporting periods.

Also, as part of the reconciliation of reported activity to Committee bank records, \$50,852 in in-kind contributions were identified. Of this amount, \$16,291 were not found itemized on the Committee's disclosure reports as required by 11 CFR §104.13.

The Committee filed amended disclosure reports for all of 1991 and 1992 on July 2, 1993. These amended reports materially corrected the irregularities noted above.

In the Interim Audit Report the Audit staff recommended ~~no further action in regard to this matter.~~

In the response to the Interim Audit Report, the Committee states that it does not agree with the auditors' results projecting itemization errors of 8%. However, the Committee did not provide any documentation or other relevant information to support its position. In addition, the Committee acknowledges that during June, July and August of 1992, "the Committee experienced significant difficulties with the vendor preparing the Primary Committee's reports." Irrespective of such vendor problems, the Committee itself, and its treasurer, have the responsibility of complying with 2 U.S.C. §434(b)(3)(A) and 11 CFR §104.3(a)(4).

C. Disclosure of Occupation and Name of Employer

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

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

Section 104.7(a) and (b) of Title 11 of the Code of Federal Regulations states in part that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. With regard to reporting the identification of each person whose contribution(s) to the committee and its affiliated committees aggregate in excess of \$200 in a calendar year, the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. For purposes of 11 CFR §104.7(b), such effort shall consist of a clear request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law.

Contributions were tested on a sample basis to determine if the occupation and name of employer had been reported; and if not, if best efforts to obtain, maintain and submit the information were demonstrated. Of the items tested in the sample that required occupation and name of employer, 49% did not have the required information. Further, the solicitations that could be associated with the contributions did not meet the best efforts standard of 11 CFR §104.7(b). On July 1, 1992, the Committee received a letter from the Commission that pointed out the Committee's obligation to disclose the full identification of contributors who donate, in the aggregate, more than \$200 or exercise its best efforts to secure such information. In addition, the Commission's Reports Analysis Division sent the Committee several requests for amended disclosure reports that would supply the missing information.

In response to the notices from the Commission, the Committee stated that it intends to request this information in writing from its contributors. During audit fieldwork the Committee stated that the mailing consisted of approximately 17,000 pieces and was sent in November, 1992. A copy of the mailing was provided and included a notice informing the contributor that the requested information is required by law. The items considered as errors in the sample analysis were compared to the listing of the individuals who reportedly received the follow-up mailing. Nearly all of the contributors associated with identified sample errors were found on the listing. Finally, a comparison of the sample contributions to the amended disclosure reports submitted in July of 1993 revealed that the Committee had provided additional information.

In the Interim Audit Report the Audit staff recommended no further action in regard to this matter.

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The Committee states in its response to the Interim Audit Report that it "disagrees with this finding." It is stated further that "best efforts was satisfied prior to the November 1992, mailing. All of the Committee's solicitations included contributor cards requesting complete contributor information in compliance with the applicable language in 11 C.F.R. §104.7." The Committee contends that "[U]nder the regulations in effect in 1991, to 1993, the Committee satisfied the 'best efforts' requirement if it made one written request per solicitation. Since all Committee solicitations were accompanied by contributor cards requesting this information, the Committee's solicitations fully satisfied this requirement."

The Committee is incorrect in its statement that "All" of its solicitations requested "complete contributor information in compliance with the applicable language in 11 C.F.R. §104.7." Several of the Committee's solicitations obtained during audit fieldwork did not request the name of employer, or state that the reporting of such information is required by law. One Committee solicitation contained no request for occupation or name of employer. In addition, the Committee is erroneous in the assumption that the Interim Audit Report concludes that best efforts was demonstrated by the Committee with the November, 1992 mailing. The Interim Audit Report only acknowledges that the mailing was done and that additional information was provided by the Committee in amended reports filed on July 2, 1993.

D. Itemization of Refunds and Rebates

Section 434(b)(3)(F) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt.

Section 431(13)(B) of Title 2 of the United States Code states in part that in this Act the term "identification" means in the case of any other person the full name and address of such person.

The Committee received in excess of \$2.5 million in reimbursements from the press and the Secret Service for travel. World Wide Travel acted as an agent for the Committee by receiving reimbursements for travel from the various press organizations and the Secret Service, depositing these receipts in an escrow account and ultimately transferring the proceeds, net of any fees charged, to the Committee's operating account. The reimbursements were itemized on Committee disclosure reports as being from World Wide Travel which does not accurately disclose the identification of the person who made the refund pursuant to 2 U.S.C. §434(b)(3)(F). The amended disclosure reports provided no additional information with respect to press and Secret Service reimbursements.

Further the Committee failed to itemize refunds and rebates (unrelated to press and Secret Service reimbursements received through World Wide Travel) totaling \$11,898 in its January, 1992 report. These transactions were included on the July 2, 1993 amended disclosure reports discussed previously.

At the exit conference the Committee stated that it had received advice from the Commission that press and Secret Service refunds for travel were not required to be itemized individually in the Schedule A-P.

In the Interim Audit Report it was recommended that the Committee amend its reports to disclose as memo entries the identification (i.e., name, address), date and amount for each person or organization who made a reimbursement to the Committee for travel. In addition, it was recommended that any fees paid with respect to these reimbursements and netted against amounts received by World Wide Travel should be included as memo disbursement entries.

The Committee states in its response to the Interim Audit Report that:

"it properly disclosed these reimbursements as received from Worldwide Travel and that further itemization is not required by the Act, regulations or other Commission precedents."

"2 U.S.C. § 434(a) requires committees to file reports of receipts and disbursements. Generally all reporting under the Act, other than debts and obligations is on a cash basis. The Commission has addressed a virtually identical issue to this one as to disbursements made by presidential committees. In AO 1983-25, the Commission concluded that the itemization of disbursement requirements were met when a publicly financed campaign reported payments to its media vendor, and further hold [sic] that the Committee was not required to itemize payments subsequently made by the vendor on behalf of the committee. Thus, although committee vendors are required to maintain documentation of disbursements made to subvendors on behalf of a committee, the committee is not required to report or itemize such disbursements. The collection and receipt of reimbursements through a third party vendor is indistinguishable from the situation in AO 1983-25."

"11 C.F.R. § 104.3(a)(4)(v) requires only that a committee identify each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year. The Committee satisfied that requirement by reporting the receipt of press and secret service reimbursements from Worldwide

Travel which was operating as a vendor to the Committee in billing and collecting press and secret service reimbursements. All records pertaining to these collections were made available for audit as in AO 1983-25. The reporting requirements, however, were fully met by reporting the receipts from Worldwide. As in AO 1983-25, the Primary Committee's travel vendor was a distinct legal entity which entered into an arm's length commercial arrangement with the Committee. Worldwide Travel was neither set up by the Primary Committee, nor was the Primary Committee its only client. It is and was an ongoing travel business."

"The Committee sought informal advice from the audit staff regarding whether these reimbursements must be itemized and was advised that they need not be. We believe that advice was fully consistent with the requirements of § 434(b)(3)(f), § 104.3(a)(4)(v) of the regulations and AO 1983-25."

"Although, the Primary Committee believes that its reporting was in full compliance with the requirements of the Act, the Committee has prepared amendments as directed by the auditors itemizing the receipts from each press and secret service entity to the extent possible. The Committee shall provide copies of the revised schedules that have been prepared itemizing this information. The amendments will be filed as soon as the revised summary pages and any other necessary amendments are completed."

Advisory Opinion ("AO") 1983-25 addresses a media vendor, contracted by a committee to administer its media production and media buys, and in the course of performing its duties would make disbursements to various advertising entities. In addition, in AO 1983-25, the following factors were considered significant in making its determination: (1) the consultants had a legal existence that was separate and distinct from the committee's operations; (2) the consultants' principals did not hold any committee staff positions; (3) the committee was conducting arms-length negotiations with the consultants that resulted in a formal contract; (4) the consultants were not required to devote their full efforts to the contract with the committee, and the consultants expected to have other media contracts with other committees and business entities during the campaign period; and, (5) the committee had no interest in the consultants' other contracts. In the case at hand, the Primary Committee paid for the chartering of aircraft and maintained travel manifests, which identified the number of press, secret service and Committee personnel traveling on a particular trip, and the cost of each trip. This information was subsequently provided to Worldwide Travel which acted as a billing and collection agent for the Committee. The monies received from Worldwide did not represent a refund of Committee funds paid to

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Worldwide Travel for services rendered. The monies represent refunds for travel incurred by the various press organizations and Secret Service personnel. Based on its responses and documentation provided to date, the Committee has not addressed all the factors noted above. Therefore, the receipts should have been disclosed as refunds from the organizations which were the actual source of those funds. The press and Secret Service were the providers of the refunds to the Committee. Worldwide Travel was merely a conduit for the receipt of those refunds.

The Committee also states that "informal advice" was received from the Audit staff. The Audit staff is unaware of any advice given to the Committee concerning this matter. In addition, the Committee did not identify the person who provided this advice.

Although no amended reports were filed with the Committee's response to the Interim Audit Report, the Committee has recently filed a series of amended reports on October 14, 1994. These reports materially correct the public record.

E. Apparent Excessive Contributions from Staff and Other Individuals

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

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8).

If the payment is not exempted, it shall be considered a contribution unless, it is for the individual's transportation and normal subsistence expenses incurred by other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business such as food or lodging.

The Committee's payments of expense reimbursements were reviewed to determine if contributions had been made. As part of the Audit staff's analysis, contributions resulting from untimely reimbursement of expenses incurred by individuals were added to direct contributions made by these individuals. The review disclosed that persons were reimbursed for both their own travel and subsistence expenses as well as expenses for non-travel items and the subsistence of other persons. In the Interim Audit Report it was concluded that seven persons made excessive contributions totaling \$75,100^{2/}. At the time of the audit, no expense reimbursement requests were outstanding. At the exit conference, the Committee was presented a schedule of these individuals. The Committee stated at the exit conference that each individual's circumstance was unique and believed that the Committee had adequate information to address this matter.

In the Interim Audit Report it was recommended that the Committee either demonstrate that no contribution occurred with respect to these expense reimbursements, including a demonstration that portions of the amounts are exempt from the definition of a contribution under 11 CFR §100.7(b)(8), or offer any other information that it believed relevant to the issue.

The Committee states in its response to the Interim Audit Report that "the auditors have incorrectly categorized them [~~these transactions~~] as ~~excessive and untimely reimbursements~~, and the audit analysis overstates the amounts of any advance."

The Committee states further that "[O]f the seven persons identified by the auditors, four^{3/} were Committee staff and three were unpaid consultants to the Committee providing services. As to the staff members, the auditors' computer print-out provides a cumulative total of all expense reimbursements received by the individuals without identifying those which were for personal transportation and subsistence." The Committee continues that "[W]hen the personal transportation and subsistence expenses have been subtracted from the analysis, the contribution figures are dramatically different. The Committee has prepared a correct analysis accounting for all permissible advances and reimbursements for transportation and subsistence expenses^{4/}." [Footnote 3 omitted].

[Footnote 4] - The auditors' analysis of David Wilhelm is skewed by the inclusion of \$6,000 which the Committee decided to reimburse him for the expenses of his apartment. It would have been permissible for him to pay these expenses without reimbursement, but it was also permissible for the Committee to reimburse him. The timing of this reimbursement is legally immaterial."

^{2/} This amount is the sum of the largest outstanding excessive balance for each individual.

The Audit staff notes that an explanation of symbols and methodology used to generate the "computer print-out" was provided subsequent to the exit conference and again with the Interim Audit Report that enables the Committee to identify those expenses for personal transportation and subsistence. In addition, a review of the Committee's analysis revealed that certain items classified as personal travel and subsistence were for the expenses of persons other than the individual reimbursed (e.g. food for volunteers) and the use of "air phone," which are not subject to the 30-60 day window for reimbursement.

With respect to one individual, Carol Willis, the Committee did provide sufficient documentation which demonstrated that advances considered excessive contributions in the Interim Audit Report were immaterial.

With respect to the \$6,000 reimbursement to David Wilhelm for rent, this payment was made at the request of David Wilhelm in a memo to David Watkins and Eli Segal dated August 15, 1992 for eight months (November, 1991 through June, 1992) rent at \$750 per month. Payment was made on August 28, 1992. As noted above, the Committee states that "it decided to reimburse him for the expenses of his apartment. It would have been permissible for him to pay these expenses without reimbursement." The Committee does not address the reason it "decided" to reimburse Mr. Wilhelm although there was no obligation to do so. In an analysis of Mr. Wilhelm's expenses submitted by the Committee, the Committee lists the \$6,000 rent reimbursement as part of a compensation package; however, no documentation or agreement was provided to support such a package. Given the documentation submitted, the \$6,000 has been excluded from this analysis and moved to Section III.B.3.b., Campaign Bonuses. This eliminates any excessive contribution by Mr. Wilhelm.

The Committee contends that "three individuals were permitted under the Act and regulations to extend credit to the Committee under the ordinary course of business because as unpaid consultants they were unincorporated vendors to the campaign under 11 C.F.R. §116.3. Each of the individuals involved volunteered their uncompensated services to the Committee and billed the Committee for the costs incurred in connection with providing those services to the Committee. Each of the individuals involved has substantial fundraising background and expertise and thus may be considered an unincorporated commercial vendor. . . Ken Brody, Shelia Davis Lawrence (whose expenses were reimbursed to her trust, M.L. Lawrence Trust), and Erskine Bowles were fundraising consultants to the Committee."

Although the Committee contends that these individuals are unincorporated vendors with substantial fundraising background and expertise who extended credit to the Committee in their ordinary course of business, it failed to provide any documentation or other relevant information (i.e., list of other

clients for whom they have performed fundraising services) which demonstrate that the individuals are unincorporated vendors and the observed billing practices are in their normal course of their business. It should be noted that during this period of time, Ken Brody and Erskine Bowles were investment bankers with the firms of Goldman Sachs and Company, and Bowles Hollowell Conner and Company respectively.

Each individual who travelled on behalf of the Committee was credited with an additional \$1,000 pursuant to 11 CFR §100.7(b)(8). Therefore, based on information provided by the Committee and the additional \$1,000 credit per individual for travel, the Audit staff has determined that five individuals made excessive contributions totaling \$58,482 (see Attachment 2.)

F. Contributions, Extensions of Credit by Commercial Vendors, and Use of Corporate Facilities

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation or labor organization to make a contribution in connection with any election for Federal Office.

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

Section 441a(a)(2)(A) of Title 2 of the United States Code states, in part, that no multicandidate political committee shall make contributions to any candidate and his authorized political committee with respect to any election for Federal Office which in the aggregate exceed \$5,000.

Section 100.7(a)(1), (3), and (4) of Title 11 of the Code of Federal Regulations state, in part, that a contribution includes payments, services or other things of value: Such as a gift, subscription, loan, advance or deposit of money; the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee, except for legal and accounting services provided under 11 CFR 100.7(b)(13) or (14); and the extension of credit by any person unless the credit is extended in the normal course of business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Section 116.3(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate, a political committee or another person on behalf of a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee

provided that the credit is extended in the ordinary course of the commercial vendor's/corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligations.

Further, 11 CFR §116.3(c) states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

(1) Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;

(2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and

(3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

Section 114.9(a) of Title 11 of the Code of Federal Regulations states, in part, stockholders and employees of a corporation may make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election; such persons will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased.

A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B) for use of such facilities.

Sections 114.9(c) and (d) of Title 11 of the Code of Federal Regulations state, in part, that any person who uses the facilities of a corporation or labor organization to produce materials, use telephones, typewriters, or borrow office furniture, for activity in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market, or in the case of the equipment, the normal rental charge.

Section 114.9(e)(1) of Title 11 of the Code of Federal Regulations state, in part, that a person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation other than a corporation licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation.

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During fieldwork the Audit staff identified a number of corporations and other vendors that were providing services to the Committee but according to the invoices, generally did not appear to be billing for anything above their costs. There were no written contracts provided to the Audit staff for any of the vendors in this finding except for two lease agreements.

There was a total of 14 vendors that received a total of \$296,355 from the Committee. During the fieldwork, the attorney for the Committee asserted that much of the activity would be permissible under 11 CFR 114.9. A list of the vendors and expenditures was given to the Committee at the exit conference on October 19, 1993.

In the Interim Audit Report, the Audit staff recommended that the Committee provide additional documentation or any other comments to demonstrate that the credit extended by the vendors was in the normal course of their business, including statements from the vendor, and therefore did not represent prohibited contributions. The information provided was to include examples of other customers or clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles was requested. The Audit staff further recommended that the Committee provide documents to support its argument that some of these activities are permissible under 11 CFR §114.9 or are exempt from the definition of a contribution under 11 CFR §100.7(b).

Presented below is an explanation for each vendor. The information in the Interim Audit Report is presented, followed by the Committee's response and a conclusion.

Goldman Sachs and Company

Before the Committee had a New York office, Goldman Sachs provided office space to a Committee employee. According to an April 19, 1993, memorandum in response to Audit staff questions, "Paul Carey, served as the Northeast finance coordinator. He reported to Ken Brody, who served voluntarily as a national finance co-chair and as the New York finance chair from October, 1991 on. In addition, he was a general partner with Goldman Sachs through November 30, 1991, and a limited partner after that. He was aware of available space at Goldman which the campaign rented for Paul Carey." Advances by Paul Carey and Ken Brody are included in Finding II.E. above.

Most of the early expenses were for limousine or taxi service provided by Goldman Sachs. These expenses were billed and paid by the Committee timely and are not included in the amount shown below. The actual office expenses for September, 1991 through December, 1991 were not billed until February 19, 1992 and not paid by the Committee until April 16, 1992. The two largest

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invoices cover the period December 27, 1991 to March 7, 1992. They were billed on March 23, 1992 and April 15, 1992. The last invoice payment was for expenses incurred in October, 1991 but not billed by the vendor until November 1992. The total amount paid for these expenses was \$16,295.

In response to the Interim Audit Report, the Committee submitted two affidavits. The first is from Harry Silver, a Vice President of Goldman, Sachs and Co. He is the Chief Administrator for the firm's Investment Banking Division. The other affidavit is from Kenneth Norton, a Vice President with the company and one of the individuals responsible for the management of the Accounting Services Department.

According to Mr. Silver, the billing for the office space and miscellaneous office support services was handled in the ordinary course of Goldman Sachs business in a manner wholly consistent with the Division's ordinary commercial practice and experience. There are no mandatory time parameters within his Division governing the process of reviewing disbursements and billing third parties. According to the affidavit, after Mr. Carey's departure, Mr. Silver instructed his staff to collect market information and make estimates as to the fair market value for the office space and office related expenses, and to compile the actual costs of the miscellaneous expenses.

Mr. Norton's affidavit addressed the car service and the Clinton breakfast in October, 1991. For both, there are no time parameters governing billing third parties for reimbursement of the car service and in-house food service incurred by the firm. According to the affidavit, as a matter of practice and experience, the processing of general expenses and billing of third parties ranges anywhere from several months to one year or more from the time that the expense is actually incurred.

The Commission believes that 11 CFR §114.9, by analogy, applies to partnerships. See AO 1979-22. It appears that Goldman Sachs has provided the use of its facilities to the Committee. In the view of the Audit Division, the Committee has not demonstrated that it reimbursed Goldman Sachs for the use of its facilities "within a commercially reasonable time." 11 CFR §114.9(d). Specifically, the affidavits do not supply any specific examples of other clients of similar size and risk, examples of similar types of activity where billings were delayed several months to over one (1) year or where Goldman Sachs donated its services at cost.

Manatt, Phelps, Phillips, & Kantor

This firm incurred \$120,192 in expenses from September, 1991 to June, 1992. These expenses were billed on July 28, 1992 and paid in two installments of \$60,096 each on August 7, and September 12, 1992. According to the Committee, Mickey Kantor was the campaign chairman and used employees of the law firm to work

for the Committee. Mr. Kantor volunteered his services but the firm was reimbursed for the employees' services. In addition to employees' services, such as secretarial, temporary help and library research, the firm was reimbursed for expenses incurred for office rent, meals, telephones, copying and postal services. The firm appeared to have billed the Committee at cost for certain items on its invoices.

The Committee submitted additional material on November 10, 1993. According to a memorandum from Manatt, Phelps & Phillips, "Our law firm utilizes various billing practices within our ordinary and normal course of business. One such practice involves the accumulation of fees and costs during the life of a project, with the billing at the conclusion of the project."

In response to the Interim Audit Report the Committee submitted an affidavit from Judi Cunningham, the accounting manager for Manatt, Phelps & Phillips. According to the affidavit the firm billed the Committee on January 13, 1992 for costs incurred from September through December, 1991, and sent another bill on May 31, 1992 for costs incurred from January through April 1992. Ms. Cunningham states that "as of July, 1992, the firm had not yet received payment for such periodic invoices. As a result, after consultation with the Campaign, new invoices dated July 28, 1992 were prepared and forwarded to the Campaign." The July 28, 1992 bill includes the previous charges as well as charges for May and June, 1992. According to the Committee, it did not have any record of receiving the first two billings. The Committee did not report any debts owed to this firm until August, 1992.

The Committee sent copies of both invoices in question. The initial invoice dated January 13, 1992 was sent to Manatt, Phelps' address in Los Angeles to Mickey Kantor. Mr. Kantor was a partner in the firm. Another invoice dated May 31, 1992 was also sent to Manatt, Phelps, attention Mickey Kantor. The July 28, 1992 bill the Committee finally recognized and paid, was sent to the Committee in Little Rock, Arkansas. There is no explanation why Mr. Kantor did not send these earlier invoices on to the Committee in Little Rock.

In the response, the Committee states that it does not think it is relevant whether the firm billed on a periodic basis or not, since it is within the firm's ordinary course of business to bill at the end of the project. According to the affidavit, "Pro bono representations typically involve the provision of volunteer legal services and may or may not involve the provisions of costs as well. In those instances where the firm seeks to recover costs, it is common to bill the costs either periodically (but not necessarily monthly) or only once, at the end of the project."

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It is understandable for a firm to bill a client for periodic expenses, yet it appears this firm went to the trouble of billing the Committee \$90 on February 3, 1992 for the use of the firm's board room on February 5th and 6th, 1992. The Committee does not explain why this vendor would normally wait to bill approximately \$120,000 in expenses but go to the trouble of billing \$90 on a timely basis.

The Commission believes that 11 CFR §114.9, by analogy, applies to partnerships. See AO 1979-22. It appears that Manatt, Phelps, Phillips, and Kantor provided the use of its facilities to the Committee. In the view of the Audit Division, the Committee has not demonstrated that it reimbursed Manatt, Phelps, Phillips, and Kantor for the use of its facilities "within a commercially reasonable time." 11 CFR §114.9(d). Specifically, the affidavit does not supply any specific examples of other clients of similar size and risk, and examples of similar types of activity where billings were delayed several months.

Mozark Productions

Mozark Productions produced a video for the Committee. Starting in February, 1992, Mozark began paying different businesses and individuals to produce the video. The last check written by Mozark was on May 4, 1992. Mozark billed the Committee \$14,019 on May 18, 1992. The Committee reimbursed Mozark on August 21, 1992. It appears that Mozark is just recovering its expenses.

The Committee stated at an August 12, 1993 conference with the auditors, that Harry Thomason was the producer of the video and volunteered his services. In the Committee's response to the exit conference, they stated "Mozark provided production services to the Committee and billed the Committee in full for production costs. The personal services of Harry and Linda Thomason were volunteered under 11 CFR §100.7(b)(3)."

This statement did not address the question of the extension of credit in the ordinary course of business.

In response to the Interim Audit Report, the Committee submitted an affidavit from Harry Thomason the President of Mozark Productions. According to Mr. Thomason, it is standard entertainment industry practice for production companies to bill a client for the direct costs of preparing a video plus a fee for services of the producers. He and his wife, Linda Bloodsworth-Thomason volunteered their personal services in connection with the production of the videos. The company did not compensate them for the volunteer services they provided. Mr. Thomason also states that it is an ordinary business practice for Mozark to bill at the conclusion of the project, which is customary in the industry.

The personal services of Harry Thomason and Linda Bloodsworth-Thomason may be volunteered to the Committee. See 11 CFR §100.7(b)(3). However, because Mozark Productions provided other production services to the Committee which are part of its usual and normal business, the extension of credit for such services must be made in the ordinary course of business. 11 CFR §116.1(c)(defining commercial vendors); 11 CFR §116.3 (ordinary course of business standard). The Committee's response did not give any examples of other clients the company does business with of similar size and risk for which similar services have been provided and similar billing arrangements have been used. The affidavit does not address whether the company requires other clients to deposit money or make advance payments prior to services being provided; or, if this is not done, whether the company normally sends progress billings at different stages of the project. Mozark does not address its failure to make follow-up billings and why it took no action to collect this debt. In the view of the Audit Division, it has not been established that the extension of credit was made in the ordinary course of business under 11 CFR §116.3.

Walter Kyle

Walter Kyle is an attorney who worked for the Committee in New Hampshire, starting in October, 1991. He incurred \$1,974 in expenses from October 24, 1991 to February 24, 1992. From the Committee's Check Request Form, he apparently billed the Committee on May 1 and 4, 1992 and was paid by the Committee on September 3, 1992. He also billed the Committee \$13,500 for services between October, 1991 and May, 1992. The invoice is undated, but the Committee paid Mr. Kyle on September 11, 1992.

In response to the Interim Audit Report, the Committee submitted an affidavit from Mr. Kyle. He states that his billing procedures were consistent with the billing practices for other clients of like size and financial capacity. In his work as plaintiff's attorney, he does not receive payment for services until after completion of the case. In matters before the United States Claims Court, his practice bills within 90 days of completion of the case.

The work described above is not the type of work he performed for the Committee. Mr. Kyle appeared to be instrumental in setting up the Committee's New Hampshire office. Of the \$13,500 in services paid for, \$7,250 was made up of 29 hours work at \$250 an hour for the following: 15 hours to search for NH headquarters, photographs and review of market conditions; 4 hours for negotiating the lease and drafting the option agreement; 10 hours for negotiation with the phone company for the 1992 number, and negotiation with sign companies for refurbishing signs. He also, billed \$6,500 for legal and political consultation between November, 1991 and May, 1992.

Neither the Committee nor the vendor presented any information on why the vendor delayed the billing for the \$1,974 in expenses. The vendor had made two prior billings to the Committee, which were not included in the finding, for expenses incurred in October, 1991 and paid in October, 1991 and January, 1992. He was also reimbursed by the Committee with two drafts for expenses incurred in January, 1992.

Though part of Mr. Kyle's work would require an attorney's expertise, it is not the same as being a plaintiff's attorney or presenting matters before the United States Claims Court. The response does not address the same type of services and billings provided by Mr. Kyle to the Committee and similar clients. Therefore, in the Audit staff's opinion, it has not established that the extension of credit was in the ordinary course of business as required by 11 CFR §116.3(c).

Newmark and Company Real Estate, Inc.

The Committee rented office space from this corporation in New York City starting December 16, 1991. A total of three offices were rented during the primary campaign and the convention. The Committee made the following rent payments; \$4,000 on February 3; \$750 on March 31; and \$750 on April 1, 1992. ~~Newmark sent the Committee a final bill dated August 19, 1992 with a total amount due of \$20,730. According to the lease agreement a \$1,500 deposit was due and payable at the time of the execution and delivery of the lease. It appears the \$750 payments made on March 31 and April 1, 1992 by the Committee were considered deposits by the vendor. The two payments, totaling \$1,500, were subsequently refunded to the Committee. The August 19, 1992 invoice covered the total rent charges for three offices between December 16, 1991 and August 15, 1992. If the \$4,000 payment is applied against the earliest rent due, the Committee owed \$20,730 for the period from March 1, 1992 to August 15, 1992. The Committee paid this amount on October 21, 1992.~~

In response to the Interim Audit Report, the Committee submitted an affidavit from Margaret Fennelly, a licensed real estate salesperson associated with the vendor. According to the affidavit, the vendor did not bill the Committee until August 19, 1992. The reason for the delayed billing is that the parties did not have an executed lease and the computer system is not equipped to bill tenants without there being a properly executed lease. This statement is inconsistent with the information provided by the Committee during fieldwork. The Committee provided a copy of the lease it had with the vendor, that was signed only by a Committee representative. The vendor also billed the Committee at least three times in February and March, 1992 prior to August 19, 1992 billing demonstrating that the Committee was at some point in Newmark's billing system. According to the information provided by the Committee, since this Committee was in the vendor's billing system, the vendor's normal business practice would have been to bill the Committee on a more frequent basis. The vendor's

affidavit also provides examples of situations when errors resulted in delayed billing. However, as noted, the explanation of how this particular situation occurred is not consistent with the documentation gathered during the audit. Therefore, in the Audit staff's opinion, it has not been established that the extension of credit was in the ordinary course of business as required by 11 CFR §116.3.

TRADEC

The Committee received invoices from this vendor for various charges incurred in January, February, and March of 1992. The charges included travel expenses, office expenses, rent and professional services. Although the vendor's invoices indicate "Professional Services(\$85 per hr.)", the vendor billed the Committee at a reduced rate or did not bill the Committee for such services. According to vendor invoices noted above, the Committee incurred actual charges for professional services of \$9,308. However, the Committee was billed only \$1,500 for professional services. The difference, \$7,808 (\$9,308-\$1,500), was itemized on the invoice as "in-kind services." The Committee paid the expenses for travel, office rent and the reduced charges for professional services.

When the Audit staff was reviewing this vendor file, there was a letter dated February 8, 1993 from the Committee to TRADEC. The letter contained the following information, "A review of our records indicates that during January, February, and March 1992, Tradec performed certain services for which you did not bill the Clinton for President Committee. Federal law prohibits corporate contributions in connection with federal elections, including the donation of goods and services. Accordingly in order to comply with federal regulations, we have enclosed a check in the amount of \$7,807.50 to cover the cost of such services."

Additional information submitted by the Committee on November 10, 1993, restated the above information, and included that "[a]ccordingly, there was no extension of credit outside the normal course of business in the amount of \$7,807.50."

In response to the Interim Audit Report, the Committee submitted an affidavit from Scott Jackson, President of Trade Development Consortium, Inc. He states that he acted as a finance co-chairman for the Committee volunteering his time to the Committee and that he did not receive compensation from the firm for the time he volunteered to the Committee. "However, pursuant to my understanding with the Committee, I accounted for my personal time and the personal time of Patric Booth spent supervising the maintenance of a fundraising database and performing event coordination even though these services qualified as exempt volunteer services on the invoice, pursuant to 11 C.F.R. 100.7(b)(3). Because of confusion over the meaning of 'in-kind' services on the invoice the Committee paid the \$7,808,

notwithstanding the fact that such services qualified as exempt volunteer services pursuant to 11 C.F.R. 100.7(b)(3). Thus, the Committee paid TRADEC and TRADEC received payment in full even though it was not required."

The vendor never billed the Committee for the \$7,808. The Audit staff is in agreement with the Committee. According to the information submitted, TRADEC did not pay or incur any liability to Mr. Jackson or Mr. Booth. Therefore, the Committee overpaid this corporation by the \$7,808. The Committee should attempt to have the vendor refund this amount. The \$7,808 has been included as an accounts receivable on the Committee's NOCO in Finding III.C.

American Federation of Teachers

This labor organization paid for an advertisement that ran in the New York Times on April 5, 1992. The original invoice sent to the Committee, dated May 14, 1992 for \$12,126 was apparently filled out incorrectly (bill to name was incorrect). According to a letter from the American Federation of Teachers ("AFT") dated February 3, 1993, the Committee authorized this paid political advertisement.^{3/} A corrected invoice dated February 2, 1993 accompanied this letter. The Committee paid AFT on February 18, 1993. ~~It should be noted that it does not appear that the payment originated from American Federation of Teachers' Committee on Political Education (Federal Account).~~

The Committee submitted a letter from the AFT which stated the same information as above, and also that the AFT did not realize their mistake until late January, 1993. According to the Committee, "there was an error in preparation of the original invoice from AFT. As soon as it was discovered, a new invoice was issued to the Committee and it was paid promptly. This was fully in accordance with the requirements of 11 CFR § 114.9 and 116.3."

In response to the Interim Audit Report, the Committee submitted an affidavit from Rachelle Horowitz, the political director of the AFT. The affidavit supports the clerical error previously addressed in the finding. The response does not address the apparent failure to pay the expenses from the American Federation of Teachers' Committee on Political Education (Federal Account). Also, the response does not address who in the Committee authorized the advertisement, or why the Committee did not estimate the amount of the bill and disclose it as a debt on their FEC reports.

^{3/} The newspaper advertisement contained the following: "Paid for and authorized by the Bill Clinton for President Committee."

Given the information provided, in the Audit staff's opinion the transactions discussed above constitute a contribution from the American Federation of Teachers for the period April, 1992 until February, 1993 in the amount of \$12,126 pursuant to 11 CFR §100.7(a)(1).

Occidental Petroleum

The Committee provided the following information in response to the Audit staff's questions concerning payments to this vendor. "Jerry Stern was an executive of Occidental Petroleum Corporation who was a volunteer in the campaign. He retired from the company at the end of last year (1992). The payments made to OPC were reimbursements for expenses incurred for use of Corporate facilities pursuant to 11 C.F.R. §114.9(d)." Most of the expenses paid to Occidental Petroleum were for secretarial services and other office expenses. The first invoice received by the Committee was dated April 21, 1992 for office expenses totaling \$3,055 incurred during the period January, 1992 through February 28, 1992. This invoice was paid on May 5, 1992. The Committee received another invoice dated May 27, 1992 in the amount of \$1,446 for office expenses incurred during the period March 2, 1992 through March 31, 1992. The Committee paid this invoice on September 8, 1992. The last billing was for expenses incurred January 1992 through June 30, 1992. However, most of the expenses were for April through June. These expenses totaling \$7,381 were billed August 31, 1992 and paid October 9, 1992.

Jerry Stern also received a reimbursement of \$4,475 on August 13, 1992, from the Committee, for expenses incurred in February, 1992. In addition, a \$3,000 charge, also incurred in February, 1992, appeared to have been paid by Jerry Stern, but there was no evidence of a reimbursement having been made.

In response to the Interim Audit Report, the Committee submitted an affidavit from Chester T. Oliver, Director of Accounting Services of Occidental Petroleum Corporation. Mr. Oliver states that the vendor is not a commercial vendor and the corporate headquarters office does not extend credit in the ordinary course of its business. He continues, "the process was time consuming because Occidental is not in the business of providing secretarial assistance, rental of office equipment, and it is not normal for Occidental to bill for these items in the course of its business." The Committee also submitted an affidavit from Gerald M. Stern, adequately documenting the \$3,000.

In the Audit staff's opinion, 11 CFR §116.3 does not apply to Occidental Petroleum since it is a corporation not engaged in its normal commercial activities. Under 11 CFR §114.9(a), a corporate executive used the corporation's facilities for individual activities in connection with a Federal election and Occidental Petroleum was reimbursed within a commercially reasonable time.

Democratic Party of Arkansas (DPA)

There was a written agreement between the Committee and the Democratic Party of Arkansas signed January 24, 1992. Under the terms of the agreement the DPA would lease space with telephones for \$10 a day. The DPA sent the Committee an invoice on May 13, 1993 for \$7,718 which covered the conference center for the period February 10 to July 10, 1992 for \$1,360 (\$10 x 136 days) and \$6,358 in telephone charges. The Committee paid the entire amount May 19, 1993.

In response to the Interim Audit Report, the Committee states that administrative error due to a lack of sufficient personnel and financial resources delayed issuance of the invoice. They also submitted an affidavit from Greg B. Brown, Treasurer of the Democratic Party of Arkansas, that supported what the Committee had said. In fact, Mr. Brown states that it was the Committee that advised the DPA that they had never received an invoice.

In the Audit staff's opinion, the Committee has failed to establish that these charges are exempt from the definition of a contribution under 11 CFR §100.7. The amount advanced exceeds the contribution limitation by \$2,718 (\$7,718 - \$5,000 limitation). However, based on the Committee's response and the relatively small amount of the excessive contribution no further action is warranted.

The Sutherland Company

During the period October 25, 1991 to June 16, 1992 the corporation incurred expenses on behalf of the Committee totaling \$29,298. Various invoices detailed charges for travel, printing telephone, postage, vendor staff coordination of events (including arrangements, invitations, call books, etc.), advance work, contract labor, campaign banners, bumper stickers, fliers, fundraising and radio advertising. Finally, included in the above invoices were charges for the use of an aircraft totaling \$3,214. The flights occurred November, 1991 through February 4, 1992, but were not paid until May, 1992. A later flight in April, 1992 was not paid until July 2, 1992. The vendor billed the Committee on January 20, March 6, April 23 and June 15, 1992. During the period May 5, 1992 through July 2, 1992, the Committee paid Sutherland Company \$29,298.

Not included in the finding, is an early payment to this vendor for Sutherland Co. services 9/15-10/15/91 for \$2,000. The company apparently made no other billings for its services after that date.

In response to the Interim Audit Report, the Committee submitted an affidavit from Tucker Sutherland. The affidavit does not describe his position with the corporation, but it does state that Craig Sutherland ran the corporation's Austin office, and

left the company in 1992 to join the Committee. He also states that the primary business of the company is political campaign consulting and political communications. The Committee's records show that Craig Sutherland received his first paycheck from the Committee on December 16, 1991.

According to the affidavit "All credit extended to the Clinton for President Committee was in the normal course of business for the Sutherland Company and billed according to our normal business practices." Mr. Sutherland states, "It is normal operating procedure for us to bill both political and other commercial clients on a project basis after the project is complete and we have collected bills from subcontractors involved in the project."

According to the affidavit, the corporation does not own any aircraft. The vendor states that the company arranges for client transportation for events in its normal course of business.

Based on the response, in the Audit staff's opinion, it has not been established that the extension of credit was in the ordinary course of business. 11 CFR §116.3(c).

Hellring Lindeman Goldstein and Siegal

This law firm incurred \$6,620 for expenses through June 15, 1992 in connection with the "organization and management of Yale Law School Graduates for Bill Clinton". There is a notation on their invoice for \$700 for in-kind contributions. Therefore, the firm credited this amount against the total expenses. The firm billed the Committee \$5,920 on September 4, 1992 and the Committee paid the vendor on November 19, 1992.

In response to the Interim Audit Report, the Committee submitted an affidavit from Robert S. Raymar, an attorney-at-law in New Jersey and a member of the law firm of Hellring Lindeman Goldstein and Siegal. According to the affidavit, starting in November, 1991 he volunteered his free time to the Committee in connection with the organization and management of the Yale Law School Graduates for Bill Clinton.

The firm intended to bill the Committee for all out-of-pocket disbursements and for all other disbursements after the conclusion of the matter. "This is consistent with the manner the firm bills numerous matters, including pro bono matters, contingent fee negligence matters, matrimonial matters, and matters in which the disbursements are not expected to be or do not prove to be significant."

Concerning the in-kind contribution, Mr. Raymar stated that on April 3, 1992 and May 16, 1992, he and his wife wrote two checks totaling \$700 payable to the law firm for the firm's out-of-pocket expenses. According to Mr. Raymar, based on these two checks, the firms out of pocket expenses were paid in full

through April 20, 1992. Both individuals notified the Committee of their in-kind contributions on April 3, 1992 and May 19, 1992. The Committee reported the in-kind contributions.

According to the affidavit, the balance of the expenses were incurred between April 21, 1992 and June 15, 1992, except the secretarial services of \$4,727 which were incurred at some point between November, 1991 and June 15, 1992.

Initially, Mr. Raymar was going to bill the Committee for expenses incurred between June 15, 1992 and July 15, 1992. After the convention, he concluded that he "might inadvertently and inappropriately be allowing the primary election organization to subsidize the general election campaign." After June 15, 1992, Mr. Raymar states he turned his efforts to the Democratic National Committee's general election fundraising and other activities.

On the September 8, 1992 billing, the firm is also billing the DNC Victory Fund/Federal Account for \$4,741.81 for expenses incurred from June 16, 1992 to August 31, 1992 in connection with the Yale Law School Graduates for Victory Fund '92. According to the affidavit, it took time to properly allocate the expenses between the two Committees, which is why the billing wasn't sent until September 8, 1992. The firm also sent additional letters requesting payment on October 15, 1992 and November 25, 1992.

Given the explanation provided, coupled with the underlying documents, the relatively small amount and the firm's subsequent attempts to collect the amount, the Audit Division believes that no further action is warranted.

Sun Building Associates

The Committee rented office space in Washington, D.C. from this vendor. There was no written lease agreement and no deposit apparently required. The Committee occupied the offices for the first four months of 1992 and made no payments during that time. The Committee occupied 2,310 square feet for the first three months and 4,621 square feet in April. The vendor sent letters on April 8 and April 30, 1992 requesting payment. The April 30, 1992 letter was sent by attorneys threatening legal action if the Committee did not vacate the premises. The Committee paid the full \$12,390 on May 1, 1992.

In response to the Interim Audit Report, the Committee submitted an affidavit from Charles A. Trainum, Jr., a managing general partner of Sun Building Associates. According to the affidavit, the space the Committee rented was vacant from August, 1987, to January, 1992. The Committee only wanted the space during the duration of the campaign. Mr. Trainum agreed to lease the Committee some or all of the ninth floor space. It was agreed that he would try to lease the space on a permanent basis and that he would require them to vacate the building on 30 days notice.

The vendor represents that it customarily rents such vacant space to short term or temporary tenants based on verbal as opposed to written agreements. For instance the vendor currently rents space to a local foundation, on a basis identical to the space rented to the Committee.

Mr. Trainum continues, that since his law offices are in the same building, and given the temporary nature of the arrangement, he decided to handle the billing for the space himself rather than turn it over to Sun Building Associate's management agent, Michael Management Company. The Committee was constantly moving its location on the ninth floor constantly expanding and contracting its space. Because of this and that he was busy in his law practice he did not bill the Committee for rent until April 1, 1992. At that time, after consulting with the Committee, he determined that the Committee had occupied an average of one-half of the ninth floor office space.

The Committee continued to rent this space through the end of July, 1992. Between July and November, 1992, the space was leased by to the Clinton/Gore '92 Committee (General Committee). Starting in May, the Committee paid its rent to Michael Management Company. At the time of its first billing on May 1, the Committee was billed for the January through April rent, as well as the May rent. The Committee did not pay this rent until June 23, 1992. ~~Since the Committee was late making its May and June rent payments, both payable at the first of each month, it was assessed a 5% late payment fee on a bill dated July 1, 1992 which was paid on July 28. The General Committee made prompt monthly payments after that through November, 1992.~~

Given the explanation provided, coupled with the underlying documents, the subsequent action of the vendor with respect to the May through July rent and the vendor's subsequent attempts to collect the amount, in the Audit staff's opinion, no further action is warranted.

O'Keefe Ashenden Lyons & Ward

This firm incurred expenses from October 16, 1991 to March 10, 1992. The firm billed the Committee for their expenses on March 11 for \$2,240 and on March 20, 1992 for \$6,418. The Committee reimbursed the firm \$8,658 on September 8, 1992. The firm's invoice appeared to be just recovering expenses they incurred. The letter accompanying the March 20, 1992 billing suggests that the agreement between the firm and the Committee called for the expenses to be billed only after the Illinois Primary.

In response to the Interim Audit Report the Committee submitted an affidavit from J. Michael Heaton a partner in the law firm. According to the affidavit, it is the custom, in the ordinary course of business, to bill expenses at the conclusion of a matter in non-recurring transactions, such as real estate tax,

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wills, probate, as well as all pro bono work, civic affairs, and other community relations. The firm usually has no problems collecting from clients. They have "no standard practice of actively pursuing collection efforts for sometimes up to a year or more, a policy adopted by the firm as a matter of business courtesy conducive to its policy of low-key, non-aggressive client relations suitable to its practice and clientele." Mr. Kevin M. O'Keefe volunteered his time and was not compensated by the firm for his volunteer services.

The Commission believes that 11 CFR §114.9, by analogy, applies to partnerships. See AO 1979-22. It appears that of the \$8,658 reimbursed to this vendor, \$2,240 represents the use of firm facilities. In the view of the Audit Division, the Committee has not demonstrated that it reimbursed O'Keefe Ashenden Lyons & Ward for the use of its facilities "within a commercially reasonable time." 11 CFR §114.9(d). With respect to the remaining \$6,418 reimbursed for travel, in the Audit staff's opinion, it has not been established that this extension of credit was in the ordinary course of business pursuant to 11 CFR §100.7(a)(4). Specifically, the affidavit does not supply any specific examples of similar types of activity where billings were delayed several months.

TAC Air

The Committee used an aircraft, owned by TAC Air, which is a division of Truman Arnold Companies, a corporate entity. TAC Air is licensed to offer commercial services for travel. A review of the vendor file indicated that invoices were paid in a timely manner for the use of this aircraft except for trips taken on January 27, 1992. The flight itinerary for the January 27th flights included an invoice from TAC Air dated February 24, 1992, indicating that Committee personnel traveled to various locations in South Dakota, and Colorado incurring a liability of \$9,370. Although these flights were made in January, 1992, and invoiced in February, the Committee did not reimburse TAC Air until August 10, 1992. In addition, it appeared that a liability existed in the amount of \$4,232 for flights taken on May 1, 1992, and invoiced on May 13, 1992 for which no payment had been found.

The Committee submitted in its response to the Interim Audit Report the affidavit of James H. Day, Administrative Vice President of Truman Arnold Companies, ("TAC"). Mr. Day states that "TAC provides various commercial aviation services through its TAC Air operating division. TAC Air is a licensed air charter operator....In addition to the use of TAC Air charter aircraft, the Committee used TAC's private corporate plane on several occasions. As required, the Committee paid for the use of the corporate plane in advance and paid for the use of charter aircraft subsequent to the flight within the course of TAC Air's business." Mr. Day states further that "[o]n April 6, 1992 TAC erroneously applied a \$10,859.00 payment (check #6650) for the use of the corporate plane to the Committee's charter account. This

credit to the account would have cleared invoice #11390 (\$9,370.18) in our accounting system and in accordance with our normal billing procedures no past due notices would have been mailed to the Committee. Thus, neither TAC Air nor the Committee would have been aware of the outstanding invoice."

Although, Mr. Day states in his affidavit that "neither TAC Air nor the Committee would have been aware of the outstanding invoice," it is noted that the Committee reported the \$9,370 as a debt owed by the Committee in its original disclosure reports filed with the Commission for reporting periods February, 1992 through August, 1992. Finally, Mr. Day states that the April 6, payment of \$10,859 for the use of the Company's corporate aircraft was inadvertently applied to the charter account. However, Mr. Day does not address why TAC did not pursue the balance owed for the use of the corporate aircraft, although he acknowledges in his affidavit that payment is "required" to be made in advance for the use of this aircraft.

In the Audit staff's opinion, it has not been established that the extension of credit was made in the ordinary course of business under 11 CFR §116.3.

The Committee provided a second affidavit from Mr. Day which states that a charter flight originally scheduled for May 1, 1992 did not occur and no liability exists in the amount of \$4,232. No further action is necessary with respect to this flight.

As previously mentioned, in the Interim Audit Report, the Audit staff recommended that the Committee provide additional documentation or any other comments to demonstrate that the credit extended by the vendors was in the normal course of their business, including statements from the vendors, and did not represent prohibited contributions. The recommendation stated that the information provided should include examples of other customers or clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles should be included. The Audit staff further recommended that the Committee provide documents to support its argument that some of these activities are permissible under 11 CFR §114.9 or are exempt from the definition of a contribution under 11 CFR §100.7(b).

The Committee did provide affidavits from all the vendors, but none of the vendors provided specific examples of other clients or customers as required in the recommendation. Specifically, in the case of Goldman Sachs and Company, Manatt Phelps, Phillips and Kantor, and O'Keefe Ashenden Lyons & Ward, the Audit Division believes that the Committee has not established that these firms have been reimbursed by the Committee for use of its facilities "within a commercially reasonable time." 11 CFR

§114.9(d). Additionally, in the view of the Audit Division, it appears that the American Federation of Teachers has made a contribution pursuant to 11 CFR §100.7(a)(1).

In the Audit staff's opinion, with respect to Mozark Productions, Newmark and Company Real Estate, Inc., The Sutherland Company, Walter Kyle and TAC Air, the Committee did not demonstrate that the companies followed their established procedures, their past practice, and whether the extension of credit conformed to the usual and normal practice in their business or in their industry as required by 11 CFR §116.3. The Committee has been able to establish that Occidental Petroleum did not make a contribution under 11 CFR §114.9.

In the Audit staff's opinion, the amount of the contributions made by these 9 vendors, corporation, and partnerships by virtue of their extension of credit and other advances is \$246,162. Attachment 3 contains the contribution amount for each vendor, corporation, and partnership.

Based on the additional information provided by the Committee, in the Audit staff's opinion, no further action is warranted with respect to Occidental Petroleum, the Democratic Party of Arkansas, Hellring Lindeman Goldstein and Siegal, and Sun Building Associates. Since no liability existed with TRADEC, the Audit Division believes that there was no extension of credit by this vendor to the Committee.

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

A. Calculation of Repayment Ratio

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

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

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

Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign. A list of all capital assets shall be maintained by the committee. The fair market value of capital assets may be considered to be the total original cost of such items acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired.

The term other assets means any property acquired by the committee for use in raising funds or as collateral for campaign loans. Other assets must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds \$5,000. The value of other assets shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility.

Section 9003.4(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that a general election candidate may incur expenditures before the beginning of the expenditure report period, if such expenditures are for property, services or facilities which are to be used in connection with the general election and which are used during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

Section 102.10 of Title 11 of the Code of Federal Regulations, in part, requires all disbursements by a political committee, except for disbursements from the petty cash fund, to be made by check or similar draft drawn on accounts established at the committee's campaign depository or depositories.

1. Duplicate Payments or Overpayments

During the review of the Committee's vendor files the Audit staff noted a number of instances where the Committee had apparently paid the same invoice or charges more than once or otherwise overpaid a vendor. In some cases payments were made by both check and draft for the same expenses. In other situations not all of the payments made were credited to the Committee's account by a vendor before preparing subsequent billings. In some instances the same charges were paid by the Committee more than once within the same check. In a few cases the vendor credited overpayments by the Committee to charges incurred by the Clinton/Gore '92 Committee (General Committee). These amounts are considered to be Accounts Receivable from the General Committee and are included on the statement of Net Outstanding Campaign Obligations (NOCO) at Section III.C. The remaining amounts are shown on the NOCO as Accounts Receivable from the vendors

including those that were recovered after the NOCO date. Attachment 4 is a listing of the duplicate or overpayments identified including the status of the amount. A number of the vendors that are shown on the attachment are also discussed in part 3 of this finding. The Interim Audit Report noted that, should additional documentation be made available, some apparent duplicates may be resolved or additional duplicates identified. In the Interim Audit Report duplicate or overpayments to 33 vendors totaling \$248,226 were identified. The transactions explained above were presented to the Committee during fieldwork and at the exit conference. The Committee sent in additional information in response to the exit conference on November 10, 1993. Discussed below are some of the individual items listed on the attachment as well as information provided by the Committee:

- ° The Committee was direct billed by Alamo for much of its rental car usage. A thorough review of the documentation showed that a number of charges were paid more than once and as many as 4 times. After this problem was brought to the Committee's attention, the Committee obtained a reconciliation of its account from Alamo which indicated that the duplicate payments were applied to general election expenses. The reconciliation shows that the amount due from the General Committee is \$43,420. This amount was reported by the Committee as due from the General Committee.
- ° The Committee made one payment to Verner Liipfert Consulting Services, Inc. on October 27, 1992 for \$13,846. This vendor billed the Committee on five different occasions with each bill reflecting the sum of all outstanding charges to date. When the Committee paid the vendor they added the total amount owed from each of the cumulative invoices. The Committee reported the overpayment as a receivable and a refund on the Second Quarter 1993 FEC Report.
- ° C & P Telephone was paid for the same invoice on two different checks for \$3,360 each. We also determined that the Committee made \$10,611 in phone deposits. Of this amount \$2,766 was applied to invoices. The Committee another \$1,534 in refunds. This left a remaining balance of \$6,311 in phone deposits. The Committee submitted additional documentation that established that \$5,800 in deposits from the Committee was refunded and deposited into the General Committee accounts on April 27, 1993. In response to the exit conference, the Committee submitted additional information that there were additional overpayments of \$3,606, which were also applied to General Election expenses. A total of \$9,406 (\$5,800 + \$3,606) was due from the General Committee.

- ° A payment was made to Southwestern Bell Telecom on August 19, 1992 for \$17,257. Another payment for \$17,054 was made on October 15, 1992. The same invoices that were attached to the second check were also associated with the first check. In the Interim Audit Report it stated that the \$17,054 had been refunded to the Committee. This was concluded based on the receipt of a refund check in the amount of \$25,115 for Southwestern Bell Telecom. However, the Primary Committee subsequently transferred the \$25,115 to the General Committee. The General Committee transferred to the Primary Committee \$19,100 received from Southwestern Bell Telecom for refunds of deposits due the Primary Committee. These transactions do not resolve the \$17,054 duplicate payment made by the Primary Committee. Based on the information supplied by the Committee, the \$17,054 is either receivable from the General Committee, a receivable from the vendor, or a nonqualified campaign expense paid after the date of ineligibility.
- ° Initially the Strategic Political Response vendor file did not have any of the invoices associated with the \$2,315,689 in payments to the vendor. The Committee was able to reconcile this file and determined that this vendor was overpaid by \$49,856. The Committee obtained a refund of this amount on August 9, 1993. According to the information submitted in response to the exit conference, this vendor would always bill the Committee on an estimated basis. When the jobs were all completed, a final account reconciliation was sent to the Committee on June 30, 1993. The Committee contends that there was no way for the Committee to determine the amount of overpayment until all the jobs were completed. Additional issues regarding this vendor are discussed in section 2. of this finding.
- ° Initially the Committee paid Mary Leslie \$22,266 for an invoice dated May 28, 1992 with two checks. These checks were dated July 10 and August 5, 1992. On August 19, 1992, the Committee paid a duplicate invoice for \$17,921 dated May 28, 1992 showing fewer charges. According to the Committee's response to the exit conference presentation of this issue, the Committee states that there was no duplicate payment. "Ms. Leslie applied payments received to commissions earned rather than to specific invoices". The Committee sent a memorandum from Mary Leslie's supervisor, Rahm Emanuel, stating he authorized payments totaling \$90,180 in accordance with her agreement with the Committee. According to the Committee, the vendor received \$53,049 in commissions.

The Interim Audit Report stated that absent a statement from the vendor showing how the funds were applied and amounts due determined, the amount appears to be a duplicate payment.

In response to the Interim Audit Report the Committee submitted an unsigned contract with Mary Leslie and Associates. The contract did not add any additional information concerning this duplicate payment. The Committee also states that Ms. Leslie has agreed to submit an affidavit further clarifying the payments. To date nothing has been received.

In the Interim Audit Report, the Audit staff recommended no further action for the vendors from whom the Committee had obtained refunds of \$126,866. For the remaining items it was recommended that the Committee submit documentation that:

- 1) Demonstrated that \$50,358 apparently owed by vendors were not duplicated or overpaid.
- 2) If duplicate payments or overpayments were made, refunds should be obtained from the vendors and the Committee should report these amounts as receivables from these vendors.
- 3) The Committee be reimbursed \$71,002 by the General Committee for primary payments refunded to the General Committee, or applied to general election expenses.

In response to the Interim Audit Report, the Committee explained the status of the \$50,358 in receivables from vendors and individuals. The Committee has contacted three individuals about overpayments totaling \$2,208. Two of the individuals deny any overpayments took place. The third person was outside the United States and could not respond. The Committee contends that it should not be required to make repayments for the \$2,208 in overpayments to these individuals, since it has made reasonable efforts to collect the debts owed the Committee. The Committee states that it is out the money and has no prospect of collecting the debt and should be permitted to write the debts off as bad debts under 11 CFR §9034.5(d) without penalty. Although the Committee may be correct that it may not be able to recover the funds at issue, that does not establish that the payments were qualified campaign expenses.

The \$17,921 receivable from Mary Leslie was previously addressed. With respect to the remaining amounts, the Committee states it has received \$14,806 in refunds and is either waiting for the refund or additional documentation for the remaining \$15,423. Concerning the \$71,002 in receivables from the General Committee, the Committee stated in its response to the Interim Audit Report and in response to the General Committee's Interim Audit Report that the Committee received the entire \$71,002 from the General Committee. The Committee did not send any information on the \$4,850 possible duplicate payment to W. P. Malone, Inc. addressed in Finding III.B.3.d. of the Interim Audit

Report. Also, as noted in Finding II.F., the Committee overpaid TRADEC by \$7,808 for time volunteered by persons associated with the firm and not compensated by TRADEC. Since the Committee did not provide any additional information, this amount is included as a duplicate or overpayment. As of June 30, 1994, there remained \$65,264 in apparent duplicate payments that are unresolved and thus non-qualified campaign expenses (\$2,208 + \$17,921 + \$15,423 + \$4,850 + \$17,054 + \$7,808).

The report considered by the Commission on December 15, 1994, explained that only those non-qualified campaign expenses paid while the Committee's accounts contained Federal funds are subject to repayment pursuant to 11 CFR §9038.2(b)(2). It was further explained that using a last in first out analysis, Committee accounts are assumed to have been purged of Federal funds at the point where the last matching fund payment to which the Candidate was entitled was expended. Of the \$65,264 at issue, it was concluded that \$39,742 of the expenses were paid while the Committee's accounts contained Federal funds. Therefore, only that amount was subject to a pro rata repayment. However, as a result of Commission actions at the December 15, 1994 meeting the Candidate's post date of ineligibility entitlement was increased (See Sections III. 2. and III. D.). With the increase in matching fund entitlement, the point where the Committee's accounts no longer contain Federal funds occurs later. Given the above, it was calculated that all of the expenses discussed were paid while the Committee's accounts contain Federal funds and are therefore subject to repayment.

Recommendation #1

The Audit staff recommends the Commission make an initial determination that the unrecovered amounts were non-qualified campaign expenses and the Candidate is required to make a pro rata repayment of \$16,861 ($\$65,264 \times .258346$) to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2). Should any additional amounts be collected the repayment amount will be adjusted accordingly.

2. General Election Expenditures

During the Audit staff's review of vendor files, numerous disbursements were found that appear to be for the benefit of the general election campaign. These expenses are grouped into those for equipment and facilities; polling and direct mail; media services; and miscellaneous.

a. Equipment and Facilities

Near the end of May, 1992, the Committee began moving into new office space at the Gazette Building. It was this location that the General Committee and Clinton/Gore '92 General Election Compliance Fund (Compliance Committee) used as their campaign headquarters during the general election campaign. The new location provided approximately three times the floor space as the location used during the primary campaign.

As part of the move to their new location, the Committee paid I-K Electric Company \$79,808 for various wiring projects. The invoices were paid between July 30 and September 2, 1992, and covered a number of projects. For example the invoices contained notations such as "INSTALL DATA CABLING NETWORK FOR NEW HEADQUARTERS (GAZETTE BLDG.) FOR 150 WORK STATION LOCATIONS", "PROVIDE AND INSTALL LANNET DATA NETWORK ELECTRONICS FOR NEW NETWORK" and "INSTALL VOICE CABLING FOR 55 TELEPHONE LOCATIONS". Although all of the invoices that contain the dates of the work indicate that it was complete by July 16, 1992, it is apparent that such services were in preparation for the general election campaign.^{4/}

During the primary election the Committee's records reflect the purchase of only small amounts of computer equipment. Instead, most equipment was leased. Also, the Committee contracted with a Washington, D.C. firm for computer services. The firm prepared matching fund submissions including computer tapes, disclosure reports, and provided the computer tapes required for the audit. The Committee had a computer terminal linked with the vendor. During the audit the Committee requested and was provided copies of the computer files obtained by the Audit Division directly from the primary vendor. Therefore, it does not appear that the primary computer files were loaded onto the Committee's computer system until 1993.

Beginning at the end of May, 1992, the Committee purchased a large amount of computer equipment (both personal computers and a larger system) then, in most cases, took 40% depreciation as a primary capital asset, and sold the equipment to the General Committee for 60% of the purchase price.

Between May 28 and July 15, 1992, the Committee purchased 50 personal computers, software, and supplies from The Future Now, Inc.. Between June 1, and August 9, 1992, the Committee paid The Future Now, Inc. \$118,742. The General Committee paid 60% of this amount, excluding sales tax on most items.

^{4/} Certain electrical work and data installation occurred July 10 through July 16, 1992.

The same vendor was paid \$11,676 for other equipment invoiced between June 8 and July 15, 1992 with \$10,123 of the total invoiced and shipped on July 15, 1992, the Candidate's date of ineligibility. None of this equipment was included among the items sold to the General Committee.

As stated above, the Committee purchased a larger computer system. A July 13, 1992 letter to the "Gov. Clinton Election Campaign" states that "The Clinton campaign contracted with ICL to provide a comprehensive system and software on May 28, 1992. ICL delivered and installed the system on June 25th. Between these two occurrences, ICL loaned the campaign a Power 6/32 system to function as an interim solution". The letter goes on to explain that ICL personnel visited campaign headquarters to provide training and expedite conversion to the new system.

The majority of the invoices for this computer system were dated June 24, 1992. In total, the vendor was paid \$272,460 in two installments on August 10 and 21, 1992. Again, the General Committee paid the Committee 60% of this amount, less sales tax.

The Committee also purchased computer equipment from W.P. Malone. The Committee paid a \$104,175 invoice dated June 30, 1992 on August 25, 1992. As with the other equipment the General Committee paid 60% of the cost.

In addition, W.P. Malone was paid \$33,260 on August 25, and November 9, 1992 for programming services, software support and consulting for moving the computer operation to the Gazette Building. The invoices reflect dates up to and including July 16, 1992. None of the amounts were reimbursed by the General Committee.

In response to the exit conference discussion of this matter, the Committee submitted additional information. The Committee objects to the Audit staff characterization of these payments as general election expenses. According to the Committee, the expenses for a new computer system were incurred well before the end of the primary and were essential to the smooth operation of the daily responsibilities. The Committee states that the initial computer system was inadequate for the Committee's needs in the early months of 1992. The system was unable to accommodate the Committee's expanding database and volume of correspondence, as well as to accommodate the Committee's delegate tracking and communications.

The Committee included a memorandum from the Director of Computer Operations. She stated that during the early months of the spring of 1992, the initial system used by the Committee could not meet the Committee's increased demands. "The initial system could not accommodate the increased number of users. It would not allow the Committee to link its personal

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computers with the network. There were major time lags, often amounting to two days, in the retrieval of information. Back-up of the Committee's data required four to five days. This prolonged back-up process compromised the integrity of the Committee's information. As demands on the system increased, there was also an increase in computer equipment failure. In addition, the system's limited resources were strained with mailings of 5,000 to 6,000 pieces per day. Furthermore, the system was not able to accommodate the Committee's extensive delegate work."

She continues that after a thorough evaluation of the systems available, the Committee purchased a comprehensive computer system and software on May 28, 1992 from ICL, Inc. They also used a programming consultant from W.P. Malone who helped design software, hardware and networking packages. The temporary system was installed on May 30, 1992 and a permanent system was installed less than one month later. "When a customer purchases a computer system it is the normal course of business that the computer company supplies the customer with a temporary system at time of purchase until the system purchased is ready." The memorandum goes on to explain that in addition, the Committee purchased a software maintenance contract and equipment from W.P. Malone and personal computers and software from Future Now in connection with the new system. It was also necessary for I-K Electric to install new wiring to accommodate the new system. The Audit staff notes that the Committee originally leased its computer system from W.P. Malone. Invoices associated with the lease suggest that the leased system was the same model as the system loaned by ICL, Inc. as an "interim solution." It is not known if it was the same computer that was obtained through W.P. Malone. Further, the equipment purchased from W.P. Malone at the time the new system was acquired was equipment that the Committee had leased up to that time.

The total amount paid for computer equipment and related services described above, excluding I-K Electric is \$540,313. The Interim Audit Report concluded that given that the Committee contracted with a Washington, D.C. firm for much of its computer work; leased the majority of its computer equipment; that the purchases were not made and the temporary system not installed until nearly all primaries were over; the permanent system was not installed until well after the last primary and approximately two weeks before the convention, it is apparent that this equipment was purchased for use in the general election. Therefore, the entire amount is considered to be a general election expense. The Committee has been reimbursed \$285,924 from the General Committee, leaving a balance due of \$254,389 plus, \$79,808 for rewiring.

In addition to the above, the Committee paid the entire amount of the rent for July 1992. Fifty percent of the amount, or \$12,500, should be reimbursed by the General Committee.

Listed below is the information requested in the Interim Audit Report and a description of the information provided in response:

- (1) Provide the following information regarding Equipment and Facilities;

° In chronological order, list the various computer systems and data entry services used by the Committee, the General Committee, and the Compliance Committee at all relevant times during the campaign. Identify the time periods that the various systems were used, and how each system was used by the Committee, and how the systems differed from each other.

In response to the Interim Audit Report the Committee submitted a chronology of its computer systems (Attachment 5). The chronology addresses the system used between August of 1991 and May of 1992; the new system, with no distinction between the temporary and permanent systems, used from May 30, 1992 to present; services provided by Public Office Corporation beginning in December of 1991 and continuing to the present, and; equipment used by the General and Compliance Committees.

° Explain and document the functions of Public Office Corporation (POC), with respect to services provided to the Committee. Explain and document whether the functions performed by POC were performed on any computer system owned or leased by the Committee. Explain and document whether any POC files were moved to any computer system owned or leased by the Committee, and provide the date(s) the transfer occurred.

According to the Committee, this vendor "provided data processing services for Clinton for President in the area of producing contribution records and related matching funds submissions. They also maintained information on cash disbursements and prepared the FEC monthly compliance reports for the periods December, 1991 through March, 1993." The Committee began moving the POC maintained data to Arkansas in late 1992 and early 1993." POC provided no services to the General Committee or the Compliance Committee.

- ° For the listed vendors provide the requested information:

W.P. Malone

-Describe the system (CCI6/32 Superminicomputer and related items) leased (or purchased) from this vendor by listing the hardware, software, and peripheral devices making up the system.

The Committee's response describes the equipment as a Unix CCI 6/32 running up to 128 devices, with 80 simultaneous users.

-Explain and document which primary campaign functions were actually performed on that computer system, including the identification of the application (e.g. office automation, delegate tracking, accounting/general ledger).

The response states that the system ran the office package including word processing and scheduling, as well as running the political data base including delegate relations.

-Identify the software used for each function.

-Explain and document which portion of the leased system (hardware and software) was acquired by the Committee, the General Committee, or the Compliance Committee and when these items were moved to the Gazette Building from the Committee's previous locations.

-Explain and document when that portion of the W.P. Malone system acquired by the other committees was: purchased; delivered; installed; and fully operational.

-For all parts of the leased system not acquired by the Committee or the General Committee, including software, provide information concerning when the lease was discontinued, if and when the equipment was moved to the Gazette Building, and when it was returned to the vendor.

The Committee did not provide any of the detailed information in its response. The Committee also did not list this company as a vendor for the General Committee or the Compliance Committee, but the General Committee paid W.P. Malone almost \$52,000.

ICL, temporary system

-Describe the system borrowed from this vendor by listing the hardware, software, and peripheral devices making up the system.

-Explain and document which primary campaign functions were actually performed on that computer system, including the identification of the application.

-Identify the software used for each function.

-Explain and document when the temporary system was: delivered; installed; and fully operational.

-Explain and document which hardware and software, and its function, was available on this system that was not available on the system leased from W.P. Malone.

-Explain and document which primary campaign functions the system performed that the previous system was not performing.

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-Explain and document which campaign functions and files were transferred to this system from any other system and the date(s) of the transfer.

ICL, permanent system

-Describe the system purchased from this vendor by listing the hardware, software, and peripheral devices making up the system.

-Explain and document which primary campaign functions were actually performed on that computer system, including the identification of the application.

-Identify the software used for each function.

-Explain and document when the permanent system was: ordered; paid for; delivered; installed; and fully operational.

-Explain and document which hardware and software, and its function, was available on this system that was not available system leased from W.P. Malone, or on the temporary system.

-Explain and document which primary campaign functions the system performed that each of the the previous systems was not performing.

-Explain and document which campaign functions and files were transferred to this system from any other system and the date(s) of the transfer.

For any other computer system used by the Committee, provide the same information and documentation specified for the systems leased from W.P. Malone or purchased from ICL.

The Committee describes the system as "DRS 6000, 386 pc's and networks. DRS 6000 was originally configured to accomodate [sic] 150 simultaneous users. Additional computer components were added during the General Election to ultimately take the capacity to 300 users." The response also states that the new system continued to run the office package including word processing, scheduling, and the political data base for the balance of the primary and the general election. Further, the Committee states that the system expansion accommodated the additional needs of delegate tracking.

With respect to transferring of functions, the Committee states that "[t]he campaign political office package and correspondence records were immediately transferred to the new temporary system. They were then transferred to the permanent system upon its final installation. Every effort was made to successfully make the transfer with the minimum

of disruption to daily staff activities." The Committee further notes that as part of the wind down operation and as part of the FEC audit, other primary files were moved to this system.

Little information is provided that distinguishes the "temporary system" from the "permanent system".

° Explain and document the delegate tracking functions performed on each of the computer systems discussed above. Also provide information showing when the delegate tracking function and the related files were transferred from one system to the other. Explain the additional capacity for delegate tracking provided by each successive system.

The Committee provided a memorandum that is entitled "Evolution of Delegate Operation Clinton Campaign" which shows levels of staffing and a general description of computer equipment available. The memorandum states that the delegate tracking staff used the leased CCI 632 and a personal computer through most of April of 1992. According to the memorandum, "[a]t the end of April the delegate operation moved to a separate building because of increasing staff pressures and an intensifying work load which required either a separate or larger computer system because the CCI 632 system was at it's upper user limit of 80 simultaneous users. The delegate computer consultant, Bill Krause, was unfamiliar with Unix systems and recommended that the 386 Dos PC become [sic] server for a Novell network with approximately 10+ PCS which because it was relatively portable also became the core of the system the campaign put together at the convention. The DC office retained the 386 Unix pc & 4 terminals. Both systems interfaced imperfectly with the 632 system because of its limitations on the version of software it could run."

° Explain and document when general election functions began to be performed on the system leased from W.P. Malone, the ICL temporary system and the ICL permanent system. Specify which functions were performed on each and the date each was transferred from one system to the other. Estimate and document the percentage of time that the primary campaign and the general election campaign used the equipment prior to and after July 15, 1992.

The Committee response did not provide any of the detailed information requested above.

° Explain why the Committee took a 40% depreciation on the computers that were purchased for the primary campaign.

In the Committee's response, they state they followed the Commission's regulation and instructions in the Primary Manual when they transferred this equipment to the General Committee.

The Committee argues that the Commission adopted the 40% depreciation provision at 11 CFR §9034.5 to simplify the transfer of assets between primary and general committees with knowledge that some assets would be purchased early in the campaign and others later. 5/

The Committee is correct. However, that regulation applies to the transfer of primary assets. The regulation does not authorize campaigns to purchase assets for the general election and, because the assets are purchased before the date of nomination, pay 40% of the cost from primary funds. As noted earlier the purchase of assets by the general election campaign prior to the beginning of the expenditure report period is anticipated by 11 CFR §9003.4(a)(1).

° Explain and document how the computers and software purchased from Future Now, Inc. furthered the Committee's primary or convention-related activity. How specifically did the Committee use the personal computers and software. Also, provide information on the \$11,676 in equipment purchased from this vendor but not bought by the General Committee.

The response to the Interim Audit Report did not provide any of this specific information.

The Committee repeated many of the arguments made in response to the exit conference that are addressed above. In addition, the Committee makes a number of specific points that are addressed below.

° The Committee asserts that the equipment was used during the primary campaign and that the enhanced computer capacity was critical to respond to the Committee's increased correspondence needs, for increased delegate tracking, to support the scheduling operation, for general political support and for communications.

5/ The Committee continues to argue that it was not appropriate to include sales tax in the cost of the assets transferred. In support of this opinion the Committee notes Arkansas law concerning when sales tax would be applicable to a transaction such as the transfer of capital assets from the primary to the general election committees. Although the Committee may be correct about Arkansas law concerning sales tax, 11 CFR §9034.5(c)(1) is intended to provide a formula for the allocation of the cost of assets in limited circumstances. Part of the cost of an asset is any applicable sales or other tax.

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As noted earlier, the Committee provided little of the specific information requested in the Interim Audit Report to support its contention. However, the Committee did provide a memorandum from Sherry Curry listing the Bimonthly Correspondence Report from January 1992 to November 1992. Her memorandum shows the increase in correspondence handled by the leased CCI 632. According to the documentation, her department handled 3,000 pieces of correspondence in January, 1992 and it increased to 6,000 in February, 1992. It remained at approximately this level throughout the rest of the primary. She points out this is not all the correspondence handled by the campaign, only the general correspondence handled by her department.^{6/}

In fact, the documentation indicates that there is not a significant increase until July, 1992. For the first half of July the Committee processed over 6,000 pieces of correspondence, but the number increased to over 9,000 in the second half of July, to almost 27,000 pieces in August, and then it decreased to almost 19,000 in September. It is our opinion that, based on the documentation submitted by the Committee, the Committee accomplished its objectives with its old equipment during the primary period, but would have definitely needed expanded capabilities during the general election period.

~~With respect to delegate tracking, the information provided indicates that at the end of April 1992, that operation was moved to a separate location and utilized a personal computer network. The Committee also notes that this equipment was then used at the convention. It is agreed that this equipment is a primary expense. However, information available does not indicate how much, if any, of the cost of this equipment is included in the amount addressed above. Therefore no adjustment has been made.~~

° The Committee also argues that the audit analysis is inconsistent since the equipment is challenged but not increased levels of staffing. Although the Committee may be correct that some staff hired by the Committee may have been working on the general election, Committee records contain no documentation that provides information to form a basis for such a challenge.

° Finally, the Committee notes that in May and June 1992, it considered alternatives to acquiring a new computer system. However, it was concluded that an upgrade of the existing system would cost approximately \$400,000 and still be unreliable. The Committee decided to buy the new system with the expectation that

^{6/} Although in a memorandum submitted by the Committee in response to the exit conference, it states that mailings of 5,000 to 6,000 pieces per day were being handled. The relationship between these two memoranda is not clear.

"it would be transferred to the General with depreciation of 40%". It is not argued that the Committee made the wrong choice. However the alternative is not relevant to the issue at hand, since it would also be a general election expense.

In summary, the Committee has made it clear that the leased computer system used in the primary was not wholly satisfactory. The reporting, some accounting, and the matching funds processes were being handled by an outside vendor on the vendor's computer system. Further, an important part of the primary campaign, delegate tracking, was eventually moved to a personal computer network at a different location and that network was also used at the convention. It is also apparent that the fully burdened leased system was not going to be adequate for the increased levels of activity in the more intense general election campaign, particularly given that two separate accounting and reporting systems were to be moved from an outside vendor to an in house function. Further it would seem only logical that a new system would necessarily be installed before the convention, given the likely need to test systems and train staff on the new system, as well as, transfer files before the general election campaign was officially under way. Given that, some lead time at a point when the least disruption of ongoing functions would occur was critical. It also appears logical that once a system was acquired for the upcoming general election campaign, some of the remaining needs of the primary campaign would be moved to the new system.

Given the above, it was concluded that the new computer system was a general election expense. Although no information was available to perform an analysis, it was acknowledged that some allowance for primary campaign use of the system may be appropriate. Also, as noted earlier, if any portion of the cost of the personal computer network acquired for the delegate tracking staff is included in the amount in question, that cost would be considered a primary campaign expense.

With respect to the \$79,708 for wiring the new campaign office, the Committee states that "it was incurred and used during the primary campaign and thus was a qualified campaign expense by the primary committee." It was agreed that the cost of the wiring should follow the computer equipment. However, as explained above, the computer equipment was considered a general election expense.

The Committee did agree that the \$12,500 in rent was erroneously paid by the Committee.

b. Polling and Direct Mail

The Committee conducted a number of opinion polls between mid-June and the convention. The Committee paid two firms, Greenberg-Lake The Analysis Group, Inc., and Opinion Research for work in connection with these polls. Four of the polls were called national polls and copies of the scripts

reviewed by the Audit staff showed that nearly all of the substantive questions dealt with the then three candidates in the general election. The remaining polls were referred to as Convention polls and were conducted during the Democratic National Convention. As with the national polls, the questions are general election in nature. Opinion Research received \$93,904. The invoices from Greenberg-Lake that could be associated with these polls total \$108,621 including \$37,500 in consulting and \$12,733 in travel, and are treated as general election expenses.

In response to the presentation of this matter at the exit conference, the Committee states that the Audit Division's position that these are general election expenditures is without legal and factual basis. The national and convention polls were conducted in order to ensure delegate support for the candidate. The Audit staff's position that these polls conducted in June and July were for the purpose of influencing the general election is inconsistent with FEC regulations. Under 11 CFR §106.4 polls decrease in value and are only worth 50% after 15 days.

The Committee also submitted a memorandum from the Executive Director of Greenberg Research Inc. dated November 8, 1993. According to the memo, the majority of the national surveys tested the viability of different running mates and whether the delegates would support the potential running mates. The state surveys were used to maintain delegate support in those states. The convention tracking monitored support and was used for the delegates and state party chairs to maintain delegate support.

During the Audit staff's review of the 4 National Surveys, which were comprised of at least 50 questions each, it was noted that the questions related to comparisons between the general election candidates and to various issues. Only 2 of the scripts contained a question (one) about vice-presidential candidates. The Committee's argument that the timing of some polls is such that their value would be significantly diminished before the date of nomination is not persuasive. One of the types of pre-expenditure report period expenses that is specifically permitted pursuant to 11 CFR §9003.4(a)(1) is polling. This regulation gives recognition to the fact that general election planning must begin before the convention and may include the evaluation of polling data. Therefore, polling data gathered before the date of nomination concerning general election candidates and issues are useful to the general election effort. Also, the Committee states that polls were used to monitor and maintain delegate support, but failed to provide evidence or documentation which established how this was accomplished.

In the Interim Audit Report, the Commission requested the Committee provide documentation to establish how the results of each of the national surveys was used to test the viability of different running mates, how the results of each of the state surveys was used to maintain delegate support in those states, and how the results of each of the convention polls was used to monitor support and was used for the delegates and the state party chairs to maintain delegate support. It was also recommended that the Committee explain and document any other use of the polls and provide a breakdown of the costs associated with each poll, including the Greenberg-Lake consulting and travel costs. The Committee was to provide information on any use of the polling results by the General Committee or the Compliance Committee.

The Committee did not provide the specific information requested above, but in response to the Interim Audit Report, the Committee did submit an affidavit from Donita Buffalo Hicks, Managing Director of Greenberg Research, Inc. formerly Greenberg-Lake, Inc. According to the affidavit, polls were performed in order to develop the candidate's message prior to and during the Convention and present the candidate at the Convention in order to ensure the necessary delegate support to ensure the nomination. The Committee concludes that the pre-Convention period was critical for consolidating his support and demonstrating his electability. The Committee also submitted a letter from Joseph E. Sandler, General Counsel with the Democratic National Committee (DNC) that states, as of July 13, 1992 then Governor Clinton had 2,089 delegates formally pledged to him, out of 2,145 delegates needed to nominate.

The letter does not specify how the DNC arrived at the number of delegates. According to the publication Presidential Primaries and Caucuses 1992, A Handbook of Election Statistics, copyright 1992, Congressional Quarterly, Inc., the candidate had a total of 2,078 pledged delegates at the end of all the primaries, caucuses, and conventions. This total does not include over 1,000 super delegates and uncommitted delegates.

The affidavit by Ms. Hicks continues, "Convention polling was done each night after prime-time and the results of the Convention polls were presented each morning to the party leadership in order to rally the delegates, to assure delegates that Governor Clinton's popularity was strong and, accordingly, that he was an electable candidate. In fact, all polling leading to the Convention was designed to ensure delegate support by determining whether the Candidate's message was being communicated effectively and in order to demonstrate the Candidate's electability." She goes on to state that prior to the Convention, polls "tested the choice of a vice presidential nominee by measuring name recognition and public perception of individual candidates." She also states that polls can be outdated within a few days.

The candidate was nominated on July 15, 1992. According to Mr. Sandler's letter to the Committee, the Candidate had nearly a sufficient number of delegates pledged to him by July 13. The first convention poll was conducted the evening of July 13. In the opinion of the Audit staff it is doubtful whether the polls conducted on the nights of July 13th, 14th, 15th, and 16th with the results available the next day could have much effect on the outcome of the candidate's nomination. Most of the democratic candidates that received matching funds, were no longer seeking the nomination at the start of the convention, the Candidate likely had sufficient delegates to secure the nomination by the evening of July 13. Further, two of the polls were conducted after the candidate was nominated.

From the information provided by the Committee, the 4 national polls, including state assessments, were conducted from mid-June, 1992 through July 8, 1992. According to the documentation obtained during fieldwork there was a formal announcement of then Senator Gore as the Vice Presidential candidate in Little Rock on July 9. The Audit staff concluded that it was doubtful whether the last poll would have had much effect on his selection.

The Committee takes the position that the Audit staff disagrees with 11 CFR §106.4 or refuses to acknowledge that poll results decrease in value over a short period of time. According to the Committee, "it is difficult to perceive how polls which are of virtually no value by the date of ineligibility are for the purpose of influencing the general election." The Audit staff does acknowledge that polling results depreciate very quickly. The Committee, however, appears not to acknowledge that the general election campaign begins before the date of nomination. It is the Audit staff's opinion that these polls have little to do with obtaining the nomination, but rather appear to relate to the campaign for election. Instead, the Committee takes the position that none of these polls have any value to the General Committee, when in fact, two of the polls were conducted after the candidate received the nomination.

The Committee also contends that the conclusion in the Interim Audit Report is at odds with past Commission decisions. Specifically the Committee cites the Reagan-Bush '84 audit where the Commission determined that some polling and voter registration expenses incurred after a state's primary were primary expenses. In that case a number of polls were challenged beginning as much as three months before the convention. Further, the report does not deal with the content of the polls. Although the Committee asserts that the questions asked can not be used to determine the purpose of a poll, it is the only indication available. In the case at hand the polls are conducted very shortly before the convention and the questions are indicative of a general election expense. Therefore, the Commission's action in the Reagan-Bush '84 audit does not dictate the result in this case.

The Committee also references the Bush/Quayle '88 audit where certain pre-convention travel expenses were determined to be primary expenses rather than, as that committee contended, general election expenses. In that case, the expenses for campaign appearances before the convention are not covered by 11 CFR §9003.4(a)(1) and therefore are not relevant. The remaining cases referenced by the Committee are the Dukakis and Kemp committees dealing with fundraising and state allocation of office expenses. Neither of these examples are relevant to the issue at hand.

The Committee also disagreed that \$5,985 assigned to the cost of these polls is accurate. The Committee did not provide any documentation on the cost of each poll as requested in the Interim Audit Report. An attachment to the Committee's narrative response provides no specific information. No adjustments have been made absent the requested information. The Audit staff concluded that the Committee had not responded to the recommendations in the Interim Audit Report sufficiently, to establish that these polls did not primarily benefit the General Committee.

Strategic Response (SR) did fundraising mailings for both the Committee and the Compliance Committee. The cost of two of the mailings were allocated 15% to the Compliance Committee and 85% to the Committee. The mailings included letters that dealt with general election issues, requested a contribution to the Compliance Committee and included either a lapel pin or a photograph promised by the Committee as a result of an earlier contribution. The cost of the mailings was \$371,855. As noted, the Committee paid 85% of the amount.

The Audit staff agrees that an allocation is appropriate; however, in our opinion, a 50% allocation would appear to be more reflective of the purpose of the mailing.

In material submitted after the exit conference of the General Election audit, the Committee submitted a letter from the vendor that states the allocation was done by the vendor in accordance with standard accounting practice and cites American Institute of Certified Public Accountants in their Statement of Position 87-2. This publication deals with non-profit organizations that distribute materials containing both a solicitation and educational or program materials. The statement explains that it does not specify any allocation method but only provides guidance concerning when an allocation is appropriate. After reviewing this publication, it is the Audit staff's opinion that the guidance to, the extent that it is relevant to this situation, could be interpreted to suggest that the Compliance Committee should pay the entire amount.

In the Interim Audit Report it was concluded that given that FECA matters are not governed by this accounting publication, that the purpose of the publication is not wholly on point, the nature of the guidance contained in the publication, and the dual purpose of the mailing the 50% allocation is appropriate. Therefore, the difference between 50% and 85%, or \$130,824 is a Compliance Committee expense.

In response to the Interim Audit Report, the Committee disagreed with the Commission's conclusion that a 50% allocation was reasonable. The Committee states that the Commission should follow Regulation 11 CFR §106.1(a) and allocate on the basis of "the benefit reasonably expected to be derived". According to the information obtained by the Audit staff during fieldwork, the two mailings in question took place on August 22 and August 28, 1992, over a month after the candidate received the nomination. The apparent benefit to the Committee was the fulfillment of a promise to contributors who were to receive a pin or photograph as the result of having made a contribution, and to thank contributors for their support. The Compliance Committee had the opportunity to solicit contributions from a group of known Clinton supporters at a reduced cost. All contributions were directed to the Compliance Committee. Thus, allocating only 50% of the cost to the Compliance Committee is a conservative approach. A larger Compliance Committee allocation could be supported.

The Committee is also critical of the Audit staff not following the American Institute of Certified Public Accountants Statement of Position 87-2. As stated in the Interim Audit Report, after reviewing this publication, it is the Audit staff's opinion that the guidance, to the extent that it is relevant to this situation, could be interpreted to suggest that the Compliance Committee should pay the entire amount.

The Committee sent an affidavit from Mitzi Dudley the treasurer of SR. According to the affidavit, the production cost for the fulfillment material for the mailing with the lapel pin was \$232,346. (88.9% of the total production costs of the mailing) and the production cost of the reply elements were \$28,791, or a total cost of \$261,137. The affidavit states that production cost for the fulfillment material for the mailing containing the photograph was \$106,782 and the General Committee's solicitation expense was calculated at \$17,872, for a total cost \$124,654. Neither the Committee nor the vendor provided any documentation to support these amounts. However, on a reconciliation provided by the vendor at the time of the audit fieldwork the cost of the mailing that contained the lapel pin was shown at \$252,952 and the cost of the mailing that contained the photograph was \$118,903. There is no explanation for the difference in the amounts in the affidavit and the documentation supplied during fieldwork. According to the vendor and the

Committee, they did overpay this vendor by \$12,558 for these mailings, which was part of the \$49,856 refund addressed in Finding III.B.1. The vendor may have included part of the overpayment in calculating the \$261,137 and the \$124,654 totals.

Attachment 6 includes copies of the actual mailings in question. The letters for both mailings are very similar. Both had return envelopes that show the Clinton/Gore Compliance Fund as addressee. Both include a Rapid Response Action Memo, with the Compliance Fund address, a reference to George Bush and Dan Quayle, a solicitation to "Please make personal check out to CLINTON/GORE COMPLIANCE FUND". The reverse side of the memo requesting contributor information, once again requests they make their check payable to the Compliance Committee and notes that it was authorized and paid by the Compliance Committee. About 60% to 70% of the letter deals with the general election. There are two separate requests within the letter for contributions to the Compliance Fund. According to the vendor, "the General Committee's solicitation expense was derived by allocating 20 percent of the cost of the letter (roughly equivalent to the percentage of space that the solicitation took up within the letter) to the solicitation."

Based on the information provided by the Committee, the Audit staff is of the opinion that the 50% allocation is more than reasonable and consistent with the Commissions regulations.

This same vendor was paid \$69,660 by the Committee for a compilation of contributors called a "Master File". With minor exception, all of the invoices are dated after the date of ineligibility with the majority of the amount billed between September 17, and December 29, 1992. As noted above, the Committee's computer work was handled by a Washington D.C. firm and the Audit staff was provided a master contributor file by that vendor during the audit fieldwork. Also as noted, the Committee requested and received a magnetic copy of that information from the Commission. The Interim Audit Report concluded that absent further information, this expense was a general election expense.

In response to the Interim Audit Report, the Committee submitted an affidavit from Mitzi Dudley the treasurer of SR, a division of National Direct Marketing Corporation (NDM).

"All master file work performed and invoiced to the Primary Committee by Strategic Response was performed as contractually required and in furtherance of our understanding of Primary Committee purposes. A primary purpose of a master file is to compile in computerized form all pertinent information on responses to communications sent by a particular entity for the purpose of using those response [sic] to determine the nature, frequency and recipients of any further communication. A master file is commonly a master

record of all donors and other responders to such communications with a full history of the time and nature of their responses including, but not limited to, the date of all responses, the amount of donation made (if any), and pertinent other information about such responses (e.g., support for particular positions, source information denoting the origination of the responder, and other demographic and behavioral information attributable to a responder as available). A master file may be of significant surviving value to the entity which owns it as it serves a crucial function as both a historical document as well as providing an important record of those people who are most likely to respond again in the future. The existence of a master list of potential future responders is crucial to a Primary Committee who may need to continue soliciting contributions beyond the candidate's nomination date to pay off primary debt. In the present case, our understanding was that the Committee was in fact concerned that it would have a serious Primary shortfall and would be forced to raise funds well past the Convention."

Ms. Dudley's affidavit continues with an explanation of the provision in the May 11, 1992 contract (paragraph 12) that it believes requires the master file to be created.

"The Agreement provides in part: the master file is a master record of all lists 'names, addresses, and other information pertaining to names developed hereunder by the Committee or by NDM [Strategic Response] on the Committee's behalf, e.g., including but not limited to lists of the Committee's supporters and contributors...'. Paragraph 12(a) makes clear that the master file 'shall be the property of the Committee...'."

The affidavit also explains that responses from primary solicitations continued to flow into the campaign through at least November 18, 1992. "After all responses were keyed as of that date, the master file then needed to be finally built, cleaned and updated." The processing required to complete the building of the master file stretched into December and it was only after the work was complete that the vendor received a bill from the data processing contractor.

During the audit fieldwork the Audit staff obtained a copy of the contract between SR and the Committee. Paragraph 12 of that contract states:

"12. OWNERSHIP OF MAILING LISTS

(a) Property of the Committee. All names, addresses, and other information pertaining to names developed hereunder by the Committee or by NDM on the Committee's behalf, including but not limited to lists of the Committee's supporters and contributors, and all rights in all of the foregoing (collectively hereinafter the 'Lists'), shall be the property of the Committee subject, however, to the provisions of Section 12(b)-(g) below."

Sections 12(b)-(f) deal with the Committee's and NDM's use of the list on behalf of the Committee, possible uses by third parties, possible use by the Democratic National Committee, the effect of the termination of the agreement, and other uses. No where in the contract is there any reference to a "Master List" or similar listing.

From the information provided during the fieldwork, the first fundraising mailing by this vendor was May 18, 1992 and the last July 17, 1992. The Committee paid for data entry and caging of the contributions received. The earliest invoice was dated June 3, 1992 and invoices continued through November 25, 1992. ~~The Committee paid over \$140,000 for this~~ activity, \$55,000 was invoiced after September 16. In fact they overpaid by \$24,500 that they later recovered as part of the previously mentioned \$49,856 refund. None of these charges are part of the \$69,660 for compiling the master file. From information obtained during fieldwork, the Compliance Committee's first invoice for data entry and caging was dated October 21, 1992. The Compliance Committee did its last fundraising mailing on October 9, 1992. The total amount the Compliance Committee paid for data entry and caging was approximately \$80,000. The Compliance Committee did not present any information that they paid for any Master File charges.

As previously stated, most of the invoices for the master file are dated after the Committee received its last contribution and long after the last solicitation mailing. The response supports that the Master List project was not an expense of the Compliance Committee. However, the response does not establish that this project was part of the original contract, or was related to any Committee fundraising effort. Indeed, the Committee had concluded that it was solvent in August of 1992. The creation of a historical record of the contributions to the Committee, beyond the existing mailing lists, or the preparation of a data base for future use, either in a future election or by another entity, is not a "[c]osts associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign..."

(11 CFR §9034.4(a)(3)(i) Winding Down Costs). Therefore, though not a general election expense or an account receivable from the Compliance Committee, the cost of the Master File is not a qualified campaign expense.

c. General Election Media Expenses

Both the Committee and the General Committee utilized the services of the same media firm, Great American Media, Inc. One of the services that was provided was the production of a biographical film about President Clinton entitled "The Man From Hope".

President Clinton received the Democratic nomination for President on July 15, 1992. On July 16, prior to President Clinton's speech accepting the nomination, the film was shown at the Democratic National Convention. By virtue of when the film was shown, it was available for broadcast by several television networks as part of their convention coverage. According to Committee records, the total cost of producing the film was \$191,273 with the Committee paying \$161,273 and the 1992 Democratic Convention Committee, Inc. (Convention Committee) paying \$30,000. A revised version of this film was aired and paid for by the Democratic National Committee during the week of August 16-20, 1992. The cost of the broadcast was considered a coordinated party expenditure pursuant to 2 U.S.C. §441a(d). A revised version was also aired and paid for by the General Committee during the week of October 9-12, 1992.

The Interim Audit Report concluded that given no known use of the film during the primary period, all costs associated with the film are a general election expense.

The Committee's response to the Interim Audit Report makes a number of arguments concerning the convention film. First, the Committee states that in the Interim Audit Report on the Convention Committee, the auditors took the position that the portion of the cost paid by the Convention Committee was an excessive contribution to the Committee. That is incorrect. The referenced report noted only that the amount paid was considered an impermissible use of public funds and that the Committee had paid the remaining charges related to the film. As the Committee correctly notes, the Commission decided that the portion of the cost paid by the Convention Committee was an acceptable convention expense.

The response also alleges that the Committee was told at the exit conference for the General Committee that the Audit Division's position with respect to the film was evolving. Although the staff does not recall using that term, given that the issue was being considered in three audit reports, only two of which could be discussed at the exit conference, the staff was limited in what could be said.

The Committee also argues that the expense meets the definition of a qualified campaign expense. In this regard the Committee's contention depends on the expense being in connection with the Candidate's campaign for nomination. As explained in the Interim Audit Report, in the opinion of the Audit staff, that is precisely where this expense does not meet the definition. It was not used until after the nomination had occurred.

The Committee argues that the purpose of the film was to introduce the Candidate to the convention and that it is therefore a proper primary expense. Further, the Committee contends that the Commission has always allowed costs for staff travel back from the convention to be considered a primary expense even though those expenses are incurred after the convention. The Committee is correct about allowing the expenses for staff travel back from the convention to be considered primary expenses, although incorrect about those expenses being incurred after the convention. The expense is incurred before the individual leaves to attend the convention. None of this changes the fact that the film was produced to be shown after the nomination and, in the Audit staff's opinion, is a general election expense.

The Committee states that in the past, the Audit staff has not challenged such expenses. Again the Committee is correct. If similar films have been produced by primary committees they have not been identified during the course of the audits. The Committee continues that if a restriction is to be placed on the payment for such films to a particular source, it should be done in the context of a rulemaking. The Commission's regulations do not attempt to list each and every type of expense that a primary committee may or may not pay. There is no need or practical way to create such a list. The regulations state that expenses paid by the primary committee must be in connection with the candidate's campaign for nomination. This film was created for use after the nomination had been awarded. Therefore, the Audit staff concluded that it is not in connection with the campaign for nomination, but rather a proper general election expense.

Finally, the Committee disagrees with the determination of the Candidate's date of ineligibility. It is argued that the date of the acceptance speech rather than the date of the vote is the relevant date. The Commission's regulations at section 9032.6 define the end of the matching payment period for a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention as the date on which the party nominates its candidate. The Code of Federal Regulations at section 9033.5(c) states that the ineligibility date shall be the last day of the matching payment period for the candidate. These provisions are clear and do not reference the

date of an acceptance speech. Further, the Committee was notified of the date of ineligibility (7/15/92) shortly after the convention and did not object until the response to the Interim Audit Report.

In support of its theory, the Committee states that the Commission must defer to party rules on the date of nomination and submits a letter from the General Counsel of the Democratic National Committee which the Committee states establishes the date of ineligibility as July 16, 1992, rather than July 15. In the letter Counsel states the procedural rules for the 1992 convention provide that "following the role call vote on selection of the presidential candidate, the Permanent Chair is to 'appoint a committee to advise the nominee of his or her selection, to determine if he or she will accept the nomination and to invite the nominee to deliver an acceptance speech to the Convention' (emphasis in original text)."

First, contrary to the Committee's statement, the Commission is not required to defer to party rules, but rather to follow the provisions of the Act. The Commission's determination has done that. Second, the quoted section of the Party's procedures do not suggest that the nomination is not "official" until the acceptance speech. Instead, the language supports the Commission's determination by referring to the candidate as the "nominee" in two places within the one sentence.

The Committee offers a number of other observations concerning the timing of the vote when held late in the day which could apply equally to the date on which a candidate makes an acceptance speech.

For the reasons stated above the conclusion contained in the Interim Audit Report was unchanged in the final audit report presented for Commission consideration.

In addition to the cost of producing the film discussed above, a number of other apparent general election media expenses paid by the Committee were addressed in the Interim Audit Report. An invoice dated July 20, 1992 for \$6,109 for work relating to focus groups was identified. One of two versions of the invoice states that the focus groups were "to test general election messages". Another invoice was for "35mm Film Shoot" at the Democratic National Convention on July 15 and 16, 1992. These dates were the Candidate's date of ineligibility and the following day. The Interim Audit Report concluded that film taken on these days could have little opportunity to be used in the primary campaign. The invoice was for \$4,950. A third invoice, totaling \$18,990, is one of a number that was billed to the Committee for travel, administrative costs and fees, and some production related items. The invoice contains a statement that "THIS INVOICE IS ENTIRELY FOR EXPENSES INCURRED DURING THE PRIMARY PERIOD". However, a review of the charges shows that the invoice appears to cover the period July 16, to August 18, 1992 and is apparently a

general election expense. Finally, the Committee paid an invoice dated August 20, 1992, that was to "Test Response Spot". The invoice is addressed to the Clinton/Gore '92 Committee. Absent further documentation, the \$4,106 is included as a general election expense.

With respect to the "35mm Film Shoot" (\$4,950) the Committee points out that one of the mailings discussed above included a photo of the Presidential and Vice Presidential candidates on the podium at the convention that had been promised in an earlier primary solicitation. Although the Committee does not provide any evidence to show that this expense was for that photo, it is reasonable to conclude that the two are related. The Committee's explanation is accepted.

The Committee provided an affidavit from Annemarie Hannon, controller for Great American Media, Inc. to address the \$18,990 charge for travel, administrative fees, and production. Ms. Hannon states that with the exception \$760 in travel expenses, all of the charges are for primary work. She explains that it is not unusual for billings to be delayed due to the need to gather information from staff and vendors, and await credit card billings. The vendor provides no detailed information to support the explanation and does not explain why the invoice indicates that the charges relate to a general election period.

The Committee does not address the remaining two charges.

The Audit staff concluded that the total amount of general election media expenses paid by the Committee was \$190,478.

d. Miscellaneous General Election Expenses

The Interim Audit Report noted a number of other expenses that were considered to be general election expenses paid by the Committee. Each is discussed briefly below:

- o The Committee purchased 150,000 copies of the book Putting People First invoiced on July 6 and 10, 1992. The total cost was \$110,286. The Committee's records indicated that it sold 106,000 copies of the book to the General Committee for \$15,900. The value was determined by multiplying \$.25 per copy times 60%, to arrive at \$.15 per copy times 106,000 copies. There are two errors in this calculation. First, the cost of the books, using the lower of the two prices paid by the Committee, was approximately \$.72 per copy. Second, since these books are not "capital assets" they are not subject to the depreciation allowance provided at 11 CFR §9034.5(c)(1). The General Committee should have paid \$.72 x 106,000, or \$76,320. Therefore an additional \$60,420 is due from the General Committee.

In response to the presentation of this matter at the exit conference, the Committee stated that it did not agree that there is a receivable from the the General Committee. In their opinion, the majority of the publications were used during the primary and the Democratic National Convention. They also stated that the value of the publications were not required to be transferred as an asset to the General Committee pursuant to 11 CFR §9034.5(c) because they are not capital or other assets.

In total, there were 150,000 copies purchased from the vendor. Of that total, 106,000 were purchased by the General Committee. If the majority of these books were used during the primary and convention, it would appear that 106,000 would not have been available to sell to the General Committee. No documentation to support the statement was submitted. Further, the audit analysis did not characterize the books as either a capital or other asset, but rather a general election expense paid by the Committee.

In response to the Interim Audit Report the Committee states that "[b]ased on the best information available to the Committee at this time, it appears that the pamphlets sent to and distributed at the Convention were erroneously counted in the inventory prepared by the Primary Committee". The Committee also objects to referring to these pamphlets as books. The Committee provided a copy of the booklet at issue and copies of two brochures of the same name produced by the General Committee and an affidavit from Jann Greenland stating that it was her understanding that the original booklet was for use in the final stages of the Primary campaign as well as a promotion piece during the Convention. Further, according to the Committee, even if some booklets were sold to the General Committee, since they weren't used in the general election, they should not be considered a general election expense and the Committee should refund the General Committee the \$15,900 paid.

The Audit staff used the word "book" because the documentation submitted by the Committee during fieldwork used the term. The information provided does not establish that the booklets were shipped to the Convention, that they were not used in the general election period, or how the inventory prepared after the Convention could have concluded that 106,000 booklets that did not exist were in inventory.

At the time the Committee presented the inventory to the Audit staff, there did not seem to be any question as to the existence of the 106,000 booklets sold to the General Committee. At a minimum, the Committee could supply an

affidavit from Committee personnel responsible for the inventory to explain whether 106,000 booklets existed or not. Absent additional information the cost of the booklets is considered to be a general election expense.

- The Committee contracted with Press Association, Inc. for a news service. The contract was to run from June 26, to November 30, 1992. The total cost was \$14,753. The Committee paid \$10,003 of this amount. This is considered a general election expense.

In response to the Interim Audit Report, the Committee agrees that the Committee has overpaid its portion but disagrees with the entire amount being a general election expense. The Response contends that the correct amount of the overpayment by the Committee was \$7,687. That amount was refunded to the Committee on June 10, 1994. The Committee did not explain how it arrived at this amount. Absent additional information, the entire \$10,003 is considered a general election expense.

- The Committee chartered aircraft from Air Advantage. Payments via wire transfer were made in advance and charges were applied as incurred. At the end of the primary a credit balance remained that was applied to general election charges. The Committee performed a reconciliation and determined that \$27,222 was due from the General Committee. In addition, the Committee had paid \$17,000 for a reconfiguration of the aircraft, bringing the total amount due from the General Committee, per the Committee's reconciliation, to \$44,222. Subsequently, the Committee concluded that \$15,000 of the \$17,000 reconfiguration charge could be considered a primary expense since the work was done on July 10, 1992 prior to the Candidate's date of ineligibility. It is clear that improvements to the aircraft were done in preparation for the general election campaign. The only use of the aircraft after July 10, 1992 and before the Candidate's date of ineligibility was to transport the Candidate and then Senator Gore to the convention. After the convention, the aircraft was used in the general election campaign.

In response to the Interim Audit Report, the Committee agrees that the \$2,000 and the \$27,222 were erroneously paid by the Committee, and notes that the amounts were reimbursed on January 11 and March 24, 1994. However, it still disagrees with the \$15,000 reconfiguration charge. Since the reconfiguration cost were incurred on July 10, 1992 and the airplane was used in the primary, in the Committee's opinion, the entire costs was allocable to the primary. The one time use of the aircraft before the convention does not justify the allocation of this cost to the primary.

- ° The Committee paid Mandarich & Associates \$1,720 for services and expenses. The invoice specifies that the services were for the "Bill Clinton General Election Compliance Fund". The Committee recognizes that this amount requires reimbursement from the Compliance Committee. In response to the Interim Audit Report, the Compliance Committee refunded this amount to the Committee on June 10, 1994.
- ° There is a group of other payments that are apparently for the general election campaign. Some of the items are expenses incurred in the general election period while others are monthly expenses that should have been allocated between the primary and general elections campaigns for July, 1992. The total amount is \$20,066.

In response to the Interim Audit Report, the General Committee refunded \$14,420 on January 11 and March 24, 1994 to the Committee and was planning to refund the remaining \$5,646.

In the Interim Audit Report, the amount owed to the Committee from the General Committee was \$879,361 and the amount due from the Compliance Committee was \$202,204. Prior to the Commission meeting of December 15, 1994, this amount had been revised based on the Committee's response, to \$874,411 due from the General Committee and \$132,544 due from the Compliance Committee. Of these amounts \$51,329 has been refunded by the General Committee and \$1,720 by the Compliance Committee.

The \$69,660 for compiling the Master File is not considered a general election expense or an account receivable from the Compliance Committee, but a non-qualified campaign expense.

In the report presented for Commission consideration, the Audit staff recommended that the Commission make an initial determination that a pro rata repayment in the amount of \$237,948 is due to the U.S. Treasury pursuant to 11 CFR §9038.2(b)(2).

However, at the Commission meeting of December 15, 1994, the Commission found many of these expenses to be similar to the expenses in the Bush-Quayle '92 report approved at the Commission meeting of December 8, 1992. As a result, some of the expenses were allocated, 50% to the Primary and 50% to the General Election. The capital assets were allocated 40% to the primary as permitted by 11 CFR §9034.5(c). These changes are detailed on Attachment 7. As of June 30, 1994, there is an outstanding balance of \$398,480 due from the General Committee and \$130,824 due from the Compliance Committee. These amounts are

shown on the Committee's NOCO statement at III.C. as accounts receivable and are non-qualified campaign expenses subject to a ratio repayment unless the amounts are reimbursed to the Committee.

Also, as noted previously, the candidate's entitlement to post date of ineligibility matching funds was adjusted in Section III.D. below. That adjustment causes the point at which the Committee's accounts no longer contains Federal funds to occur later than was calculated in the report considered by the Commission on December 15, 1994. It is now calculated that all non-qualified campaign expenses discussed in this section were paid while the Committee's account contained Federal funds.

Recommendation #2

As a result of the Commission's decisions, the Audit staff recommends that the Commission make an initial determination that the Candidate is required to make a pro rata repayment to the U.S. Treasury of \$154,740 $[(\$398,480 + \$130,824 + \$69,660) \times .258346]$ pursuant to 11 CFR §9038.2(b)(2). This amount may change if the Committee demonstrates that the Candidate was entitled to a greater amount than is calculated at Section III.D.

3. Other Non-qualified Campaign Expenses

a. Kathlyn Graves Escrow Agents

The Committee made a \$37,500 payment on September 2, 1992, to Kathlyn Graves Escrow Agents. The only documentation in the Committee's records was a canceled check and a carbon copy of the check with the notation "settlement". According to the Committee, payments were made on behalf of the Committee for consulting work. The terms are confidential and can't be made public. There is a written agreement but the terms of the agreement can't be made public. The terms of the agreement preclude disclosure. During fieldwork the Committee requested the attorney who drew up the agreement provide a statement to clarify the nature of the agreement. This statement was requested again by the Audit staff at the exit conference.

In response to the exit conference and the Interim Audit Report, the Committee submitted additional information but it did not establish this payment as a qualified campaign expense.

b. Campaign Bonuses

The Committee paid bonuses to various staff members, firms, and consultants after the date of ineligibility. According to the Committee these bonuses were determined prior to the date of ineligibility. Any contracts the Committee had with these individuals did not cover these bonuses. The Committee stated these were orally agreed to, between the Committee and the

individual. During the fieldwork and at the exit conference the Committee stated they would provide statements with information about how the amount was arrived at by the Committee. The statements were to be from either the individual that received the bonus or the Committee person that arrived at the amounts. There were a total of 21 entities that received bonuses totaling \$237,750.

After the exit conference presentation of this matter, the Committee submitted memos from David Watkins for each of the people receiving a bonus. Basically, each memo gave the person's position in the campaign, stated that Mr. Watkins authorized the bonus and that each bonus was determined prior to the Democratic National Convention. Some bonuses were based on the recommendation of the immediate supervisor, such as David Wilhelm, Rahm Emanuel, and Keeley Ardman. These memos do not establish that the bonuses were in connection with the campaign for nomination.

In response to the Interim Audit Report, the Committee states that it could find no instance when the Commission did not permit bonuses. The Committee states that it does find instances of the Commission permitting other rewards to staff after the close of the campaign. The response also states that the Commission has considered severance pay after the date of ineligibility and the costs of a staff party after the election as qualified campaign expenses. The Committee did not cite any specific cases in their response.

In addition, the Committee submitted information on the individuals and firms that received bonuses. For Carville and Begala, the Committee submitted an addendum to their consulting contract. According to this addendum, dated March 3, 1992, the Committee would pay the firm a bonus of \$87,500 if the candidate was nominated by the Democratic National Convention. The Audit staff notes that at the end of fieldwork the Committee stated there were no addenda to this contract. In the Audit staff's opinion, the Committee has established a contractual liability that was incurred prior to the date of ineligibility, and the payment to Carville and Begala is therefore a qualified campaign expense.

The Committee also submitted an affidavit from Rahm Emanuel. His affidavit states that he was responsible for developing and implementing the Committee's national fundraising campaign. According to the affidavit, part of Mr. Emanuel's employment agreement provided for a performance based bonus plan. The agreement provided for a bonus to be paid if fundraising performance exceeded campaign goals. The affidavit explains that the Committee and Mr. Wilhelm honored the employment agreement and provided Mr. Emanuel with bonus payments of \$52,000. Neither Mr. Emanuel or the Committee provided any written agreement.

For Amy Zisook, the Committee submitted an unsigned draft of a contract with Amy Zisook & Associates, Inc. (AZA). According to the contract, AZA was to receive \$25,000 within 5 days of whichever occurs first: (1) Governor Clinton suspends his candidacy in the primaries or withdraws from the presidential primaries; or (2) the agreement is terminated; or (3) June 11, 1992. The Committee also submitted an affidavit from Amy Zisook supporting the draft contract. According to Ms. Zisook, the "contract, which was submitted to the Committee in February, 1992, accurately reflects my verbal agreement with the Committee regarding payment of professional fees including the \$25,000." The Audit staff requested any contracts the Committee had with AZA or Amy Zisook during fieldwork but none were provided. In addition the Committee stated during fieldwork that Ms. Zisook had an agreement but not in writing. Again, in the Audit staff's opinion, the Committee has established a contractual liability that was incurred prior to the date of ineligibility, and is therefore a qualified campaign expense.

For the remaining individuals, the Committee submitted an affidavit from David Watkins, Director of Operations for the Committee. According to Mr. Watkins, based on discussions with Mr. Emanuel before the end of the primary, the bonuses for Jim Palmer, John Frontero, Nancy Jacobson, Patrick Dorinson, Matt Gorman, Mary Leslie, Teri Walters, and Simon Kahn were based on the amount of money raised by these people for the Committee and that the amount raised exceeded each person's individual goal. The Committee did not supply any information to establish what each employee's goal was at the beginning of their fundraising activity or that any agreement for a bonus was part of any contract with the individuals.

The Committee did not supply any additional information for the balance of the employees, except for Mr. Watkin's affidavit. In that affidavit the bonus payments were characterized as payments to bring total compensation up to agreed upon levels. The Audit staff reviewed the employment records provided during fieldwork to support the Committee's statements.

According to Mr. Watkins, George Stephanopoulos received his \$7,000 bonus in order to bring his total pay to the agreed salary of \$60,000 per year. Mr. Stephanopoulos signed a contract with the Committee dated November 4, 1991 and was paid \$5,000 a month as a consultant. Beginning in 1992, he went on the payroll as a Committee employee at a salary of \$5,000 per month. As with other employee's of the Committee in the spring of 1992 he received less than his full paycheck. On July 28, 1992 he received a paycheck that restored his pay to \$5,000 a month. Mr. Stephanopoulos started working for the General Committee immediately after the date of ineligibility. Based on his net pay from the General Committee, it appears his

salary was equal to or greater than \$5,000 per month. According to the information supplied during fieldwork, Mr. Stephanopoulos had already received compensation of at least \$60,000 per year before receiving the \$7,000 bonus on November 5, 1992.

According to Mr. Watkins affidavit, Paul Carey, Rick Lerner, Keeley Ardman, and George Hozendorf, received bonuses in order to bring their pay during the primary to a certain monthly rate. For Mr. Carey, the bonus was intended to bring him up to a "market rate of \$3,500 per month for the period from November, 1991 through January, 1992." Mr. Carey started in September, 1991 at a salary of \$2,500 per month. In December, 1991, his salary was increased to \$3,000 per month. Only if the Commission permitted the Committee to retroactively increase Mr. Carey's salary, would he have been entitled to any portion of the \$3,000.

The affidavit continues that, Mr. Lerner's \$3,000 bonus was intended to bring Mr. Lerner's "pay to market" rate at \$2,500 per month." Mr. Lerner's compensation included receiving consulting payments of \$2,500 per month, one pay check with a net amount of \$761.51, and \$9,000 in consulting fees for fundraising. Since this person received in excess of \$2,500 per month, the explanation of the bonus does not seem to be correct.

For Keeley Ardman, Mr. Watkin's wanted her \$7,500 bonus "to bring her average pay during the primary to a market rate of \$3,000 per month". Ms. Ardman started working for the Committee on September 9, 1991 for \$1,500 per month. She received a raise to \$2,400 per month on November 4, 1991. Her final increase came on May 1, 1992 to \$3,000 per month. Like other employees she received less than her full pay but received a payment on July 28, 1992 that restored her back pay. Therefore the purpose of the bonus was to give her a retroactive pay raise to \$3,000 per month from September, 1991 through April 30, 1992.

Mr. Watkin's affidavit justified George Hozendorf's bonus of \$5,000 "to bring his rate of pay to \$2,500 per month for service from April, 1992 through July, 1992 as well as to compensate him for an anticipated small period of time assisting with primary drafts after the end of the primary." This employee started working for the Committee at a salary of \$1,833 per month. His salary remained constant throughout the primary. The paycheck on July 28, 1992 appears to contain an amount greater than the amount of his back pay, and could be viewed as covering any incidental work done for the Committee after the date of ineligibility. It appears he started working at a higher salary for the General Committee immediately after the primary.

In the Audit staff's opinion, these individual's salaries were negotiated with the Committee at the start of their employment. There is no justification for granting retroactive pay raises.

According to the affidavit, Avis Lavelle was paid \$10,500 as partial compensation as the Press Director of the Committee prior to the Democratic National Convention. Though the Committee did not supply any information covering this employee's starting salary, according to the Committee's records, the first paycheck was June 30, 1992. She was paid approximately \$9,000 after the Democratic Convention, before the bonus. Excluding the \$8,000 bonus, for the period of time she worked for the Committee, she would have had a weekly paycheck of over \$2,600, making this person the highest paid employee of the Committee. With the bonus, the weekly pay would have been over \$4,600. This person started working for the General Committee immediately after the primary at a salary of approximately \$5,000 a month. Apparently, this person's employment with the Committee was longer than four weeks, but the Committee has not provided any information establishing the length of this person's employment.

Christine Varney's \$12,500 bonus, according to Mr. Watkin's, was based on her having "to travel to and stay in Little Rock, Arkansas more often and for more extensive periods of time (i.e., more weekend stays) than originally contemplated when hired. In addition, the bonus represented compensation for her continuing winddown work after the date of ineligibility." Ms. Varney started working for the Committee on May 1, 1992, at a salary of \$5,833 per month. She also started working for the General Committee immediately after the date of ineligibility.

According to the affidavit, Betsy Wright was Director of Research. Her bonus of \$2,250 was to "compensate for work done during the primary beyond that originally contemplated when the rate of pay was established." The bonus was based on the recommendation of David Wilhelm. According to Committee records, she started working for the Committee at a salary of \$6,000 per month on March 20, 1992. She started working for the General Committee, for what appears to be the same salary, immediately after the date of ineligibility.

Lisa Shochat was a part-time assistant with the Committee according to the affidavit. She "received a \$1,500 bonus which was payment for work performed for the Committee prior to the date of ineligibility." From Committee records, she appears to have been a volunteer for the Committee, receiving a small amount to cover her expenses while traveling. She started working for the General Committee on July 31, 1992 with a salary of \$1,000 per month.

Finally, Shannon Tanner received a \$2,500 bonus for "outstanding performance and dedication during the primary."

Except for Carville and Begala and Amy Zisook, the Committee has failed to establish they had any liability to pay these bonuses as of the date of ineligibility.

As noted at Finding II.E. above, the Committee reimbursed David Wilhelm \$6,000 for apartment rent. In that finding the Committee had no obligation to make this payment. This amount has been added to the other bonuses paid to various staff members.

The total of non-qualified campaign expenses for staff bonuses is \$131,250. (Attachment 8 pg. 2)

c. Traveler's Cheques

During the campaign the Committee purchased \$179,357 in traveler's cheques (see Attachment 9.) These cheques were purchased over a period starting February 13, 1992 and ending July 9, 1992. During fieldwork, the Committee provided the following information on "Procedures for Issuing Travellers Checks", in a memorandum dated March 25, 1993.

"After consultation with the Federal Election Commission, the Clinton for President Committee began a policy of distributing American Express Travellers Cheques to campaign staff to cover living costs associated with campaign-related field work during the primary campaign period. The following disbursement procedures were established:

- 1) Travelers cheques would be used exclusively for per diem payments to the campaign's advance personnel on the road, and all other compensation such as advance consulting fees and salaries would be issued on campaign checks;
- 2) Travelers cheques could not be substituted for standard campaign drafts or bank checks intended for event costs or any other non-per diem expenses on the road;
- 3) Travelers cheques would only be issued out of the scheduling and advance department and could not be used for other campaign activities, i.e. volunteers, headquarters operations, etc.;"

The Committee did provide a log that was used when the cheques were issued that details the recipient of the cheques, the days traveled, the locations, the denomination of the traveler's cheques, the total amount, date issued, and the initials of the authorizing official. This information was not provided for all cheques. In its response to the exit conference, the Committee stated that the log supported \$159,190 in traveler's checks spent during the campaign. The Committee did not explain

the difference of over \$20,000, between the \$179,357 in traveler's cheques purchased and the \$159,190 in the Committee's log. The Audit staff was able to determine that the log supports approximately \$158,000.

A review of the log appears to indicate that in some instances blocks of cheques were issued to individuals, for amounts greater than a person would need for their per diem. In these cases, the log does not provide the names of other individuals that may have eventually received the traveler's cheques and the days traveled by the individual. It would therefore appear, that in some instances, the campaign staff person receiving the travelers cheques is not recorded or the cheques were used for other than the recipient's per diem. This amounted to over \$40,000 in insufficiently explained cheques in the log, including \$1,620 recorded twice in the log for the same cheques. The Audit staff considers the use of traveler's cheques to be cash disbursements in violation of 11 CFR §102.10 since the cheques are not a check or similar draft drawn on an account established at a Committee campaign depository, and therefore are non-qualified campaign expenses. Further, the expenditures are not documented in accordance with 11 CFR §9033.11.

In response to the Interim Audit Report, the Committee states it disagrees that the use of traveler's cheques are cash disbursements. However, if they were considered to be cash disbursements the Committee believes that the disbursements are adequately documented pursuant to 11 CFR §9033.11.

The Committee again states that the traveler's cheque plan was approved by the Audit staff. The Committee has been unable to locate any contemporaneous evidence of the approval. The Audit staff has no record or recollection of any such approval.

The response also states that the method of documenting the traveler's cheques is indistinguishable from the permissible method of documenting petty cash expenditures. It is also stated that the individual per diem rate was \$30 (less than the \$100 limit on petty cash disbursements) and thus the treatment of traveler's cheques like a petty cash fund is fully consistent with the Act and regulations. In the Audit staff's opinion the use of nearly \$180,000 in travelers cheques cannot be likened to a petty cash fund. The log submitted does contain entries identifying who received the cheques for the majority of the amount but the amounts are often in excess of \$100.

The Committee also contends that the use of traveler's cheques can be considered the same as a payment by "similar draft" from the Committee's depository pursuant to 11 CFR §102.10. The Committee explains that cheques were purchased from Worthen Bank, the Committee's depository, by checks drawn on the Committee's checking account. The traveler's cheques are written instruments, which are returned to the bank for payment just as

checks. The Committee is incorrect. First, the requirement is that the expenditure be made by check or similar draft drawn on an account established at a campaign depository. These traveler's cheques are not drawn on a Committee account. Further, the Committee is not accurate that the traveler's cheques are returned to Worthen Bank. They are sent to American Express. There is no negotiated instrument available for the Audit staff's review at the Committee or their depository. The requirement that checks be drawn on a Committee depository provides records for both Committee and Commission review.

Finally, the Committee states that even if the traveler's cheques are not consistent with the requirements of 11 CFR §102.10, it does not follow that they are undocumented within the meaning of 11 CFR §9033.11. The Committee goes on to cite the various types of documentation that may be presented under that regulation and concludes that the log and Committee per diem policy complies with two of the tests. What the Committee does not consider is that in addition to the listed documentation, 11 CFR §9033.11 requires a canceled check negotiated by the payee. This is not possible when traveler's cheques are used.

The Committee did not explain the difference in the \$179,357 in traveler's cheques purchased and the \$159,190 ~~the Committee claims the traveler's cheque log supports.~~ Also, the log didn't support \$158,000 as claimed in the response. As explained in the Interim Audit Report, although the log recorded approximately \$158,000 in traveler's cheques over \$40,000 of that amount was insufficiently explained. The Committee did not address this problem in their response.

The Audit staff concluded that the use of travelers cheques were cash disbursements in violation of 11 CFR §102.10 since the cheques were not a check or similar draft drawn on an account established at a Committee campaign depository, and therefore, were non-qualified campaign expenses. Further, the expenditures were not documented in accordance with 11 CFR §9033.11.

At the Commission meeting of December 15, 1994, the Commission decided to permit the Committee to consider amounts of \$100 or less, per transaction, as a qualified campaign expense. As a result of this decision a total of \$166,658 was determined to be non-qualified campaign expenses.

d. W.P. Malone, Inc.

Invoices for leased equipment for February, March and April, 1992 totaled \$40,710. Committee records indicate three payments were made, \$10,000 on March 27, 1992, \$15,000 on June 1, 1992 and 15,710 on August 25, 1992, which paid the balance in full. In addition, on July 10, 1992 the Committee paid \$4,850 which appears to be a partial payment on the April, 1992 billing. Therefore, \$4,850 represents an apparent duplicate payment. The

invoice associated with the \$4,850 check is the same invoice associated with the three payments discussed above. The Interim Audit Report concluded that if the Committee did not provide additional invoices supporting the \$4,850, it would be considered a duplicate payment, and the amount would be included in section 1 of this finding. Additional issues with respect to this vendor are discussed in section 2 of this finding.

The Committee did not provide any additional information in its response to the Interim Audit Report; therefore, the \$4,850 has been included in section 1 of this finding.

The Audit staff did not review the Committee's Third Quarter 1993 FEC Disclosure Report at the time of the audit fieldwork. However, on that report, the Committee reported paying W.P. Malone an additional \$63,000 in consulting payments. The Committee did not report any debt owed to this vendor on the Second Quarter 1993 FEC Report. As mentioned in Section 2. of this finding, all the equipment bought from this vendor was sold to the General Committee. The Audit staff requested additional documentation that established that the \$63,000 in payments were in connection with the campaign for nomination. Pending receipt of that documentation, the amount was considered a non-qualified campaign expense.

In response to the Interim Audit Report, the Committee provided a copy of a check to this vendor for \$50,000 and an invoice from the vendor that states the amount is a "Deposit toward professional services for June through September, 1993." The Committee did not explain the \$13,000 difference but the Fourth Quarter 1993 FEC Disclosure Report shows a voided check to the vendor of \$13,000. On the same report the Committee disclosed another \$159,695 payment to W.P. Malone. The Committee later sent a copy of an invoice which stated only that the payment was for June through September, 1993 professional services. After the Interim Audit Report was sent to the Committee the Audit staff reviewed the 1994 Disclosure Reports and noted additional payments to this vendor for \$210,081 and \$95,645. The Audit staff requested additional documentation. The Committee provided an invoice for the \$210,081 that states only that the amount is for professional services for October, November, and December 1993. The Committee also provided a copy of the check and an invoice for the \$95,645, which was for professional services for the months of January and February 1994. Also, on the Second Quarter 1994 FEC Disclosure Report, the Committee disclosed a debt to this vendor of \$93,436 for computer consulting.

The Committee has not provided any detailed explanation as to what specific services this vendor is providing to the Committee other than consulting payments and how those services relate to the wind down activity of the Committee. The Committee has continued to pay Public Office Corporation for services during the winding down period for database management,

preparation of FEC reports, equipment rental, and other services. The Audit staff has not included the additional payments and debt to W.P. Malone, Inc. totaling \$608,857 in winding down expenses on the NOCO statement in Finding III.C.

e. Miscellaneous

The Committee issued \$5,500 in checks from its New York bank account. The checks were data entered under Harold Ickes name, but the payee on the check is the Clinton for President Committee. Annotations made by the bank with respect to certain checks appear to indicate that cash was obtained. There was no documentation except for the canceled checks.

Another vendor in Section 1. of this finding is Carol Willis. There were many reimbursements to Carol Willis. However, many of the expenses incurred were actually paid on credit cards belonging to Wilbur T. Peer and Leroy Brownlee. The Audit staff requested documentation that supports when and how Mr. Peer and Mr. Brownlee were reimbursed by Mr. Willis such as copies of canceled checks. The expenditures not sufficiently documented total \$11,209. Also, available documentation indicates that a portion of this amount may represent duplicate payments of the same expenses.

In addition, the Audit staff requested additional documentation for the Sheraton Manhattan in the amount of \$6,489 and New England Telephone for \$7,000. Documentation for these vendors appears to be complete; however, there is no recognition of payments in these amounts. The disbursements may be duplicate payments of the same expenses.

In response to the Interim Audit Report, the Committee stated it has requested information from all the vendors listed above and will submit it as soon as it is available.

The Committee also had parking tickets totaling \$2,129, a stolen fax machine costing \$1,207, and lost radios costing \$13,424.

In response to the Interim Audit Report, the Committee did not address the parking tickets. For the lost and stolen equipment, the response states that the Committee and its members exercised great care in the maintenance and security of leased equipment. The Committee provided a copy of the security policy used during the general election, which was "the culmination of the verbal policies promulgated and adhered to during the Primary." It is further stated that "it is the Committee's position that there was no evidence of misconduct or gross negligence ... and thus it was unnecessary to execute the Committee's policy of withholding salaries upon the discovery of evidence of misconduct or gross negligence."

The Committee submitted documentation from its insurance agent that pertained to the General Committee. It is stated in the documentation that since the cost of commercial insurance was prohibitive, the only reasonable approach was self insurance. "A comparison of the losses identified by the Audit Division to the total monies expended by the Committee for equipment leases in general and as compared to leases for similar equipment reveals that the Committee paid a relatively small amount for the replacement of lost equipment (the amount paid by the Committee represents only .08% of the rental equipment fees)". The Committee did not submit any information on how they arrived at .08%. The Audit Division doubts the accuracy of this percentage, since the total equipment stolen or lost was \$14,631. If this represents .08% of the total, the Committees equipment leases would be \$18,288,750 ($\$14,631 / .08\%$).

As explained in Section III.B.1., repayment is required for non-qualified campaign expenses paid while Committee accounts contain Federal funds. Of the amounts discussed above, \$47,750 plus the payments to W.P. Malone of \$608,857 were made after the Committee's accounts had been purged of Federal funds and are not included in the repayment calculation.

As previously stated, except for the \$608,857 consulting payments to W.P. Malone, the problems noted in this section, were addressed during field work and at the exit conference. In addition, Committee representatives were provided schedules detailing these items. All items discussed above in sections III.B.3.a. to III.B.3.e. are listed on Attachment 8.

In the Interim Audit Report, the Commission recommended that the Committee provide evidence to demonstrate that these expenses were qualified campaign expenses. The Commission further recommended that the Committee demonstrate that the Kathlyn Graves disbursement was made in connection with seeking the nomination pursuant to 11 CFR §9032.9(a)(2). In addition, it was recommended that the Committee provide: (1) evidence showing that the payment of bonuses to staff was a qualified campaign expense and (2) a pre-established written Committee policy on bonuses. With respect to the lost equipment, it was recommended that the Committee provide evidence of the methods employed by the Committee to safeguard the equipment. In addition, demonstrate what efforts were made to recover the lost equipment (i.e., were police reports filed). Finally, provide documentation which identified the relative value of the lost equipment to the total value of the equipment leased from the respective vendors. The Interim Audit Report also stated that absent such evidence, the Audit staff would recommend that the Commission make an initial determination that the Committee make a pro rata repayment of \$118,494 [$(\$569,415 - \$63,000 - \$47,750) \times .258346$] to the United States Treasury.

Except for the \$87,500 payment to Carville & Begala, and the \$25,000 payment to Amy Zisook, the Committee has not demonstrated that expenses in this finding are qualified campaign expenses. In addition, the Committee did not provide a written pre-established campaign policy for bonuses, and did not provide documentation which identifies the relative value of the lost equipment to the total value of equipment leased.

In the report considered by the Commission on December 15, 1994, the Audit staff recommended that based on the Committee's response to the Interim Audit Report, the Commission make an initial determination that the Committee was required to make a pro rata repayment to the U.S. Treasury in the amount of \$89,727 pursuant to 11 CFR §9038.2(b)(2) and (3).

As explained above, the Commission decided to allow a portion of the amount expended by the Committee in the form of traveler's cheques to be considered qualified campaign expenses. Also, the candidate's entitlement to post date of ineligibility matching funds was adjusted in Section III.D. below. That adjustment causes the point at which the Committee's accounts no longer contains Federal funds to be later than was calculated in the report considered by the Commission on December 15, 1994. The recalculated amount of non-qualified campaign expenses subject to repayment is ~~\$382,366~~ (~~\$991,224~~ - ~~\$608,857~~ paid to W.P. Malone).

Recommendation #3

As a result of the Commission's decisions on December 15, 1994, the Audit staff recommends that the Commission make an initial determination that the Candidate is required to make a pro rata repayment to the U.S. Treasury in the amount of \$98,783 ($\$382,366 \times .258346$) pursuant to 11 CFR §9038.2(b)(2) and (3).

C. Determination of Net Outstanding Campaign Obligations

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

President Clinton's date of ineligibility was July 15, 1992. The Audit staff reviewed the Committee's financial activity through June 30, 1994, analyzed winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations as of July 15, 1992, which appears below. Additional fieldwork may be required to assess the impact of future financial activity on the NOCO Statement.

CLINTON FOR PRESIDENT
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
AS OF JULY 15, 1992
(Determined at June 30, 1994)

Assets:

Cash in Bank	\$	526,906	
Accounts Receivable:			
Total Reported Refunds, Rebates, Receivables		1,411,043	<u>a/b/</u>
Clinton/Gore '92 General Election Expense		398,480	<u>c/</u>
Clinton/Gore '92 Compliance Fund		130,824	<u>c/</u>
Overpayments/Duplicate Payments		65,264	<u>c/</u>
Telephone Deposits		43,695	<u>d/</u>
Capital Assets		<u>4,640</u>	
Total Assets:			\$2,580,852

Obligations:

Accounts Payable	\$7,808,624		<u>a/</u>
Less Non Qualified Campaign Expenses	<u>(256,590)</u>	7,552,034	
Contribution Refunds		106,956	<u>e/</u>
Clinton/Gore '92 GEC		43,726	<u>f/</u>
United States Treasury		40,859	<u>g/</u>
Winding Down Costs (Based on actual disbursements 07/16/92 thru 06/30/94)		2,675,057	<u>a/</u>
Estimated Winding Down Costs (For the Period from 07/01/94 thru 07/15/95)		<u>465,500</u>	<u>h/</u>
Total Obligations:			<u>10,884,132</u>
Net Outstanding Campaign Obligations: (Deficit)			<u>(\$8,303,280)</u>

Footnotes to NOCO

- a/ This amount includes receipts and disbursements reported on Committee disclosure reports filed through June 30, 1994 and the Committee's response to the Interim Audit Report. The Audit staff will review additional Committee records to verify the amounts as necessary.
- b/ An account receivable from the U.S. Secret Service in the amount of \$51,531 is uncollectible and is not included in this amount.
- c/ Absent recovery from Clinton/Gore '92 Committee, Clinton/Gore '92 General Election Compliance Fund and the various vendors who received overpayments or duplicate payments these amounts will be considered non-qualified campaign expenses and a pro rata repayment to the Treasury will be requested in the amount of \$153,604.
- d/ This amount includes \$43,695 in deposits from New York Telephone. That amount consists of a receivable in the amount of \$13,095 and unexplained deposits of \$30,600. The Committee was attempting to get additional information from the vendor. In the Committee's response to the Interim Audit Report it did not address these outstanding deposits.
- e/ These are excessive or prohibited contributions that were deposited on or before July 15, 1992.
- f/ These are Primary Committee expenses paid by the General Committee. This amount includes convention related expenses (\$2,255) for Julia Payne; an overpayment by the General Committee (\$7,402) of payroll taxes applied to amounts owed by the Primary Committee; an expenditure (\$7,565) to Manatt & Phelps for legal services provided to the Primary Committee; Primary Committee payroll taxes (\$354); AT&T Telephone services relative to the Primary Committee (\$22,079); an expenditure to Drummond Woodson (\$308); overpayment to Visa Bankcard Center (\$3,129); overpayment to Worthen Bank Card Center (\$576); and a payment to the Los Angeles Times (\$58).
- g/ This amount is for stale-dated checks repayable to the United States Treasury (see Finding III.E.).
- h/ In the Committee's response to the Interim Audit Report, it provided an updated undocumented winding down estimate of \$1,638,543 which includes legal and accounting fees of \$1,300,250. It should be noted that this revised estimate was provided after the Committee was informed that a substantial repayment may be due for funds received in excess of the Candidate's entitlement. The Audit staff finds

these estimates to be unreasonable. We will review the Committee's disclosure reports and records to compare the actual figures with our estimates and prepare adjustments as necessary. Finally, the Committee's third quarter 1994 disclosure report contains winding down expenses totaling \$582,000 including \$138,000 paid to W. P. Malone (see section III.B.3.d.). This amount is significantly more than previous periods and has not been recognized pending the submission of documentation and explanations of the amounts.

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D. Receipt of Matching Funds in Excess of Entitlement

Section 9034.1(a) of Title 11 of the Code of Federal Regulations states, in part, that a candidate is entitled to matching funds for each matchable contribution except that a candidate who has become ineligible may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching 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, i.e., the sum of 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. This entitlement will be equal to the lesser of: (1) The amount of contributions submitted for matching; or (2) The remaining net outstanding campaign obligations.

Section 9034.5(a)(2)(i) of Title 11 of the Code of Federal Regulations in defining cash on hand for purposes of a committee's Statement of Net Outstanding Campaign Obligations states that the amount includes cash on hand as of the close of business on the last day of eligibility including all contributions dated on or before that date whether or not submitted for matching.

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

Section 9003.3(a)(1)(iii) of Title 11 of the Code of Federal Regulations (General Election Legal and Accounting Compliance Fund-Major Party Candidate-Sources of Funds) states, in part, that funds received after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be redesignated for the legal and accounting compliance fund and transferred to or deposited in such fund if the candidate obtains the contributor's redesignation in

accordance with 11 CFR §110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if:

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;

(B) The redesignations are received within 60 days of the Treasurer's receipt of the contributions;

(C) The requirements of 11 CFR §110.1(b)(5) and (1) regarding redesignations are satisfied; and

(D) The contributions have not been submitted for matching.

Section 110.1(b)(2)(i) of the Code of Federal Regulations defines, in part, when a contribution is made with respect to a particular election. The provision states that in the case of a contribution designated in writing for a particular election, the election so designated.

Section 110.1(b)(4) of the Code of Federal Regulations states in part that a contribution is considered to be designated for a particular election if:

1) The contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made;

2) the contribution is accompanied by a writing, signed by the contributor, which clearly indicates the particular election with respect to which the contribution is made; or

3) the contribution is redesignated in accordance with 11 CFR 110:1(b)(5).

The Interim Audit Report concluded that the Committee had net outstanding campaign obligations on July 15, 1992 of \$7,588,794. The Committee received private contributions totaling \$5,863,410, between July 16, and October 2, 1992. During this same period of time the Committee received matching fund payments of \$1,431,599 on August 4, 1992, \$1,786,327 on September 2, 1992, and a final payment of \$2,825,181 on October 2, 1992.

On August 21, 1992, the Committee opened a checking account known as the Suspense Account. With minor exception, the contributions from individuals deposited after August 21, were deposited into this account. Contributions deposited into this account were included in the Committee's disclosure reports. Based on our review of contributions deposited, it appears that the Committee obtained redesignation letters and subsequently transferred the majority of the contributions to the Compliance Committee. Relatively few of the contributions were in excess of

the contributors' primary election contribution limit and the Committee had remaining primary expenses to be paid. During the period when the redesignations were being sought for the contributions deposited into the Suspense Account, the Committee continued to request and receive matching fund payments based on NOCO statements that did not recognize contributions deposited into the Suspense Account. The Committee transferred to the Compliance Committee contributions totaling \$2,444,557. Of the \$2,444,557 transferred, private contributions totaling \$1,025,404 were deposited by the Committee after September 2, 1992, the date on which the Audit staff calculated that the Candidate received the last matching fund payment to which he was entitled. Those contributions deposited after September 2, 1992 are not considered in the analysis below.

In the Interim Audit Report it was explained that the Audit staff examined each deposit of contributions between July 16, and October 2, 1992 to determine the amount of primary contributions available to pay remaining primary election expenses. In making the determination, any contribution that was in excess of the contributor's primary election limit was excluded. Also excluded were any contributions that, even though deposited into a primary election account, showed a payee or other notation that suggested the contribution was meant for the general election or was in any other way designated by the contributor for the general election. Based upon our review, it was determined that contributions deposited between July 16, and September 2, 1992, totaling \$155,686, could have been transferred to the Compliance Committee.

Based on the information available at the time of the Interim Audit Report, a calculation was presented that showed that as of September 2, 1992, the Committee had received matching funds in excess of the Candidate's entitlement in the amount of \$849,172. After that date the Candidate received one matching fund payment totaling \$2,825,181 bringing the amount of matching funds received in excess of entitlement to \$3,674,353 (\$849,172 + \$2,825,181).

At the exit conference, the Committee's accountant stated that at a point the Committee determined that it was solvent and the transfers were permissible. The Audit staff noted that such a calculation worked only if the matching funds to be generated in the future were considered an accounts receivable. The Committee's accountant agreed. The Committee strongly disagreed that any repayment was due.

The inclusion of matching funds to be generated from future matching fund requests, as an asset, is not appropriate when determining remaining matching fund entitlement.

In its response to the exit conference, the Committee again explained that as of a date after the Candidate's date of ineligibility, it was determined that the Committee no longer had outstanding campaign obligations in excess of funds available to pay them.

The Committee goes on to state that "[t]he Committee disputes the auditors' assertion that these contributions could not be redesignated to GELAC. That assertion is contrary to law. Those contributors properly and legally designated those contributions in writing for GELAC pursuant to 11 CFR §110.2 7/ and the auditors cannot prohibit the Committee from maintaining those contributions in the GELAC.

"The Committee further disagrees with the auditors' method of applying contributions and matching funds to determine when there is no additional entitlement."

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With respect to the propriety of the redesignations, the Interim Audit Report stated that 11 CFR §110.1 is not the relevant regulation. That regulation specifies the procedures and time limitations that apply to a redesignation when a redesignation is appropriate. As stated above, 11 CFR §9003.3(a)(1)(iii) clearly states that the redesignations pursued by the Committee were not permissible. That section states that only if no remaining primary expenses are to be paid, may primary contributions not in excess of the contributors limit be redesignated to the compliance fund. The definition of remaining primary expenses is clearly stated in 11 CFR §9034.1(b) which speaks to remaining matching fund entitlement. That definition states that remaining net outstanding campaign obligations is the candidate's net outstanding campaign obligations on the date of ineligibility less "the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility." Therefore, in the case of a publicly funded candidate, the Commission's regulations concerning the receipt of public funds place limitations on a committee's ability to seek redesignations of contributions to other elections that are not contained in the more general application regulations at 11 CFR §110.1.

The Interim Audit Report also explained that the definition and the calculation of remaining entitlement to which the Committee objects enjoys a long and consistent history in Commission regulation and practice. This interpretation dates to a December 1976 memorandum to the Commission proposing an amendment to then section 134.3(c)(2) of the Commission's regulations. This proposed regulation stated that "a candidate

7/ The Committee claimed that it complied with 11 CFR §110.2. We assume that it meant section 110.1.

shall be entitled to no further matching funds if, at time of any submission for certification, the total contributions and matching funds received after the ineligibility date equals or exceeds the net obligation outstanding on the date of ineligibility".

The 1979 Explanation and Justification of 11 CFR §9034.1 explains that for candidates who have net outstanding campaign obligations on the date of ineligibility, "[b]asically, these candidates are entitled to payments only if the private contributions received between the date of ineligibility and the date of submission are not sufficient to discharge the net debt". A simplified example of the calculation presented in the Interim Audit Report follows this explanation. Finally, it is explained that the regulation "furthers the policy that the candidate should use private contributions to discharge campaign obligations wherever possible". The 1983 Explanation and Justification for the same provision states that the section had "been revised to state that to receive matching funds after the date of ineligibility, candidates must have net outstanding campaign obligations as of the date of payment rather than the date of submission. Thus, if the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly". This revision reinforces the requirement that private contributions received must be applied to obligations prior to the receipt of further matching funds. The 1991 Explanation and Justification for §9003.3 states that "contributions redesignated must represent funds in excess of any amount needed to pay remaining primary expenses. If this requirement is not met, the committee would have to make a transfer back to the primary account to cover such expenses".

Finally, each edition of the Commission's Financial Control and Compliance Manual For Presidential Primary Candidates Receiving Public Financing, beginning with the first in 1979, has, in some form provided, an explanation and example of the calculation contained in the Interim Audit Report and again below.

The Interim Audit Report noted that the Committee's position is inconsistent with the plain meaning of the Commission's Regulations concerning post ineligibility date matching fund entitlement as well as the long established Commission practice and policy.

The recommendation in the Interim Audit Report concerning this matter requested the Committee provide evidence demonstrating that it did not receive matching funds in excess of entitlement. Absent such a demonstration, it was stated that the Audit staff would recommend that the Commission make an initial determination that the Committee repay \$3,674,353 to the U.S. Treasury. Finally it was noted that the amount of the repayment was subject to change upon further review.

In response to the Interim Audit Report the Committee puts forth several arguments why no repayment is due. To begin with, the Committee argues that the contributions in question were not primary contributions but rather were for the most part undesignated contributions received after the date of the primary election and, pursuant to the 11 CFR §110.1, general election contributions. As general election contributions, the Committee contends that no redesignations were necessary to transfer the contributions to the Compliance Committee. The Committee states that the redesignations were obtained by the vendor who processed contributions for the Committee without the Committee's knowledge. The explanation suggests that due to provisions in that vendor's contract, the vendor stood to gain by sending the redesignation requests.

In support of their conclusion that no repayment is due, the Committee, using its interpretation of the provisions 11 CFR §110.1, submitted a calculation of the amount that could be considered general election contributions without need of redesignations. In support of this calculation the Committee response included lists showing the deposit date, number and amount that were considered to represent general election contributions. The lists were divided into three categories; contribution checks made payable to Clinton for President with an ~~unsigned primary contributor card attached~~; ^{8/} ~~contributions checks made payable to Clinton for President without a contribution card attached~~, and contribution checks made payable to other than Clinton for President with or without a contribution card attached. The Committee's analysis includes contributions through part of January of 1993, well beyond the relevant period for determining the amount of contributions that must be applied to the primary debt, and concludes that \$2,773,327 in contributions deposited into primary accounts are actually general election contributions. The Committee states that copies of the contribution checks supporting their analysis were available for our review at Committee Counsel's Offices.

The Committee's response goes on to state that the redesignations received serve to make clear the contributor's intent in any case where the contributor's intent is unclear from the contribution check.

8/ Included in this and the following category are checks that include Clinton for President in the payee. Thus checks payable to Clinton for President Committee, Bill Clinton for President, Clinton for President Campaign, and other similar combinations are included.

The Audit staff concluded that the Committee's analysis was not consistent with the provisions of 11 CFR §110.1, not consistent with the matching fund regulations and the post date of ineligibility matching fund entitlement system, and not consistent with their own treatment of these contributions.

As noted, section 110.1 of the Commission's regulations states that to be considered designated to a particular election a contribution must clearly indicate the election with respect to which the contribution is made. In the view of the Audit staff the majority of the contributions in contention are so designated. By the Committee's calculation, over \$2.2 million of the \$2.8 million in post date of ineligibility contributions were made payable to the Committee and \$1.6 million of that was photocopied with a Committee solicitation attached. The Committee and Compliance Committee have different and distinctive names, Clinton For President Committee vs. Clinton/Gore '92 General Election Compliance Fund. Each entity had its fundraising appeals that made it clear which committee was soliciting the contributions. Each committee is a separate entity, has separate accounts, files separate reports with the Commission and has different funding sources. Therefore, the Audit staff stated that a check made payable to Clinton For President is designated in writing for the primary election and, to conclude otherwise would be inconsistent with other provisions in the matching fund regulations. As explained above, the Commission's regulations have for many years held that after the date of ineligibility private contributions must be applied to a campaign's deficit before any matching funds may be received by the committee. The Staff concluded that to allow contributions solicited by, made payable to, received by, and deposited by the primary committee to be transferred wholesale to the general election compliance fund is completely inconsistent with the matching fund regulations. Rather than minimize the amount of post date of ineligibility matching funds paid to a candidate such an interpretation would encourage candidates to manipulate their contributions in such a way as to maximize their receipt of matching funds.

The Audit staff analysis also concluded that other sections of the Commission's regulations governing the matching fund program support the Commission's interpretation. In 11 CFR §9034.8(c)(7)(iv), it is clear that when dealing with joint fundraising by publicly funded campaigns, contribution checks made payable to a particular participant are considered to be earmarked or designated to that participant. The case at hand is similar. The contribution is made payable to a particular committee.

Section 9034.5(a)(2)(i) of Title 11 of the Code of Federal Regulations defines cash on hand to include all contributions dated on or before the date of ineligibility. This includes checks received and deposited after the date of ineligibility. The Committee's analysis of their contributions includes as general election contributions some contributions

dated on or before the date of ineligibility. Finally, section 9034.2 of the Commission's regulations define in part, a matchable contribution to be one that is dated, physically received and deposited by the candidate, or any of the candidate's authorized committees, on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period, and made payable to the candidate or his or her authorized committees. The Audit staff concluded that following the Committee's analysis none of the contributions dated after the date of ineligibility would be matchable. To match such contributions would suggest that contributions intended for the general election and transferable to the compliance fund could be matched for the primary committee.

In the opinion of the Audit staff, the Committee's own analysis was inconsistent with respect to these contributions. The lists supporting those contributions made payable to Clinton For President begin with deposits on August 6, 1992. The apparent reason is that the Committee's final matching fund submission contained contributions deposited through August 5, 1992. A sample of the contributions deposited between the date of ineligibility and August 5, 1992, was selected and examined to determine if those contribution checks were different with respect to payee or election designation. ~~No difference was noted.~~ Thus it appears that more significant to the Committee's analysis than an express election designation, is whether the Committee submitted the contribution for matching. Even more revealing was a review of the contributions contained on the Committee's list of contributions not made payable to Clinton For President and now considered general election contributions. First, a number of contributions are dated before the date of ineligibility and are therefore considered cash on hand for NOCO purposes. Second, a spot check of the contributions on this list dated after the date of ineligibility and deposited before August 6, 1992 indicates that the majority of the contributions were submitted for matching and matched. In the opinion of the Audit staff the Committee cannot have it both ways.

The Committee's response to the Interim Audit Report goes on to argue that in August of 1992 the Committee made a calculation of the cut-off date beyond which no further matching funds would be sought. The Committee contends that this estimate was made without benefit of hindsight or the results of the audit. As a result, the Committee states that fewer contributions were raised for the Compliance Committee than would have been the case had the Committee known the position that the Commission would take with respect to post date of ineligibility contributions. The Committee argues further that to require the Compliance Committee to transfer the funds back to the Primary Committee would result in unfairness to the Committee because it may leave insufficient amount in the Compliance Fund to pay continued general election winding down costs.

"The Committee believes that the Commission's approach in this regard is inconsistent with the legal concept of 'entitlement.' A candidate who qualifies for matching funds is entitled to receive them in an amount equal to matchable contributions raised up to 50% of the expenditure limitation. 26 U.S.C. §9034. The process would be far less costly and simpler to administer if the Commission, as envisioned by the statutory language, were to match qualifying contributions up to the 50% limitation and seek a ratio surplus repayment once all obligations have been satisfied. 26 U.S.C. §9038(b)(3). In fact, if the Commission followed the statutory scheme it may be possible to resolve the audits within the six months contemplated in the surplus repayment provision. Id."

Committee Counsel's highly optimistic analysis of the benefits of the recommended change in approach aside, it is noted that the Commission considered and rejected just such a system in the course of its 1987 amendments to the Matching Fund Regulations. More recently, a July 8, 1994, opinion by the U.S. Court of Appeals for the District of Columbia in Lyndon H. LaRouche and LaRouche Democratic Campaign '88 v. Federal Election Commission is relevant. In that decision the Court quotes 11 CFR §9034.1(b) concerning the application of private contributions to a candidate's NOCO and states:

"This language would appear to be dispositive. A candidate is entitled to receive post-DOI matching payments so long as net campaign obligations remain outstanding; and the regulation defines a candidate's 'remaining[NOCO]' as the difference between the amount of his original NOCO and 'the sum of the contributions received ... plus matching funds received.'... Whenever the sum of his post-DOI receipts equal the amount of his NOCO—whether those receipts be in the form of private contributions or matching payments from the public fisc—his entitlement to further matching payments comes to an end. Even if we were to find the regulation ambiguous, which we do not, we would still have to accept the Commission's interpretation of section 9034.1(b) unless we found it 'plainly inconsistent with the wording of the regulation,'... which it is not.

"Having concluded that the Commission's interpretation of its regulations is not merely reasonable, but compelling, we must determine whether the regulations, as construed, represent a permissible interpretation of the Act."

"Here, petitioners have failed to cite anything in either the language or structure of the Act that would render the Commission's interpretation of section 9033(c)(2) unreasonable. To the contrary, its provisions make it clear that Congress wished to restrict the availability of matching payments to candidates it considered viable. Thus the Act expressly limits the class of those who are eligible for funds, 26 U.S.C. § 9033, and it withdraws the eligibility of candidates who fail to receive at least ten percent of the vote in two successive primaries. Id §

9033(c)(1)(B). Under the circumstances, we fail to discern why it is impermissible for the Commission to adopt a regulation that terminates post-DOI matching payments as soon as a candidate has received sufficient funds from private and public sources to liquidate his NOCO, whether or not they are so used."

Although President Clinton did not become ineligible due to a failure to receive 10% of the vote in two consecutive primaries, once he had past the date of ineligibility the provisions of 11 CFR §9034.1 are applicable and as the Court concluded, consistent with the statutory scheme.

After considering the Committee's arguments and examining the documentation assembled by the Committee to support their calculations, the Audit staff again reviewed the composition of the \$155,686 allowance for contributions transferable to the Compliance Committee included in the Interim Audit Report calculations. That allowance included \$34,585 in excessive contributions redesignated to the Compliance Committee, \$52,357 specifically designated to the Compliance Committee by virtue of the payee or a notation on the check's memo line, and \$68,744 in contributions that were made payable to a non-specific payee (e.g., Bill Clinton, Clinton Team, Clinton Campaign, etc.) dated after the date of ineligibility and not associated with any solicitation. In further review, it was learned that many of the contributions in the non-specific payee category deposited after the date of ineligibility but on or before August 5, 1992 were submitted for matching and matched. This is in accord with the Commission's Guideline For Presentation In Good Order and Regulations which state that a matchable contribution is to be made payable to the candidate or his or her authorized committees. Thus it was apparent that the Committee treated contributions with such payees as primary contributions. The Audit staff could see no reason to challenge that treatment. The amount that calculated as transferable to the Compliance Committee from contributions received and deposited by the Committee between July 16, and September 2, 1992 was \$99,806. That amount consists of \$34,585 in redesignated excessive contributions, \$56,792 in checks made payable to or otherwise designated to the general election campaign, and \$8,429 in cash contributions identified during the review of records made available with the Committee's response to the Interim Audit Report.

For the reasons presented above, the Audit staff concluded that the Committee has received matching funds in excess of the Candidate's entitlement. Presented below is a calculation of the amount as presented to the Commission for consideration.

t

Net Outstanding Campaign Obligations(Deficit) at 7/15/92	(\$7,878,678)
Private Contributions (7/16/92-9/2/92)	5,275,9209/
Matching Fund Payment (8/4/92)	1,431,599
Matching Fund Payment (9/2/92)	<u>1,786,327</u>
Amount Received in Excess of Entitlement	<u>\$ 615,168</u>

Therefore, it was calculated that as of September 2, 1992, the Candidate had received matching funds in excess of his entitlement. After that date the Candidate received one additional matching fund payment in the amount of \$2,825,181 bringing the amount received in excess of entitlement to \$3,440,349 (\$615,168 + \$2,825,181).

In the report considered by the Commission the Audit staff recommended that the Commission make an initial determination that the Committee was required to repay the United States Treasury \$3,440,349 pursuant to 11 CFR §9038.2(b)(1).

During the consideration of the Final Audit Report, the Commission determined that, consistent with a similar determination in the audit of the Bush-Quayle campaign, certain amounts discussed in Section III. B. 2., General Election Expenditures, were allocable in part to the primary campaign. As a result, the amount shown on the NOCO statement as receivable from the General Committee was reduced. This adjustment causes a \$424,602 increase in the Committee's NOCO and matching fund entitlement. Further, the Commission considered the question of the application of private contributions to the Committee's remaining net outstanding campaign obligations as of the date of each matching fund payment, versus treating most post date of ineligibility contributions as containing no election designation and therefore transferable to the Compliance Committee.

- 9/ The Committee deposited private contributions totaling \$5,411,443 during the period July 16, 1992 to September 2, 1992. The private contributions noted above are net of contribution refunds totaling \$35,717, and contributions from individuals, totaling \$99,806, deposited in the primary accounts that could be transferred to the Compliance Committee (\$5,411,443 - \$35,717 - \$99,806).

A motion was made to support the Staff analysis requiring the application of private contributions to remaining net outstanding campaign obligations before the payment of further matching funds. That motion failed by a vote of three to three with Commissioners Potter, Elliott and Aikens voting in favor and Commissioners McDonald, McGarry and Thomas voting against. A second motion to consider all post date of ineligibility contributions unmatchable unless specifically designated for the primary election also failed by the same vote.

As a result of these Commission votes, only contributions deposited through August 5, 1992, the last deposit date for which contributions were submitted for matching, will be applied to the remaining net outstanding campaign obligations prior to subsequent matching fund entitlement determinations. As compared to the calculation considered by the Commission on December 15, 1994, \$1,943,403 less in private contributions is applied to the Committee's remaining net outstanding campaign obligations. Also, post date of ineligibility contributions deposited on or before that date will be considered matchable without a specific election designation. This outcome produces the following entitlement determination.

Net Outstanding Campaign Obligations

(Deficit) at 7/15/92, as revised (\$8,303,280)

Less:

Private Contributions (7/16/92-8/5/92)	3,332,517 <u>10</u> /
Matching Fund Payment (8/4/92)	1,431,599
Matching Fund Payment (9/2/92)	1,786,327
Matching Fund Payment (10/2/92)	<u>2,825,181</u>
Amount Received in Excess of Entitlement	<u>\$1,072,344</u>

10/ The Committee deposited private contributions totaling \$3,381,102 during the period July 16, 1992 to August 5, 1992. The private contributions noted above are net of contribution refunds totaling \$22,280, and contributions from individuals, totaling \$26,305, deposited in the primary accounts that could be transferred to the Compliance Committee (\$3,381,102 - \$22,280 - \$26,305).

Therefore, as of October 2, 1992, the Candidate had received matching funds in excess of his entitlement in the amount of \$1,072,344.

Recommendation #4

Given the Commission's actions with respect to this finding, the Audit staff recommends that the Commission make an initial determination that the Candidate is required to repay the United States Treasury \$1,072,344 pursuant to 11 CFR § 9038.2(b)(1).

E. Stale Dated Committee Checks

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

The Audit staff performed bank reconciliations through June 30, 1993 and determined that the total amount of outstanding checks was \$111,673. Of this amount, \$79,119 were for checks dated between November, 1991 and March 19, 1993.

In the Committee's response to the exit conference, it provided documentation which demonstrated that checks totaling \$9,596 were not outstanding. However, the Committee did not provide evidence which demonstrates that no liability exists for those checks still considered outstanding nor were copies presented of any negotiated replacement checks.

Therefore, in the Interim Audit Report checks totaling \$69,523 (\$79,119 - \$9,596) were considered outstanding.

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

- a) The checks are not outstanding (i.e., copies of the front and back of the negotiated checks); or
- b) the outstanding checks are void (copies of the voided checks with evidence that no obligation exists, or copies of negotiated replacement checks); or
- c) the Committee attempted to locate the payees to encourage them to cash the outstanding checks or provide evidence documenting the Committee's efforts to resolve these items.

The Audit staff added that any information provided would be reviewed with respect to any amounts which remained outstanding, a recommendation would be made that the Commission make an initial determination that the amounts are payable to the United States Treasury.

In the response to the Interim Audit Report the Committee voided checks totaling \$43,389. Of that amount the Committee provided evidence that checks totaling \$28,618 were reissued and subsequently negotiated by the payee. Three checks that were reissued totaling \$1,043 were outstanding. The Committee did not provide a copy of the voided checks or any documentation which demonstrates that no liability exist for the remaining checks totaling \$13,728.

Finally, the Committee states in its response that letters had been sent for checks totaling \$26,133. Of that amount two checks totaling \$46 cleared the bank and are not considered stale dated. No other documentation or information was provided by the Committee.

In summary, the Audit staff has determined that the revised amount of stale dated outstanding checks is \$40,859 (\$69,523 - \$28,618 - \$46).

Recommendation #5

The Audit staff recommends that the Commission make an initial determination that \$40,859 is payable to the United States Treasury pursuant to 11 C.F.R. §9038.6.

F. Recap of Amounts Due to the U.S. Treasury

Shown below is a recap of amounts due the U.S. Treasury as discussed in this report.

Non-qualified Campaign Expenses	\$ 270,384
Matching Funds in Excess of Entitlement	1,072,344
Stale Dated Checks	<u>40,859</u>
TOTAL	<u>\$1,383,587</u>

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Adjusted Receipts
(Through September 30, 1994)

Att it 1
Page of 2

	Federal Matching Funds	Individual Contributions Minus Refunds	PAC's and Other Cmte Contrib Minus Refunds	Contributions from the Candidate	Candidate Loans Minus Repayments	Other Loans Minus Repayments	Other Receipts	Adjusted Total Receipts
Democrats								
Larry Agran	\$269,891	\$331,631	\$0	\$500	\$3,000	\$1,029	\$3,001	\$606,852
Jerry Brown	\$4,239,345	\$5,176,336	\$0	\$0	\$0	\$0	\$4,693	\$9,420,374
Bill Clinton	\$12,516,130	\$24,983,688	\$2,429	\$0	\$0	\$1	\$30,724	\$37,534,972
Tom Harkin	\$2,103,352	\$3,080,206	\$415,570	\$0	\$0	\$0	\$22,601	\$5,621,729
Bob Kerrey	\$2,198,284	\$3,913,332	\$349,757	\$0	\$0	(\$1,225)	\$5,931	\$6,466,079
Lyndon LaRouche	\$566,434	\$1,604,065	\$0	\$0	\$0	\$0	\$8,231	\$2,180,730
Paul Tsongas	\$3,039,388	\$5,072,889	\$3,568	\$0	\$45,000	(\$9,576)	\$0	\$8,151,069
Doug Wilder	\$289,026	\$506,519	\$750	\$0	\$0	\$0	\$1,039	\$799,334
Total Democrats	\$25,225,650	\$44,870,466	\$772,072	\$500	\$48,000	(\$9,770)	\$76,220	\$70,783,138
Republicans								
Patrick Buchanan	\$4,999,983	\$7,157,908	\$24,750	\$0	\$0	\$0	\$43,940	\$12,226,481
George Bush	\$10,658,513	\$27,088,825	\$44,250	\$0	\$0	\$0	\$222,417	\$38,014,005
David Duke*	\$0	\$220,715	\$0	\$0	\$1,000	\$0	\$0	\$271,815
Total Republicans	\$15,658,496	\$34,467,348	\$69,000	\$0	\$1,000	\$0	\$266,357	\$50,512,301
Other Party								
Andre Marrou*	\$0	\$562,770	\$181	\$116	\$15,000	\$0	\$0	\$578,067
Lenora Fulani*	\$1,935,524	\$2,201,490	\$0	\$325	(\$1,258)	\$1,200	\$0	\$4,137,281
John Hagelin	\$353,160	\$563,800	\$449	\$0	\$0	\$5,830	\$5,316	\$928,355
Total Other Party	\$2,288,684	\$3,328,060	\$630	\$441	\$13,742	\$6,830	\$5,316	\$5,643,703
Grand Total	\$43,172,830	\$82,465,874	\$841,702	\$941	\$62,742	(\$2,940)	\$347,893	\$128,939,142
Perot	\$0	\$3,905,594	\$0	\$65,544,735	\$2,056,371	\$0	\$5,807	\$71,512,507

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Adjusted Disbursements
(Through September 30, 1994)

	Operating Expenditures Minus Offsets	Exempt Fundraising Minus Offsets	Exempt Legal/Accounting Minus Offsets	Other Disburse	Adjusted Total Disbursements	Expenditures Subject to Limit	Latest Cash On Hand	Debts Owed By the Campaign
Democrats								
Larry Agran	\$609,111	\$0	\$0	\$95	\$609,206	\$616,223	\$47	\$3,170
Jerry Brown	\$6,315,622	\$2,276,938	\$311,799	\$108,584	\$9,014,934	\$6,668,482	\$135,482	\$0
Bill Clinton	\$25,321,257	\$5,524,000	\$3,969,675	\$0	\$34,834,932	\$24,528,607	\$284,544	\$20,932
Tom Harkin	\$4,027,765	\$1,144,000	\$198,633	\$35,316	\$5,405,720	\$3,142,973	\$164,246	\$143,389
Bob Kerrey	\$5,181,456	\$1,076,976	\$178,911	\$23,404	\$6,461,751	\$6,050,481	\$9,662	\$0
Lyndon LaRouche	\$1,550,893	\$0	\$132,929	\$290,604	\$1,974,426	\$1,520,588	\$215,155	\$0
Paul Tsongas	\$6,806,157	\$754,976	\$191,375	\$0	\$7,754,510	\$7,001,566	\$7,496	\$164,472
Doug Wilder	\$606,776	\$6,566	\$39	\$0	\$613,383	\$607,258	\$786	\$0
Total Democrats	\$50,621,039	\$10,765,466	\$5,004,352	\$458,003	\$66,868,862	\$50,356,176	\$617,418	\$331,963
Republicans								
Patrick Buchanan	\$11,828,268	\$0	\$0	\$0	\$11,828,268	\$11,828,272	\$487,655	\$0
George Bush	\$27,429,416	\$5,526,322	\$4,938,167	\$73,400	\$37,967,307	\$27,429,422	\$6,405	\$0
David Duke	\$353,838	\$0	\$0	\$1,000	\$354,838	\$0	\$0	\$29,250
Total Republicans	\$39,611,524	\$5,526,322	\$4,938,167	\$74,400	\$50,150,413	\$39,257,694	\$494,060	\$29,250
Other Party								
Andre Marrou*	\$415,576	\$160,219	\$0	\$0	\$575,795	\$0	\$0	\$0
Lenora Fulani*	\$4,204,009	\$0	\$0	\$3,235	\$4,207,244	\$4,207,526	\$0	\$0
John Hagelin	\$700,534	\$91,456	\$52	\$90,293	\$882,337	\$700,534	\$0	\$0
Total Other Party	\$5,320,119	\$251,677	\$52	\$93,528	\$5,665,376	\$4,908,060	\$0	\$0
Grand Total	\$95,552,662	\$16,563,467	\$9,942,571	\$625,931	\$122,664,651	\$94,521,932	\$1,311,476	\$361,213
Perot	\$69,152,998		\$0	\$5,388	\$69,158,386	\$0	\$0	\$1,938,407

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Summary of 11CFR 116.3 Problems

Name of Vendor	Dates Incurred	Amount Incurred	Date Billed	Date Paid	Amount Paid	Check Number	Type of Expenditure
Goldman Sachs and Company	10/91 11/91	\$3,839	02/19/92	04/16/92	\$3,839	8503	Office rental, photocopying, word processing, messenger, and telephone.
	12/27/91 to 03/07/92	\$4,401 \$6,820	03/23/92	04/22/92 04/15/92	\$11,221	8678	telephone, and taxi service
	10/24/91	\$1,235	11/24/92	12/10/92	\$1,235	14206	Clinton Breakfast
Total for Vendor:		\$16,295			\$16,295		
Menatt, Phelps, Phillips, and Kantor	09/91 to 06/92	\$120,192	07/28/92	08/07/92 09/12/92	\$120,192	11851 13421	Firm's expenses for office rental, copying, meals, etc.
	Total for Vendor:		\$120,192		\$120,192		
Monack Productions	02/11/92 to 05/04/92	\$14,019	05/18/92	08/21/92	\$14,019	12624	Promos produced for the campaign
Total for Vendor:		\$14,019			\$14,019		

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Summary of 11 CFR 116.3 Problems

Name of Vendor	Dates Incurred	Amount Incurred	Date Billed	Date Paid	Amount Paid	Check Number	Type of Expenditure
Walter Kyle	10/24/91 to 02/24/92	\$1,974	05/01/92	09/03/92	\$1,974	12939	Travel expenses
	10/09/91 to 05/92	\$13,500	7	09/11/92	\$13,500	13377	Legal services
Total for Vendor:		\$15,474			\$15,474		
Newmark and Co. Real Estate Inc.	03/01/92 to 08/15/92	\$20,730	08/15/92	10/21/92	\$20,730	13939	Rent for two Suites in New York City
Total for Vendor:		\$20,730			\$20,730		
American Federation of Teachers	04/05/92	\$12,126	02/02/93	02/18/93	\$12,126	14687	Advertisement in N.Y. Times Authorized by CFP
Total for Vendor:		\$12,126			\$12,126		

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Summary of 11CFR 116.3 Problems

Name of Vendor	Dates Incurred	Amount Incurred	Date Billed	Date Paid	Amount Paid	Check Number	Type of Expenditure
The Sutherland Co.	10/25/91 to 11/25/91	\$7,564	01/20/92	05/01/92	\$7,564	9023	Travel, telephone, meals, printing, copying and advertising
	10/24/91 to 01/06/92	\$6,406	03/06/92	05/20/92	\$6,406	9536	Travel, telephone, postage, meals, printing and copying services, and advertising
	10/91 to 06/16/92	\$7,664	04/23/92	06/25/92	\$7,664	10476	Travel, telephone, postage, meals, printing, copying
		\$5,071	04/23/92	07/02/92	\$5,071	10752	
		\$2,593	06/15/92	07/02/92	\$2,593	10771	Travel, 6/5 Houston Convention expenses, meals, telephone and postage
Total for Vendor:		\$29,298			\$29,298		
O'Keefe Ashenden Lyons & Ward	10/16/91 to 03/10/92	\$8,658	03/11/92	09/08/92	\$8,658	13156	Travel for Kevin O'Keefe, Peter Halpin; Airfare, lodging, Rental car, telephone, office supplies, postage, refreshments
			03/20/92				
Total for Vendor:		\$8,658			\$8,658		
TAC All	01/27/92	\$9,370	02/24/92	08/10/92	\$9,370	12014	Air travel to South Dakota and Colorado
Total for Vendor:		\$9,370			\$9,370		
Total for all Vendors:					\$246,162		

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Duplicate Payments

PAYEE	DUPLICATE PAYMENTS	REFUNDED AMOUNTS	RECEIVABLE FROM VENDOR
1 A T & T	\$19,021	\$19,021	
2 Airborne Express	399	399	
3 Alamo	43,420	43,420 *	
4 Alltel	867	867	
5 A. B. Data	2,614	2,614	
6 Bachar, Steven	1,200		\$1,200
7 Brantley Sound Associates	250	250	
8 Budget Rent-A-Car	1,385	1,385	
9 Bylites	12,569	1,424	11,145
10 C & P Telephone	3,606	3,606 *	
11 Carville and Begala	5,063	5,063	
12 ExecJet/TRN/AmAir Svcs	4,778	4,778 *	
13 Gibbs, Geoffrey	508		508
14 Halloran, Charles	500		500
15 Ickes, Harold	2,216		2,216
16 Leslie, Mary	17,921		17,921
17 Madison Hotel	7,502	7,502	
18 Merchant's Rent-A-Car	2,018	2,018	
Motorola	4,919	4,919	
Palmer House	6,832	6,832	
21 Radisson Hotel Atlanta	2,452	2,452	
22 Share Systems	1,394	1,394	
23 Sheraton Cleveland	6,766	6,766	
24 Southwestern Bell	17,054		17,054
25 Sprint (14,550.09)	19,198	19,198 *	
26 Strategic Political Response	49,856	49,856	
27 Thomases, Susan	444	444	
28 Tradec	7,808		7,808
29 Verner Lipfert	10,048	10,048	
30 West Coast Productions	577	577	
31 Westin Peachtree Plaza	250	250	
32 Weststates Airlines/Richmor Aviation	280	280	
33 Willis, Carol	2,062		2,062
34 W.P. Malone	4,850		4,850
35 Zale S. Koff Graphics	257	257	
TOTAL:	260,884		65,264

* THESE PAYMENTS WERE REFUNDED TO THE GENERAL COMMITTEE OR APPLIED TO GENERAL ELECTION EXPENSES

COMPUTER SYSTEMS UTILIZATION
CLINTON FOR PRESIDENT COMMITTEE, CLINTON/GORE 92

August 1991-October 1991

Equipment: 386 PC running 8 devices

Vendor: Malone & Company

Functions Performed: Ran office package including word processing and scheduling; ran political data base. Maintained contributor information. Supported staff of 18.

November 1991-May 1992

Equipment: Unix CCI 6/32 running up to 128 devices, 80 simultaneous users.

Vendor: Malone & Company

Functions Performed: Continued to run office package including word processing and scheduling as well as running political data base. Supporting 40 work stations on the network. Supported staff of 49 at the end of November which had grown to 173 by the end of May. By the end of May, forty core staff and approximately 100 auxiliary staff people were working on delegate relations. The computer system provided terminals for 20% of the core staff. Mailings and calls to each delegate after each state primary were necessary and computerized tracking was maintained.

General correspondence had grown to 1600 letters per week by the end of May and doubled again in June. Governor Clinton felt it was critical that every letter be answered, and in a timely manner. This continual growing load of correspondence greatly taxed the processing power of the CCI 6/32 and its software.

The overall capacity of the CCI 6/32 system was physically limited to 128 devices (terminals, printers, modems, etc.). Of that number *only 80 devices* could be operated simultaneously without experiencing computer problems such as terminal lockouts, system crashes, processing delays of up to 30 minutes or more, etc. Backups required manual intervention and took up to a full week to complete. They were obsolete before they were completed. A summary of the devices supported by the CCI 6/32 at various times during this time frame is as follows:

Month	Terminals	Modems	Printers	Total Devices
December, 1991	36	3	10	49
January, 1992	52	3	12	67
February and March, 1992	64	5	14	83
April, 1992	88	7	18	113
May, 1992	91	9	18	118

Service was required on a recurring basis due to system failures. (Copies of sample service requirements are attached.)

The ever-growing young staff was familiar with the DOS working environment and needed to be able to use Novell. Extensive upgrades to both the hardware and software were going to be necessary to accommodate the user needs. Quotes were taken regarding the necessary upgrades to the existing system where it was determined that a new system would actually cost less. (Upgrades were projected to cost in excess of \$400,000 and the result would have been less desirable than an entirely new system.) Several consultants were involved in the decision process and all agreed that the new system was the only sensible alternative.

May 30, 1992-present

Equipment: DRS 6000, 386 pc's and networks. DRS 6000 was originally configured to accommodate 150 simultaneous users. Additional computer components were added during the General Election to ultimately take the capacity to 300 users.

Vendors: ICL, Inc.—hardware and software, Malone & Company—hardware and consulting, Future Now and Complete Computing—personal computers and software.

Functions Performed: Continued to run office package including word processing and scheduling as well as running political data base for balance of Primary and during General Election.

System expansion in May, 1992 accommodated additional user needs of tracking delegates for the Democratic Convention, allowing the delegate operation to interface using a separate Novell network—portable for use in New York during the Convention.

This equipment (temporary system) was installed in the Gazette Building. (The Committee had outgrown its old space and made the move to the new space effective June 1, 1992.) Installing the new equipment in the old building and moving it to the Gazette Building in just a few days would not have been cost effective or sensible considering the tempo of campaign operations. A temporary system was necessary due to the Committee's urgent computer needs as indicated by the chart above. The permanent system was installed less than one month later.

The new system required a new networking system and extensive rewiring. (I-K Electric provided the wiring.)

The campaign political office package and correspondence records were immediately transferred to the new temporary system. They were then transferred to the permanent system upon its final installation. Every effort was made to successfully make the transfer with the minimum of disruption to daily staff activities.

Primary records were maintained and functions performed through the Convention after which the General Election began. Primary political records and other information were used in the General Election. This equipment was sold to the Clinton/Gore '92 Committee effective after the Convention.

Clinton for President records previously maintained by Public Office Corporation as well as detailed transaction files from World Wide travel were transferred to the ICL equipment as part of the winddown operation. Amendments required by FEC auditors related to press and Secret Service reimbursements as well as continuing data to respond to audit questions and make quarterly FEC filings have been maintained.

Accounting records to include vendor information and cash disbursements have been maintained by the Committee on in-house 386 computers.

Data necessary for preparation of amendments necessary to debt schedules originally prepared by POC covering inception through March, 1993 has been reconstructed by the Committee. Amended reports were prepared and filed.

Many of the PCs and printers were sold to Transition, staff and others at the end of the General Election.

December, 1991-Present

Equipment: N/A due to service bureau nature of services

Vendor: Public Office Corporation (POC)

Functions Performed: Public Office Corporation provided data processing services for Clinton for President in the area of producing required contribution records and related matching funds submissions. They also maintained information on cash disbursements and prepared the FEC monthly compliance reports for the periods December, 1991 through March, 1993. During late 1992 and early 1993, the Committee began the difficult task of moving the POC maintained data to Committee computers in Arkansas. POC has continued to provide minimal services as requested since that time. At present POC still maintains certain duplicate records and answers questions relative to the ongoing audit. It is anticipated that upon completion of the current phase of the FEC audit all records remaining in custody of POC will be moved to Arkansas and the relationship terminated other than on an advisory basis as needed during the duration of the audit period.

POC provided no services to Clinton/Gore '92 or the related Compliance Committee.

July 16, 1992-Present

Clinton/Gore '92 Committee: All accounting related computer services were performed in-house on networked PCs. All FEC compliance reports were prepared internally by the Committee from information generated on the accounting department computers.

Vendors: Future Now, Inc., Complete Computing, Great Plains, Kerry for President Committee

Compliance Committee: All accounting related computer services were performed in-house on separate networked PCs. Compliance Committee computers were separately networked and maintained separate from the Clinton/Gore '92 Committee accounting computers. All FEC compliance reports were prepared internally by the Committee from information generated on the Compliance accounting department computers and manual records.

Vendors: Complete Computing, Aristotle Software

(last updated July 3, 1994)

Job: 3224-24P
Descr: Pin Fulfillment #2
PKB 1
Qty 62,005
Marsd: 8/22/92

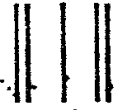
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Stamps
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Bill Clinton
CLINTON/GORE COMPLIANCE FUND
Dept. 3224
P.O. Box 8802
Little Rock, AR 72231-8802



30 / 0194



Number 99430

Dear Loyal Friend,

The attached official Pre-Convention Clinton Team lapel pin has been sent to you in recognition of your steadfast commitment to our cause.



It is a collectible limited edition and is only available to those dedicated individuals who contributed to my pre-convention campaign.

I will never forget your generosity and special friendship.

Rui Clinton



Advertisement and Post fee for the Clinton for President Committee

9597019430



RAPID RESPONSE ACTION MEMO

To: Bill Clinton
Clinton/Gore Compliance-Fund
112 West 3rd Street
P.O. Box 8802
Little Rock, AR 72231

From: Mr. Sample A. Sample
123 Any Street
Anytown, US 00000-0000

Yes, Bill, we must be fully prepared!

I agree George Bush and Dan Quayle have nothing to run on and, because of this, we can expect more "Willie Horton" style attacks this year—and much worse.

I have rushed my personal check made out to the special CLINTON/GORE COMPLIANCE FUND in the amount of:

\$25 \$50 \$100 \$250 Other \$ _____

(Please make personal check out to CLINTON/GORE COMPLIANCE FUND and return with this Action Memo in the enclosed envelope. Thanks.)

12345678--318600010000X

Please See Other Side

059 / 01944

The Federal Election Commission requires the following information:

Name: _____

Home Address: _____

Occupation: _____ Employer: _____

Please make your personal check out to the Clinton/Gore Compliance Fund. Corporate contributions are prohibited by law. Political contributions are not tax deductible.

Authorized and paid for by the Clinton/Gore Compliance Fund

BILL CLINTON

August 21, 1992
7:15 AM

Mr. Sample A. Sample
1234 Any Street
Anytown, US 00000-0000

Dear Mr. Sample,

I'm pleased to present you with your limited edition, individually numbered Pre-Convention Team lapel pin.

And though it can't possibly measure up to the debt of thanks I owe you, your pin represents two very important things.

First, it recognizes you for standing with me early and investing your faith in our common cause and values. Believe me when I tell you, the power of your conviction strengthened and helped sustain my own faith and beliefs in the face of sometimes great adversity these past months.

And second, it's given in recognition of the generous financial support you provided my pre-convention campaign. Contributions like yours infused our effort with the critical resources we needed to campaign hard through June and early July. You made it possible for me to communicate our message of change right up to the moment Al Gore and I joined hands in New York City and officially launched our general election campaign. And what a launch it was!

There's no doubt in my mind, we would not have achieved the successes we have, without the commitment and early support of Pre-Convention Team members like you.

We would not have retired our pre-convention campaign debt. We would not be this far ahead in the public opinion polls. And Ross Perot's backers would not be coming our way in droves the way they have in recent days.

But we can't rest easy on the gains we've made. You know how volatile elections are these days and you know exactly what kind of base, gutter tactics we can expect from our opposition -- especially now, when they're turning scared.

You played a pivotal role in our pre-convention campaign. Now, I'm asking you to make an even bigger contribution as we move forward.

This year we simply can't afford to allow George Bush and his cynical crew of negative campaign experts to get in our way. Too much is at stake. Too much needs to be done to repair the damage the Bush Presidency has inflicted on this country.

And all indications suggest we can expect the worst from them and then some. George Bush has no record to run on and no plan for America's future. The low road is the only road he can take.

(Next page please)

20



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Mr. Sample A. Sample
August 21, 1992

Page two

He can't defend rolling up the biggest budget deficits and national debt in American history...or breaking his promise on taxes...or immersing himself in world affairs while Americans lost jobs and their hope for the future here at home.

Our recent Democratic Presidential Nominees learned the lessons of "Willie Horton" and the Republican attack apparatus the hard way. Well, it won't happen this time around -- not if you'll help me now.

That's why I'm asking you and all your fellow Pre-Convention Team members to assist the campaign in developing a high-tech rapid response and counter tactical operations capability. And one of the keys to this critical campaign initiative is fully funding the CLINTON/GORE COMPLIANCE FUND. That's where we need your help the most.


Your donation will help pay for skilled election lawyers to defend against the nuisance tactics, bogus legal challenges, and baseless allegations we've come to expect from the other side. And they'll need the computer power necessary to put huge volumes of key information at their fingertips to fight back with the facts, fast, before any damage is done.

But we must act quickly. We must be ready soon because we know Bush, Quayle, and the rest of them will be coming out of their convention on the attack.

Just remember, George Bush has stated he'll "do whatever it takes to win." And, I think, this is one time when we can take him at his word.

Please act today and give as generously as you can. We have no time to lose if we're truly serious about winning on the third of November.

Warmest Regards,



Bill Clinton

P.S. In addition to its keepsake value, your Pre-Convention Team lapel pin and individual pin number will serve as a special credential and security pass to a -- members only -- inaugural victory celebration next January in Washington.

But before we celebrate, we must win! And so, Mr. Sample, help us shut down the Republican "attack apparatus" by supporting our rapid response capability. Please, fill out the enclosed Action Memo and mail it back with your generous contribution to the CLINTON/GORE COMPLIANCE FUND. Thanks!

C 14/2

**Clinton
TEAM**

112 WEST 3RD STREET
LITTLE ROCK, ARKANSAS 72201

CLINTON PRE-CONVENTION TEAM

**ENCLOSED: Official 1992
Nomination Acceptance Photograph**

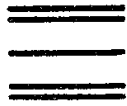
Job: 3186-2CP
Descr: Project Ltr. S. Photo
Pkg: 1. Respondents to 3185
Qty: 124
Mailed: 8/28/92

**ATTENTION POSTMASTER:
PLEASE DO NOT BEND.**



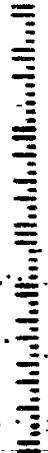
950/0196135

Please
Place
Stamp
Here



First Class

Bill Clinton
CLINTON/GORE COMPLIANCE FUND
Dept. 3186
P.O. Box 8808
Little Rock, AR 72261-8808





RAPID RESPONSE ACTION MEMO

To: Bill Clinton
Clinton/Gore Compliance Fund
112 West 3rd Street
P.O. Box 8802
Little Rock, AR 72231

From: Mr. Sample A. Sample
123 Any Street
Anytown, US 00000-0000

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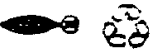
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\$25 \$50 \$100 \$250 Other \$ _____

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12345678--316600010000X

Please See Other Side



Mr. Sample A. Sample
August 28, 1992

Page two

He can't defend rolling up the biggest budget deficits and national debt in American history...or breaking his promise on taxes...or immersing himself in world affairs while Americans lost jobs and their hope for the future here at home.

Our recent Democratic Presidential Nominees learned the lessons of "Willie Horton" and the Republican attack apparatus the hard way. Well, it won't happen this time around not if you'll help me now.

That's why I'm asking you and all your fellow Pre-Convention Team members to assist our campaign in developing a high-tech, rapid response and counter-tactical operations capability. And one of the keys to this critical campaign initiative is fully funding the CLINTON/GORE COMPLIANCE FUND. That's where we need your help the most.

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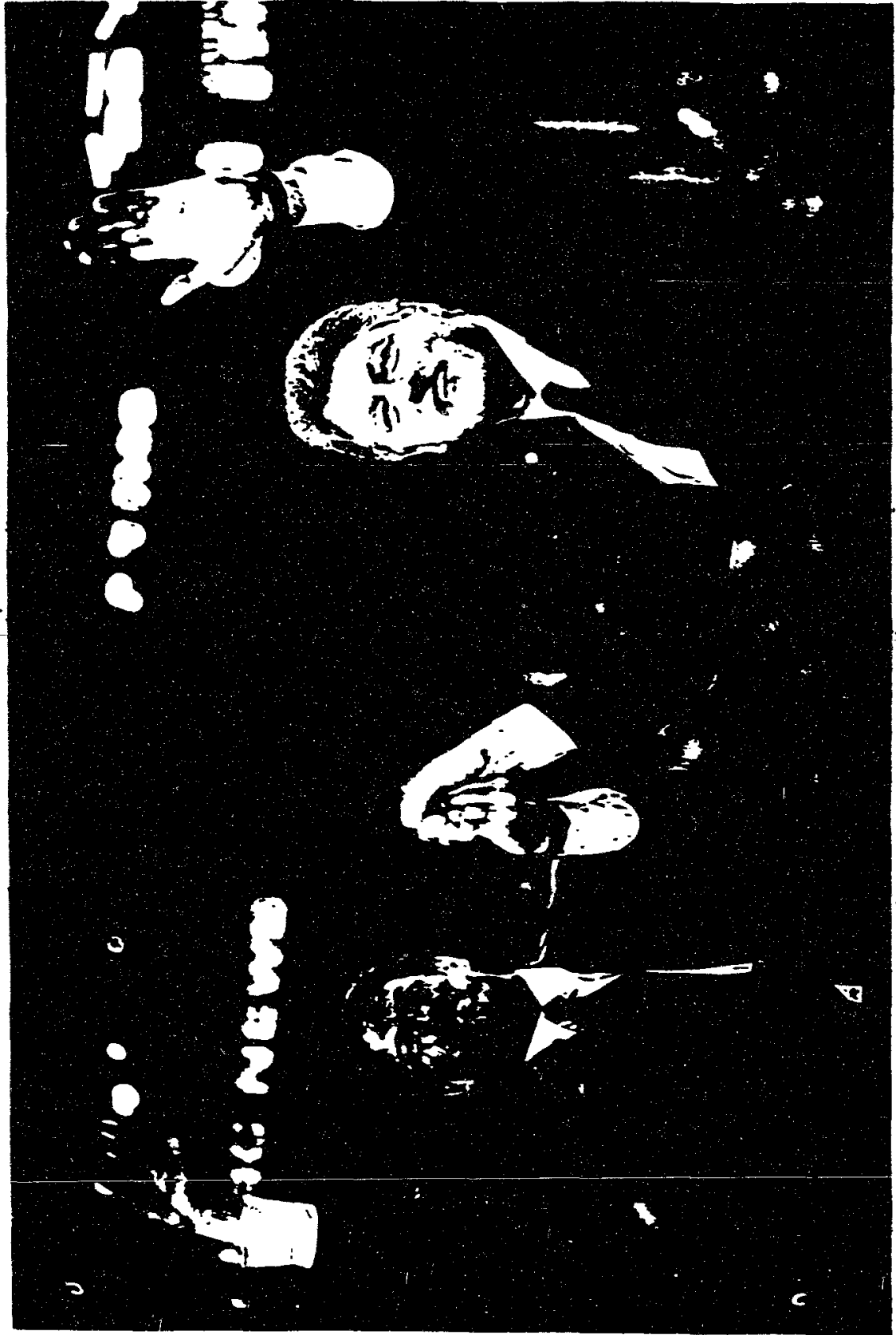


Bill Clinton

P.S. If recent history has taught us anything, it's that we must be prepared for our opposition's unscrupulous tactics.

And so, Mr. Sample, help us shut down the Republican "attack apparatus" by supporting our rapid response capability. Please fill out the enclosed Action Memo and mail it back with your generous contribution to the CLINTON/GORE COMPLIANCE FUND. Thanks!

950701948217



Madison Square Garden - July 16, 1992

*Sample A. Sample,
 Standing up there, Al and I were thinking of you and all your fellow Team members.
 We couldn't have done it without you.*

Warm regards,

Clinton for President
Final Audit Report

Prefunding

VENDOR	COST	AMOUNT PAID BY GENERAL COMMITTEE	%	AMOUNT DUE FROM THE GENERAL COMMITTEE	AMOUNT DUE FROM THE COMPLIANCE FUND
EQUIPMENT AND FACILITIES					
Future Now, Inc.	113,676	65,478	60%	2,728	1
Future Now, Inc. shipped 7/15	11,676	0	100%	11,676	
Future Now, Inc. shipped 7/15	5,066	2,894	100%	2,172	
ICL, Inc.	272,460	155,047	60%	8,429	1
I-K Electric	79,808	0	50%	39,904	
Little Rock Newspapers		0		12,500	2
W.P. Malone	104,175	62,505	60%	0	
	33,260	0	50%	16,630	
POLLING AND DIRECT MAIL					
Greenberg-Lake	99,306	0	50%	49,653	
G-L Convention Survey #4	9,315	0	100%	9,315	
Opinion Research	83,450	0	50%	41,725	
O-R Convention Pole #3 7/15	5,930	0	100%	5,930	
O-R Convention Pole #4 7/16	4,594	0	100%	4,594	
Strategic Political Response					200,484
GENERAL ELECTION MEDIA EXPENSES					
Focus Groups	6,109	0	100%	6,109	
Man from Hope	161,273	0	50%	80,637	
Test Resp. Spot	4,106	0	100%	4,106	
Admin 7/15 through 8/16	18,990	0	100%	18,990	

Prefunding

VENDOR	COST	AMOUNT PAID BY GENERAL COMMITTEE		AMOUNT DUE FROM THE GENERAL COMMITTEE	AMOUNT DUE FROM THE COMPLIANCE FUND
MISCELLANEOUS GENERAL EXPENSES					
Air Advantage 7/10/92 Reconfig.	17,000	2,000	100%	15,000	
Horton Brothers	76,320	15,900	100%	60,420	
Press Association, Inc.		7,687	100%	2,316	
OTHER					
Blue Cross/Blue Shield				3,248 3	
La Harpe's Office				2,398 3	
SUB-TOTAL:				198,480	200,484
LESS:					
Strategic Political Response	Master File 4				69,660
TOTAL:				198,480	130,824

- 1 Unpaid sales tax.
- 2 Amount represents one half July rent.
- 3 Acknowledged by Committee.
- 4 This amount is not considered due from the Compliance fund but is non-qualified.

Page 138, Approved 12/27/94

Non-Qualified Campaign Expense

<u>NAME</u>	<u>AMOUNT</u>
Graves, Kathlyn; Escrow Agent	\$37,500
Ickes, Harold	5,500
Malone, W.P.	608,857
Sheraton Manhattan	6,489
Willis, Carol	11,209
Worthen National Bank	166,658
New England Telephone	7,000
Parking Tickets	2,129
Stolen Fax Machine	1,207
Lost Radios	13,424

PAGE TOTAL:

\$859,973

Non-Qualified Campaign Expense

Bonuses Paid Post DOI

<u>NAME</u>	<u>AMOUNT</u>
David Wilhelm	\$6,000
Rahm Emanuel	52,000
Keeley Ardman	7,500
George Hozendorf	5,000
Avis Lavelle	8,000
Lisa Shocet	1,500
George Stephanopoulos	7,000
Shannon Tanner	2,500
Christine Varney	12,500
Betsy Wright	2,250
Paul Carey	3,000
Jim Palmer	2,500
Rick Lerner	3,000
John Frontero	2,500
Nancy Jacobson	3,000
Patrick Dorinson	2,500
Matt Gorman	3,000
Mary Leslie	2,500
Terri Walters	2,500
Simon Kahn	2,500

PAGE TOTAL: 131,250

TOTAL: \$991,223

Worthen National Bank Listing of Traveler's Cheques

Check #	Date	Amount
6369	02/13/92	4,040
6511	02/17/92	10,100
7036	03/03/92	8,080
7354	03/09/92	3,000
7406	03/11/92	5,050
7628	03/19/92	3,030
7629	03/19/92	8,080
7820	03/26/92	5,050
8040	03/31/92	20,695
8482	04/16/92	5,000
8726	04/23/92	5,050
8810	04/27/92	10,100
9025	05/01/92	10,100
9318	05/13/92	10,100
9429	05/19/92	10,100
9651	05/22/92	10,100
9749	05/28/92	10,100
10185	06/15/92	10,100
10367	06/22/92	5,050
10530	06/26/92	5,050
10799	07/06/92	5,050
10949	07/09/92	16,332
	Total:	179,357

950 / 0194

059/0194A27

Received in Mail -
11/4/94



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

November 3, 1994

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Peter G. Blumberg
Attorney

Abel M6ntez
Attorney

Andre Pineda
Attorney

SUBJECT: Proposed Final Audit Report on Clinton for President
Committee (LRA #449/AR #94-17)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Clinton for President Committee ("the Primary Committee") submitted to this Office on August 26, 1994. The following memorandum summarizes our comments on the proposed Report. We concur with findings in the proposed Final Audit Report which are not discussed separately in the following

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memorandum.1/ If you have any questions concerning our comments, please contact Peter G. Blumberg, the lead attorney assigned to this audit.

II. ITEMIZATION OF REFUNDS AND REBATES (II.D.)

The proposed report raises the issue of whether the Primary Committee is required to itemize refunds and rebates made by various entities to its travel agent, Worldwide Travel, Inc. ("Worldwide"). The Primary Committee argues that it was not required to do so, and cites Advisory Opinion ("AO") 1983-25 as support for its position. The proposed report, however, concludes that AO 1983-25 is not relevant, and further states that AO 1983-25 cannot be extended to non-media vendors.

In AO 1983-25, the Commission found that a committee may report its payments to media consultants as expenditures, and that payments by media consultants to other persons, which are then used to purchase services or products used in connection with the consultants' contract, need not be separately reported. The Commission noted the following factors as significant in making this determination: (1) the consultants had a legal existence that was separate and distinct from the committee's operations; (2) the consultants' principals did not hold any committee staff positions; (3) the committee was conducting arm-length negotiations with the consultants that resulted in a formal contract; (4) the consultants were not required to devote their "full efforts" to the contract with the Committee, and the consultants expected to have other media contracts with other committees and business entities during the campaign period; and (5) the committee had no interest in the consultants' other contracts.

We disagree with the proposed report's conclusion that AO 1983-25 is not relevant to itemizations made by Worldwide, and cannot be extended to non-media vendors. To the contrary, we believe that AO 1983-25 is relevant to determine whether the Primary Committee is required to report refunds and rebates for travel expenditures. AO 1983-25 contains no language limiting its scope solely to media vendors, and AO 1983-25 factors have been applied by the Commission to determine the legitimacy of a non-media business vendor. See AO 1994-25. As such, we believe that AO 1983-25 allows the Primary Committee, subject to the above-stated factors, to contract with non-media vendors to perform campaign activities without requiring the Primary Committee to itemize and report vendor payments from third-party sources.

1/ We recommend that the Commission consider this document in open session since the discussion is not exempt from disclosure under the Commission's Sunshine Regulations. 11 C.F.R. § 2.4. Parenthetical references are to the placement of the findings in the proposed report.

Notwithstanding the applicability of AO 1983-25 to the Primary Committee, we note that the Primary Committee response states that it satisfied the reporting obligations of AO 1983-25 without including supporting documentation. We believe, however, that if such documentation is provided, the Primary Committee may be able to satisfy the above-stated factors.

III. EXTENSIONS OF CREDIT BY COMMERCIAL VENDORS (II.F.)^{2/}

The proposed report addresses the Primary Committee's payments totaling \$296,355 to 14 individuals, organizations, and corporations. Some of these payments appear to be contributions under 11 C.F.R. § 100.7(a)(1).^{3/} The issue is whether the Primary Committee has demonstrated that the transactions followed the dictates of 11 C.F.R. §§ 116.3 or 114.9, and, therefore, are exempt from the "contribution" definition. See 11 C.F.R. § 100.7(a)(1). Due to the type of transaction, some of the expenses fall within the ambit of 11 C.F.R. § 116.3, while others fall under 11 C.F.R. § 114.9. Pursuant to 11 C.F.R. § 116.3, an incorporated and unincorporated commercial vendor may extend credit to a political committee and the credit will not be considered a contribution if it is provided in the ordinary course of business. However, the focus of 11 C.F.R. § 114.9 is on the use of corporate and labor facilities in connection with a Federal election and whether a reimbursement is made within a commercially reasonable time for the normal and usual rental charge.

We concur with the report's analysis of the transaction involving Tradec because the services provided appear to qualify as exempt volunteer services pursuant to 11 C.F.R. § 100.7(b)(3). We conclude that the transaction involving Occidental Petroleum should be analyzed under 114.9 because a corporate executive used the corporation's facilities for individual volunteer activities in connection with a Federal election. We believe that the transactions involving Mozark Productions, Walter Kyle, Newmark and Company Real Estate, Inc.,

^{2/} We suggest that you change this heading in your report to "Contributions, Extensions of Credit by Commercial Vendors, and Use of Corporate Facilities," because this section involves all three areas.

^{3/} We recommend that you revise your report in the Manatt Phelps discussion on page 18 by removing any references about the \$90 bill because it is of no legal significance.

The Sutherland Company, Sun Building Associates, 4/ and TAC Air should be analyzed under section 116.3 because these entities are "commercial vendors" that provided goods and services. See 11 C.F.R. §§ 116.3(a)-(b) and 116.1(c).5/

However, we believe that the Primary Committee has failed to prove that it complied with section 116.3(c) or 114.9. The affidavits provided by the individuals, organizations and corporations insufficiently address whether the dictates of the Commission's regulations were followed. In many cases, the affidavits explain in general terms that the vendors followed their established procedures and past practice in approving the extension of credit. Nevertheless, the vendors have not provided the underlying documents to support their claims. See, e.g., Primary Committee Response, Exhibit 7. In other affidavits, the vendors state that their terms with the Primary Committee were substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation, but failed to give specific examples of those debtors, as recommended in the interim report. See, e.g., Primary Committee Response, Exhibit 15.6/ In other affidavits,

4/ We recommend that you revise your report in the Sun Building Associates discussion on page 28 by changing the words "requirement(s)" to "consideration(s)" in accordance with the language of 11 C.F.R. § 116.3(c).

5/ We conclude that the American Federation of Teachers, Democratic Party of Arkansas, Goldman Sachs and Company, Hellring Lindeman Goldstein and Siegal, Manatt, Phelps, Phillips & Kantor, and O'Keefe Ashenden Lyons & Ward cannot be analyzed under section 116.3. These entities do not appear to be "commercial vendors" because the services that they provided are not the sort of services that they provide in their "usual and normal business," 11 C.F.R. § 116.1(c). These transactions cannot be analyzed under section 114.9, because these entities are not "corporations" or "labor organizations." See 11 C.F.R. § 114.9. The American Federation of Teacher's transaction cannot be analyzed under section 114.9, because the use of the labor organization's facility is not involved.

6/ In contrast, the proposed Final Audit Report for Clinton/Gore '92 General Election Committee (the "General Committee") identifies an apparent prohibited contribution from Chambers Associates. In response to the Interim Audit Report, the General Committee submitted a detailed affidavit from Chambers Associates that names other clients with the same billing arrangement as the General Committee. In addition, the vendor provided copies of its balance sheets and accounts receivable schedules to document the information contained in the affidavit. The proposed Final Audit Report states that the General Committee has demonstrated that this

the vendors state that they followed usual and normal practice in the vendors' trade or industry by billing at the end of the project. However, the vendors fail to provide the underlying documents to support these claims or the names of other customers. See, e.g., Primary Committee Response, Exhibit 16. However, we note that some of the credit extensions involve relatively small amounts of money and the period of credit extension is not particularly long, so we believe that the Audit Division could recommend no further action in those situations.

IV. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (III.B.3.)

The proposed report recommends that the Commission make an initial determination that the Primary Committee repay \$106,453 to the United States Treasury for nonqualified campaign expenses. These expenses include disbursements for legal and professional work, employee bonuses, duplicate payments to various vendors, lost equipment and traveler's checks.^{7/}

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We concur with the Audit Division's conclusion that \$37,500 paid to Kathlyn Graves Escrow Agent was not a qualified campaign expense. The Primary Committee submitted a canceled check with the notation "settlement." Given that the word "settlement" did not disclose the "purpose" of the disbursement as defined by 11 C.F.R. § 9033.11(b)(3), the Audit Division recommended that the Primary Committee provide more documentation. The Primary Committee then provided a letter from the Committee's general counsel, who stated that "the payment was made pursuant to a consulting arrangement with a former employee of the Committee, and the related agreement is subject to a confidentiality provision." The Primary Committee requests that the letter not be subject to public disclosure under the Freedom of Information Act. If the letter is subject to disclosure, the Primary Committee requests that the letter be returned.

(Footnote 6 continued from previous page)
billing did not constitute an extension of credit.

^{7/} We also generally concur with the report's conclusions that uncollected duplicate payments are not qualified campaign expenses. However, we recommend that you place all the uncollectible duplicate payments on the Primary Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") as an accounts receivable. This will ensure that any efforts made by the Committee to collect the duplicate portion of the payment will be consistent with the efforts deemed sufficient to conclude that the duplicate payment expenses are qualified campaign expenses. Compare 11 C.F.R. § 9034.5(d) (documentation requirements relating to collectibility of accounts receivable) with 11 C.F.R. § 9033.11 (documentation requirements relating to proving disbursements are qualified campaign expenses).

In the cover memorandum, you ask whether the Commission will be able to honor the attorney's request to keep his letter from public disclosure. You also ask whether the letter may be referred to in the Final Audit Report. This Office believes that because of the Freedom of Information Act's strong presumption in favor of disclosure,^{8/} the Commission would be required to disclose the letter if it were in our possession as part of the Final Audit Report. Although parties to a "settlement" can agree to keep matters "confidential," information used as a basis for audit findings may be subject to disclosure. See 11 C.F.R. § 9038.1(e).^{9/} We believe that the Primary Committee's initial decision to enter into such a settlement agreement placed a legal impediment on its burden of proving that the disbursement was a qualified campaign expense. See 11 C.F.R. §§ 9033.1(b)(1)-(2). Thus, the Primary Committee may not be able to demonstrate that a "settlement" is a "purchase" of "goods or services." 11 C.F.R. § 9033.11(b)(3)(ii). The letter is and the underlying documentation are essential to determine whether the expenditure was a qualified campaign expense.^{10/} If the Primary Committee persists in its claim that this transaction constitutes a qualified campaign expense, the audit and repayment process require that the expense be verified and disclosed as such.^{11/} 11 C.F.R. § 9038.1(e)(1). If the letter cannot be used in the audit process, the Primary Committee will be required to make a pro rata repayment for the expenditure.^{11/} In accordance with

8/ See generally United States Dept. of State v. Ray, 502 U.S. 164, (1991)(Court states: "[The] burden remains with the agency when it seeks to justify the redaction of identifying information in a particular document as well as when it seeks to withhold an entire document.").

9/ See generally Bacon v. Secretary of Air Force, 785 F. Supp. 1255 (S.D. Ohio 1991) (settlement terms for a retaliatory discharge suit can be kept confidential if the parties agree to do so), aff'd 7 F.3d 232 (6th Cir. 1993).

10/ The FOIA section 552(b)(7)(C) exemption cited by the attorney is clearly inapplicable because his letter was generated in an administrative, rather than in a law enforcement, context. See 5 U.S.C. § 552(b)(7)(C). Because we do not possess the actual settlement agreement, we are unable to determine for ourselves whether the "privacy" exemptions of 5 U.S.C. § 552(b)(6), also cited by the attorney, would be applicable to the agreement and to the attorney's letter. See generally United States Dept. of State v. Washington Post Co., 456 U.S. 595 (1982).

11/ Although the Primary Committee may choose to make the pro rata repayment for the expenditure, this does not abrogate its obligation to "furnish to the Commission all documentation relating to disbursements and receipts . . ." 11 C.F.R. § 9033.1.

lost radios valued at \$13,424.14/ The Primary Committee contends that it was not commercially feasible to have purchased insurance to cover such losses. Moreover, the Primary Committee contends that due to the prohibitive cost of such commercial insurance, its only alternative was self-insurance.

A committee's decision to purchase or not purchase commercial insurance is a relevant factor in determining whether a committee made a "good faith" effort to safeguard its equipment. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention -- Legal Comments on Proposed Interim Audit Report (September 17, 1993), at 4-7.15/ Although a committee's purchase of commercial insurance provides some evidence that it has taken steps to safeguard its equipment, the documentation provided by the Primary Committee to demonstrate that commercial insurance was cost prohibitive refers not to the Primary Committee, but to the General Committee. See Primary Committee Response, Exhibit 33 (Marsh & McLennan Memorandums dated June 22, 1994). The Primary Committee asserts that it had verbal policies which were promulgated and adhered to during the primary campaign to safeguard its equipment. The Primary Committee, however, provides no documentation to support this assertion other than the General Committee's "Loss Prevention Policy," which it claims resulted from these verbal policies. Additionally, the Primary Committee provided no documentation demonstrating what efforts it made to locate the lost and stolen equipment, nor did it provide documentation demonstrating that no fraud or abuse occurred. See Memorandum to Robert J. Costa, Re: Committee on Arrangements for the 1992 Republican National Convention -- Legal Comments on Proposed Interim Audit Report (September 17, 1993), at 4-7. Therefore, the Primary Committee should be required to make a pro rata repayment to the United States Treasury for the value of the lost and stolen equipment.

V. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES -- GENERAL ELECTION EXPENDITURES (III.B.2.)

The proposed report finds that the Primary Committee made various expenditures for goods and services that were for the benefit of the General Committee or the Clinton/Gore '92 General

14/ We note that the lost equipment itself is similar to the lost equipment at issue in the audit of the Committee on Arrangements for the 1992 Republican National Convention where the Commission determined that the loss was a permissible use of funds. See 11 C.F.R. § 9008.6(a).

15/ The Interim Audit Report for the Committee on Arrangements for the 1992 Republican National Convention was interpreting permissible uses for convention expenditures. Compare 11 C.F.R. § 9008.6(a) (permissible use of convention expenses) with 11 C.F.R. § 9032.9(a) (qualified campaign expenses).

Election Compliance Fund ("the GELAC"). The report notes that the Primary Committee incurred costs for items such as computers and polling in the last weeks prior to the candidate's date of ineligibility ("DOI") when most or all state primary elections had been held.^{16/} The report reasons that the purchase of certain goods and services made so late in the primary campaign could have no other purpose than to be pre-expenditure report period expenses for the general election committees. Since the costs were not incurred in connection with seeking the nomination, the report recommends that the Commission make an initial determination that the Primary Committee repay the Treasury \$237,948.^{17/}

The Primary Committee urges the application of essentially a "bright line" test based on the date of a candidate's nomination to support its position that the expenses in question were qualified campaign expenses for the primary election. The Primary Committee argues that costs for goods and services incurred before DOI and used before DOI are qualified campaign expenses. With regard to the expenditures for equipment and facilities (e.g., mainframe computers, personal computers, printers, keyboards, monitors, modems, software), the Primary Committee argues that the expenditures were qualified campaign expenses for the primary election because the goods were purchased and used before the DOI. Thus, the Primary Committee contends that as a primary asset, it was permitted to sell the equipment to the General Committee at a 40% depreciation, the required price pursuant to 11 C.F.R. § 9034.5.

With regard to the polling expenditures, the Primary Committee argues that the expenditures were qualified campaign expenses because the polls were conducted prior to the DOI and concerned issues related to the seeking of the nomination. In addition, the Primary Committee contends that the polls had a limited shelf life which had expired by the time the general election campaign began. The Primary Committee asserts that the Commission has acknowledged the limited shelf life of polls in its own regulations. See 11 C.F.R. § 106.4(g).

^{16/} State primary elections were held through June 9, 1992. The candidate's DOI was July 15, 1992.

^{17/} The report concludes that the expenditures are qualified campaign expenditures for the General Committee, and rather than require the Primary Committee repay the United States Treasury, the General Committee can also choose to reimburse the Primary Committee for the expenditures the General Committee should have made. However, the expenditures that should have been made by the General Committee will place the General Committee in excess of its expenditure limitation by \$684,220 if the General Committee makes the reimbursement, as noted in the proposed Final Audit Report for the General Committee.

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We believe that the standard advocated by the Primary Committee would enable a primary committee to use private contributions and public matching funds to pay a portion of the general election campaign expenses, thus circumventing the general election expenditure limitation and the law's prohibition on receipt of private contributions by publicly funded general election candidates. 2 U.S.C. § 441a(b)(1)(B); 26 U.S.C. § 9003(b)(1) and (2). Moreover, such an interpretation is inconsistent with 11 C.F.R. § 9003.4(a)(1), which permits general election campaigns to incur expenses prior to the beginning of the expenditure report period. This regulation would not be necessary if all expenditures made prior to the primary date of ineligibility were qualified campaign expenses of the primary committee, even if the expenditures related to the general election.

However, our analysis differs from that of the Audit Division because we believe that some of the expenditures may have had a dual purpose for the Primary Committee and the General Committee, and those expenditures could be allocated between the two committees if the purpose is documented. The central issue raised is whether the expenditures were made "in connection ... with [the primary] campaign for nomination" or "incurred to further a candidate's [general] campaign for election to the Office of President. . . ." Compare 11 C.F.R. § 9032.9(a)(2) (defining qualified campaign expenses for primary committees) with 11 C.F.R. § 9002.11(a)(1) (defining qualified campaign expenses for general committees).

A "bright line" test based solely on the date that an expenditure is incurred has never been applied by the Commission to determine whether a particular expense is a qualified campaign expense for the primary or general election. Rather, the two key elements for assessing qualified campaign expenses are timing and the subject matter requirement of "made in connection with" or "incurred to further." 11 C.F.R. §§ 9032.9(a)(2) and 9002.11(a)(1). It is not sufficient merely for an expenditure to be incurred prior to the candidate's date of ineligibility to be considered a qualified campaign expenditure. Rather, the correct standard for determining whether an expenditure is a qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15.

The Commission has previously considered the purposes of expenditures when allocating costs between primary and general presidential committees. In the Reagan Bush '84 audit, the Commission concluded that certain specific expenditures for polling, consulting, and voter registration incurred prior to the candidate's DOI and apparently related to the general election campaign could be considered qualified campaign expenses of the primary committee since the purpose of the expenditures related to "delegate tracking." Final Audit Report on Reagan Bush '84 Primary (July 7, 1986). However, the

Reagan Bush general committee also reimbursed the primary committee \$64,000 for telemarketing expenditures incurred prior to the candidate's date of ineligibility, and the Commission allocated costs between the committees for advertising production costs incurred during the primary campaign for certain advertisements used during both the primary and general campaigns, thus demonstrating that the timing of the expenditure alone does not determine whether it is related to the primary or general election. *Id.*; Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). This precedent supports examining all of the particular facts surrounding an expenditure.

Moreover, matters concerning coordinated party expenditures, which involve publicly-financed presidential campaigns and expenditure limitations, are analogous to the issue of qualified campaign expenses presented here. In situations involving coordinated party expenditures, the Commission has considered not only the timing, but also the purpose of expenditures when determining to which election an expenditure should be attributed. AO 1984-15. For example, in AO 1984-15, the Commission noted that while "timing is relevant," coordinated party expenditures are not restricted to the time period between the nomination and the general election, and it would be inconsistent with the purpose of the limitation on coordinated expenditures to "permit expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the presidential general election to escape this limitation." AO 1984-15.

It is possible that some of the expenditures at issue were intended, in part, for activities related to securing the candidate's nomination. With regard to capital assets determined to be primary committee assets, we believe the Commission would have to allocate those expenditures pursuant to the method used for depreciating capital assets under 11 C.F.R. § 9034.5(c)(1). For the purpose of calculating a committee's NOCO Statement, primary committees are permitted to take at least a 40% depreciation on "any property used in the operation of the campaign whose purchase price exceeded \$2,000 when acquired by the committee." 11 C.F.R. § 9034.5(c)(1).

There is a question whether the expenditures for computer equipment are qualified campaign expenses for the Primary Committee. Many of the Primary Committee's computer requirements (processing matching fund submissions, preparing disclosure reports, scheduling travel plans) were handled by outside vendors such as Public Office Corporation and Worldwide Travel, Inc. throughout the course of the campaign. However, the Primary Committee asserts that it used the computer equipment to: (1) increase its correspondence capability and activity; and (2) engage in "delegate tracking" in preparation

for the convention.^{18/} Additionally, the Primary Committee asserts that its previous computer system often malfunctioned because it could not handle all the necessary users, and therefore, a replacement was sought. Finally, the Primary Committee notes that all its existing files were transferred to the new mainframe system once it came on-line prior to DOI.

As documentary support for these arguments, the Primary Committee produced three memoranda regarding the computer system from Sherry Curry, a Primary Committee staff member to Barbara Yates, the Primary Committee's accountant. One memorandum, dated June 27, 1994, states that the Primary Committee purchased the new mainframe computer to increase user capacity since the leased system could only handle 80 devices (terminals, modems, printers) before suffering breakdowns, and the Primary Committee submitted three sample computer repair work orders from these breakdowns. Once the new mainframe came on-line, more devices could be operated at the same time. Similarly, in a June 24, 1994 memorandum from Ms. Curry to Ms. Yates, it is stated that the Primary Committee's incoming correspondence level was increasing and because of the need to respond, the Primary Committee needed greater computer capacity. The memorandum includes a list of the biweekly incoming correspondence amounts demonstrating that in the last two weeks before the DOI, the incoming correspondence level increased to 6,036 incoming pieces, up from approximately 3,000 incoming pieces over the previous biweekly periods dating back to February 1, 1992.^{19/} Primary Committee Response, Exhibit 21. Finally, a third memorandum asserts that delegate tracking and convention operations were performed on certain unspecified personal computers. It appears that the Primary Committee is referring to the personal computers purchased from Future Now, Inc.

The Primary Committee response to the interim report and the computer vendors' invoices indicate that the ICL, Inc. mainframe computer came on-line at least on June 25, 1992, and that the Primary Committee files were inserted on this system. Thus, there is evidence that the Primary Committee had the

^{18/} Based on the Primary Committee's descriptions in their response to the interim report, "delegate tracking" on the computer system apparently would include using computers to prepare correspondence to the delegates, and to log phone calls made to delegates. The Primary Committee response appears to also indicate that computers were used for general convention preparation and logistics.

^{19/} However, the memorandum does not indicate the subject matter of the incoming correspondence (e.g. contributions, bills, letters), whether the Primary Committee answered the correspondence at the same level that it was incoming, and how the computer system would be used to process either incoming or outgoing mail.

equipment before DOI, during the timeframe from June 25, 1992 through July 15, 1992.^{20/} Similarly, it appears that the only peripherals that the Primary Committee possessed at the end of the campaign were the W.P. Malone peripherals it owned from July 11, 1992 on.^{21/} Additionally, it appears that the Future Now, Inc. personal computers were used in the convention operations.^{22/}

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The facts at issue present difficult questions concerning how to distinguish legitimate primary campaign activity from activity that is geared towards the general election campaign. In the instant matter, it is clear that the computer equipment was used extensively throughout the general election campaign. There is also some evidence that the Primary Committee had most of the computer equipment in its possession prior to DOI. However, the evidence submitted to demonstrate the extent to which the Primary Committee used the computer equipment is limited. The documentation submitted to date consists of unsworn memoranda produced in response to the interim report. Given the limited information provided and the questions that remain regarding the computer system, the Primary Committee should be required to provide documentation with more probative value such as sworn affidavits and contemporaneous documentation or memoranda. For example, the Primary Committee could provide delegate tracking reports produced by the system and ~~comprehensive computer maintenance records.~~ If the Primary Committee can provide additional documentation demonstrating its use of the computer system, we believe that the costs incurred for the system would be qualified campaign expenses for the Primary Committee and the value of the asset determined pursuant

20/ We note there is a dispute over when the new system came on-line. The Primary Committee ordered the new mainframe computer from ICL, Inc. on May 28, 1992 (invoice date), but the permanent equipment was only installed on June 25, 1992. The Primary Committee asserts that ICL, Inc. provided it a loaner during the interim period, but this assertion is undocumented. Thus, it appears that the new mainframe was installed only two weeks prior to the start of the convention.

21/ We note that the devices that the Primary Committee appears to have agreed to purchase on June 30, 1992 (invoice date) from W.P. Malone for \$104,174 were actually being leased by the Primary Committee up to July 11, 1992 since the purchase invoice and lease invoices list the exact same equipment. So, it appears that the Primary Committee only became the owner of these goods at the time the convention started (or owned and leased the equipment concurrently).

22/ The costs for fifty-one personal computers ordered from Future Now, Inc. were incurred by the Primary Committee on May 29, 1992 (invoice date). Additional personal computers were ordered by the Primary Committee from Future Now, Inc. and delivered on June 23, 1992, June 29, 1992, and July 15, 1992.

to section 9034.5(c)(1) of the Commission's regulations for purposes of the Primary Committee's NOCO Statement.

We concur with the proposed report's conclusion that the polling expenses paid by the Primary Committee to Greenberg-Lake (\$108,622) and Opinion Research Calling (\$93,904) are general election campaign expenses. Polling expenditures are specifically provided for in 11 C.F.R. § 9003.4(a)(1) as qualified campaign expenses for the general election. The polls concerned the general election itself in that they measured the candidate's popularity versus the other likely candidates in the general election, George Bush and Ross Perot.^{23/} Indeed, two of the polls were taken after the roll call vote for the nomination was completed at the convention. With regard to the Primary Committee's argument that the polls decrease in value at a rapid rate, we view this as irrelevant since we view the polls as general election expenses.

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We concur with the report's treatment of the expenditures for various services (e.g., expenditures to Air Advantage and I.K. Electric) that were provided to the Primary Committee which seem to have been only for the incidental benefit of the Primary Committee. An example of this is the reconfiguration of the candidate's airplane just prior to the convention. The actual work appears to have been completed prior to the convention. However, the reconfigured plane was used only once prior to DOI. With these types of expenditures, we recommend that the Primary Committee be allowed to reimburse the General Committee to account for the Primary Committee's use.

Finally, we concur that all costs associated with the biographical film about the candidate entitled "The Man From Hope" are general election expenses. In Reagan-Bush '84, the Commission specifically addressed the issue of commercial production costs associated with a television commercial produced by the primary committee but aired during the general election. Statement of Reasons supporting Final Repayment Determination in Reagan-Bush '84 General, at 9-12 (July 11, 1988). The Commission concluded that the date of broadcast for media projects (i.e., the date when commercials, films, etc. are aired or broadcasted), not the date of production, determines whether such projects are primary or general election

^{23/} The Commission has in the past viewed the content of the expenditure to determine the purpose of that expenditure. See AO 1984-15 (after scrutiny of the content of certain television commercials, the Commission concludes that "[t]he clear import and purpose of the these proposed advertisements is to diminish the support for any Democratic Party presidential nominee ...").

expenditures.^{24/} "The Man from Hope" film was shown at the convention after the candidate was nominated, as well as on several subsequent dates.^{25/} Therefore, these expenses are not qualified campaign expenses for the primary election.

**VI. RECEIPT OF MATCHING FUNDS IN EXCESS OF ENTITLEMENT
(III.D.)**

The proposed report recommends that the Commission make an initial repayment determination of \$3,464,150 on the basis that the Primary Committee received public funds in excess of its entitlement. The report notes that the Primary Committee received certain contributions and then redesignated the contributions to the GELAC in a manner inconsistent with the Commission's regulations at 11 C.F.R. § 9003.3(a)(1)(iii) since the Primary Committee had remaining debts to satisfy at the time of the redesignations. The report seeks to treat the contributions as primary contributions, nullifying the impermissible redesignations. When the subject contributions are applied to the Primary Committee's NOCO Statement as an asset, the funds decrease the Committee's net outstanding campaign obligations and results in the repayment to the United States Treasury based on receiving funds in excess of the Primary Committee's entitlement.^{26/}

^{24/} The Commission concluded that the commercial at issue aired repeatedly during the general election campaign, despite the Primary Committee's arguments to the contrary. Reagan-Bush '84 Statement of Reasons, p. 11. There, the Commission rejected the primary committee's assertion that production costs should only be allocated to the primary campaign.

^{25/} The Primary Committee contests the Commission's determination that the candidate's DOI is July 15, 1992. The DOI is the "date on which the party nominates its candidate." 11 C.F.R. § 9032.6(a). Although the Commission has not defined the word "nomination," the Commission has previously viewed the completion of a convention roll call vote which nominates a candidate as the "nomination." The Primary Committee's suggestion to defer to a political party's definition of the term "nomination" will lead to inconsistent applications since every party could define it differently. Moreover, the Commission notified the Primary Committee by letter dated August 4, 1992 that July 15, 1992 was the DOI, and the Primary Committee did not object to this determination until now. As a result, we concur with the proposed report's conclusion that the DOI was July 15, 1992, the date that the convention roll call vote nominating the candidate was completed.

^{26/} The proposed Final Audit Report for the General Committee recommends that the GELAC reimburse the Primary Committee for the improperly redesignated funds.

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In response to the interim report, the Primary Committee argues that the subject contributions were undesignated, and thus, under 11 C.F.R. § 110.1(b)(2)(ii), could be viewed as GELAC contributions since they were received after the candidate's DOI. The Primary Committee contends that the redesignations were performed by mistake by a former vendor. The Primary Committee further asserts that it should not be penalized for setting a cut-off date for receiving contributions in the belief that it has no remaining debts "without the benefit of hindsight." Primary Committee Response, at 40. In this respect, the Primary Committee challenges the Commission practice of applying private contributions against a deficit on its NOCO Statement prior to applying matching funds against the deficit. The Primary Committee believes that if anticipated matching funds were applied against its deficit as reflected on the NOCO Statement, it would have been permitted to make the redesignations.

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We concur with the report that the Primary Committee received matching funds in excess of its entitlement. The determination of whether a contribution is designated for a particular election turns on the contributor's donative intent. See AO 1990-30. Arguably, the contributions in question were designated to the Primary Committee since they were made payable to "Clinton for President" or a similar entity and received when the Primary Committee had outstanding debts.^{27/} See 11 C.F.R. § 110.1(b)(4)(i). The Commission has permitted publicly-financed presidential campaigns to treat contributions received post-DOI as primary receipts and submit them for matching if they have outstanding debts. Further, Commission regulations condition redesignations of a primary committee's contributions on the fact that the contributions represent funds in excess of the amount needed to pay remaining primary debts, thus, it is anticipated that a primary committee will continue to receive private contributions designated to it after DOI. See 11 C.F.R. § 9003.3(a)(1)(iii).

The Primary Committee benefited from this approach, receiving public funds for contributions received post-DOI that were virtually identical to these at issue here. The Primary Committee has not advanced a credible reason for distinguishing between the post-DOI contributions submitted for matching and those contributions that it now claims were contributions to the GELAC. We do not believe that the Primary Committee can apply the designation rules in a manner that will allow it to arbitrarily claim that certain contributions are primary contributions that are matchable and reverse its position to increase its entitlement to public funds by claiming that

^{27/} We recommend that you attach to your report an exhibit demonstrating the amounts of contributions designated for each specific entity (e.g., Bill Clinton, Bill Clinton for President, Bill Clinton for President Committee, Team Clinton).

similarly designated contributions are designated to the GELAC. The designation rules do not operate to thus allow a committee to manipulate its entitlement to public funds.

The Primary Committee's argument that matching funds be counted into the NOCO Statement as of the time of submission, rather than receipt of such funds, would also allow the Primary Committee to manipulate its entitlement to public funds. The Primary Committee's claim that the Commission's NOCO Statement calculation system is unfair is based solely on the fact the Primary Committee miscalculated its remaining entitlement and expenditures. The Commission's regulations account for the fact that there may be miscalculations in the NOCO Statement because the Primary Committee is required to submit a revised NOCO Statement with each submission for matching funds after DOI and the Primary Committee will be required to make a repayment if it is later determined that the payments exceeded the Primary Committee's net outstanding campaign obligations. 11 C.F.R. §§ 9034.5(f)(1) and 9038.2(b)(1)(i).

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Further, while treating future matching funds as an accounts receivable to eliminate its debts, the Primary Committee nevertheless submitted a NOCO Statement indicating that it was in a deficit position so that it would be entitled to receive the anticipated matching funds. This places the Primary Committee in the contradictory position of asserting that it has debts and does not have debts in order to obtain the maximum benefits of the public financing process. The Commission's regulations do not contemplate treating future matching funds as an accounts receivable on the NOCO Statement. The accounts receivable (or amounts owed) that can be listed as assets on the NOCO Statement generally include credits, refunds of deposits or rebates from qualified campaign expenditures. 11 C.F.R. § 9034.5(a)(2)(iii) (discussing calculation of NOCO statements). The result of including anticipated matching funds as an asset is that the Primary Committee is able to increase its entitlement based on speculation that the contributions will in fact be matched. 11 C.F.R. § 9034.5(a).

950/0194444



FEDERAL ELECTION COMMISSION

December 27, 1994

Mr. J. L. "Skip" Rutherford, Treasurer
Clinton For President Committee
c/o Ms. Lyn Utrecht
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N. W.
Washington, D. C. 20006

Dear Mr. Rutherford:

Attached please find the Final Audit Report on Clinton For President Committee. The Commission approved this report on December 27, 1994. As noted on page 4 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is required to repay to the Secretary of the Treasury \$1,383,587 within 90 days after service of this report (March 30, 1995).

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (January 30, 1995), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(3) permits a candidate who has submitted written materials to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

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

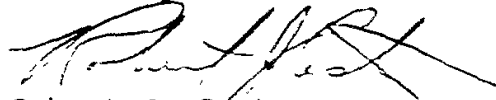
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Letter to Mr. J. L. "Skip" Rutherford, Treasurer
Page 2

The Commission approved Final Audit Report will be placed on the public record on December 29, 1994. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matter covered during the audit or in the audit report should be directed to Joe Stoltz, Russ Bruner or Leroy Clay of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: Lyn Utrecht, Esq.

050 / 0194 446



FEDERAL ELECTION COMMISSION
WASHINGTON, D. C. 20543

December 27, 1994

The Honorable William J. Clinton
c/o Ms. Lyn Utrecht
Oldaker, Ryan & Leonard
818 Connecticut Avenue, N. W.
Washington, D. C. 20006

Dear Mr. President:

Attached please find the Final Audit Report on Clinton For President Committee. The Commission approved this report on December 27, 1994. As noted on page 4 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9038.2(c)(1) and (d)(1), the Commission has made an initial determination that you are required to repay to the Secretary of the Treasury \$1,383,587 within 90 days after service of this report (March 30, 1995).

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (January 30, 1995), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(3) permits a candidate who has submitted written materials to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

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

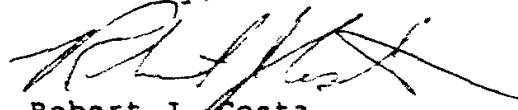
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Letter to The Honorable William J. Clinton
Page 2

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Any questions you may have related to matter covered during the audit or in the audit report should be directed to Joe Stoltz, Russ Bruner or Leroy Clay of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: Lyn Utrecht, Esq.

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CHRONOLOGY
CLINTON FOR PRESIDENT COMMITTEE

Pre-audit Inventory Commenced	12/7/92
Audit Fieldwork	2/2/93 - 8/31/93
Interim Audit report to the Committee	4/4/94
Response Received to the Interim Audit Report	7/6/94
Final Audit Report Approved	12/27/94

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PRESS



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Assistant Staff Director Costa
Press Officer Harris

FROM: *MWR* Marjorie W. Emmons/Bonnie J. Ross 
Secretary of the Commission

DATE: December 16, 1994

SUBJECT: Statement of Reasons For Clinton Campaign Audit

Attached is a copy of the Statement of Reasons for the Clinton Campaign Audit signed by Commissioners McDonald, McGarry, and Thomas. This was received in the Commission Secretary's Office on Friday, December 16, 1994 at 12:40 p.m.

Attachment

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FEDERAL ELECTION COMMISSION

WASHINGTON D C 20463

STATEMENT OF COMMISSIONERS McDONALD, MCGARRY,
AND THOMAS REGARDING CLINTON CAMPAIGN AUDIT

We write this short statement to explain our principal reasons for disagreeing with the staff's recommendation to treat about \$1.5 million in funds raised by the Clinton campaign after the nomination as primary committee assets. The staff's recommendation would have resulted in an additional repayment obligation in that amount on the theory that the primary campaign debt was \$1.5 million smaller and matching funds given to the campaign to pay its debts should be returned.

First, as a matter of law, this is a case of first impression. The Commission has never addressed whether contributions coming in after the nomination with some indications they were intended for the primary, but without the specific signed writing required for proper designation as such (see 11 C.F.R. §110.1(b)(4) and Advisory Opinion 1990-30, 2 Fed. Elec. Camp. Fin. Guide (CCH) § 6006), must be treated as primary campaign assets. The staff felt that because the checks were made payable to various names such as "Clinton for President Campaign," the legal requirement for a proper designation as a primary contribution was met. We think the regulation and advisory opinion cited necessitate clearer words of designation for a particular election than that. Also, we disagree that the solicitation materials which appear to have generated some of the contributions at issue satisfy the designation standard without a contributor's signature. Maybe the regulation and advisory opinion shouldn't have been made so strict, but the signature requirement is there.

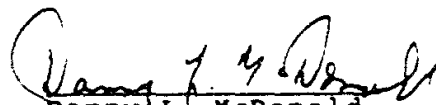

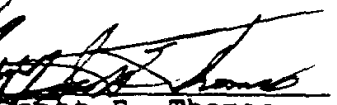
Second, assuming the contributions at issue didn't have to be treated as primary assets, we faced the policy issue of whether the Clinton campaign should be forced to treat them as such nonetheless. Because the actual intent of these post-nomination donors was ambiguous at best, because the technical requirements for designation as primary donations were not met, and because the use of public funds (rather than private contributions) to pay campaign expenses is the very essence of the public funding program, we felt it inappropriate to account for these funds in a way that would deprive the Clinton campaign of the use of public funds to pay legitimate post-primary debts. The funds at issue, which came in after the nomination, which

subsequent to receipt were confirmed in writing by the donors to be intended for the general election legal and accounting compliance fund (GELAC), and which were not submitted for primary campaign matching funds, shouldn't be reconfigured as primary campaign assets, we believe.

The staff was of the view that if we don't treat the funds moved to the GELAC as primary assets, we should treat other post-nomination contributions submitted for primary matching as non-matchable and recoup any associated matching funds. This struck us as a "Catch 22" argument. In our view, the contributions submitted for matching can and should be treated differently. First, the Clinton campaign concedes that such contributions must apply as a primary asset, thereby reducing post-nomination entitlement for matching funds. Further, the Commission's longstanding practice, apparently, has been to treat such contributions as matchable even though the technical requirements for written designation have not been met.

What is the impact of our approach? Taxpayer funds, rather than privately raised dollars, are used to pay primary campaign expenses-- a result that furthers the public financing concept. The funds at issue are left available to the GELAC to pay for complying with the many complexities of the law-- again a result that furthers the public financing concept because it insures that candidates continue to opt for public rather than private financing.

Our approach does not undermine the responsibility of the agency to insure that public funds are not spent for things that have no relation to the primary campaign or that are not properly documented. Hundreds of thousands of dollars in the Clinton and Bush campaigns are being treated as non-qualified for these reasons. Nor does our approach undermine our review of campaigns to insure that the state-by-state and overall spending limits are adhered to by the publicly funded campaigns. The audit reports demonstrate this. All our approach does is allow the use of more public funding dollars to pay for legitimate primary campaign expenses of a publicly funded campaign. As a matter of policy, we think that is a better result than the alternative.

		
Danny L. McDonald Vice Chairman	John Warren McGarry Commissioner	Scott E. Thomas Commissioner
<u>12-16-94</u> Date	<u>12/16/94</u> Date	<u>12/16/94</u> Date

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Statement of Reasons

Final Audit Report of the Clinton for President Committee Commissioners Joan D. Aikens, Lee Ann Elliott, Trevor Potter

On December 15, 1994, the Federal Election Commission considered the Final Audit Report on the Clinton for President Committee. Unfortunately, a major recommendation in this Report that required the Clinton Committee to make a substantial repayment of taxpayer funds was blocked by three Commissioners.

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This unprecedented action involved the Clinton Committee's receipt of matching funds from the U.S. Treasury in excess of its entitlement. The Commission's Audit Division found, and the General Counsel agreed, that the Clinton Committee improperly diverted over a million dollars in private contributions from the Primary Committee to a separate "legal and accounting fund" for the General Election. However, the law requires these private contributions be used to pay the remaining debts of the primary committee.

The effect of this impermissible transfer was to artificially inflate the Primary Committee's debt. This caused the U.S. Treasury to make an overpayment of taxpayer funds to the Committee to cover that debt. Accordingly, the Audit Division and General Counsel recommended the Committee repay \$2.9 million to the U.S. Treasury. We voted for this recommendation because this result was clearly required by the Commission's regulations and previous presidential audits. We regretfully conclude that our three colleagues' failure to adhere to these rules, and their vote against this recommendation, can only be considered arbitrary and capricious.

I. Commission Regulations and Procedures Required the Clinton Committee Make a Repayment

The Commission's regulations at 9034.1(b) limit the amount of public funds a candidate may receive after the nomination to the net debt outstanding at the time a matching fund payment is received. To arrive at this debt calculation, all public and private contributions are subtracted from debts outstanding. Any net debt remaining would increase the candidate's

entitlement to public funds to pay the debt. The long history of this regulation makes it clear that it was designed to encourage the payment of campaign debts, to the extent possible, with private contributions.^{1/}

Commission regulations at part 9003.3(a)(1)(iii) also clearly state: Contributions that are made after the convention but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election may be redesignated for the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if:

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;...

^{1/} The requirement at 11 C.F.R. § 9034.1(b) that private contributions be used to pay a committee's debts was recently upheld in Lyndon H. LaRouche; LaRouche Democratic Campaign '88 v. FEC, 28 F.3d 137 (D.C. Cir. 1994). In LaRouche, the Court stated "the language (of 9034.1(b)) would appear to be dispositive. A candidate is entitled to receive post-DOI matching payments so long as net campaign obligations remain outstanding, and the regulation defines a candidate's remaining [NOCO] as the difference between the amount of his original NOCO and the sum of the contributions received...plus matching funds received... Whenever the sum of his post-DOI receipts equal the amount of his NOCO-whether those receipts be in the form of private contributions or matching payments from the public fisc - his entitlement to further matching payments comes to an end. Even if we were to find the regulation ambiguous, which we do not, we would still have to accept the Commission's interpretation of section 9034.1(b) unless we found it plainly inconsistent with the wording of the regulation, which it is not. 28 F.3d at 140 (emphasis added).

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

(D) The contributions have not been submitted for matching.

(emphasis added).

This regulation was approved on a 6-0 vote by the Commission after the 1988 election cycle when a similar issue arose in the Dukakis audit. This regulation was designed to more clearly state the consistent position taken by the Commission from the first publicly financed election in 1976. In noting the need for this clearer regulation, Commissioner Thomas pointed out during the Dukakis audit that:

On its face, the (former) regulation would seem to allow the redesignation of post-primary designated contributions if the primary would have a debt afterward. However, it would be inconsistent with the Commission's congressional mandate to allow a committee to, in essence, create debt that would lead to entitlement for post ineligibility matching funds. In other words a committee should not be able to claim a net debt and hence entitlement to post ineligibility matching funds if it dissipated its permissible primary contributions to do so. Taken to its extreme, a committee could redesignate all of its unmatched contributions ... and unnecessarily create a huge deficit with a resulting claim for matching funds.

The current language of 9003.3(a)(1)(iii) pertaining to redesignation of post-primary designated contributions, effective April 8, 1987, evolved from a somewhat similar provision in the previous version of 11 C.F.R. 9003.3. However, the prior version made clear that such redesignations were permissible only if the primary committee retained sufficient funds to pay its remaining debts.

Contributions which are made after the beginning of the expenditure period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: provided that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign...
[11 C.F.R. 9003.3(a)(1)(iii) (effective July 11, 1983).]

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Commissioner Trevor Potter

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Though the current language did not retain this protective phrasing, there appears to have been no intent to alter the prior approach. ... Indeed, as noted, it would be contrary to public policy to allow the creation of debt and the consequent entitlement to post ineligibility matching funds. Accordingly, the Committee should be permitted to redesignate and transfer-out to the GELAC only so much of the contributions as would not leave the Committee in a net debt position. The remaining amount in question, ... cannot be redesignated and transferred-out, must be repaid by GELAC, and must therefore be included in Committee's cash on hand figure.^{2/}

In order to clarify any ambiguity that may have occurred during the 1988 Presidential audits, the Commission revised its Presidential regulations for 1992 to make absolutely clear that public and private money be used for debt retirement, and that there is limited permissibility and several prerequisites for any redesignation of private funds. See 11 C.F.R. 9003.3(a)(1)(iii) and 9034.1(b).

II. Application of These Rules to the Clinton Committee

By splitting 3-3 on two repayment motions, the Commission failed to apply these regulations to the Clinton Committee. For example, there is no question that on the date of ineligibility (i.e., the date of Clinton's nomination, July 15, 1992), the Committee had a debt of over \$7 million. Solicitations prior to July 15 had clearly solicited funds for the primary campaign and all contributions received were made payable to the Primary Committee, and deposited into the primary account. Those solicitations reminded the contributor that the contribution could be matched. In fact, the last primary solicitation sent on July 17, which solicited funds to retire the primary debt, again reminded the contributor that the contribution could be matched.^{3/}

^{2/} Quote of Commissioner Scott Thomas from the Final Audit Report on the Dukakis for President Committee, approved by Commission 6-0.

^{3/} Subsequent solicitations were mailed for contributions to the General Election Legal and Accounting and Compliance Fund (the GELAC). Those contributions are not at issue here.

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Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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Contributions deposited by the Primary Committee from these solicitations totaled \$5,863,410 between July 16 and October 2, 1992. In that same time frame, the Committee submitted final matching requests totaling \$6,046,107. The Committee received this inflated amount because they did not apply all of their private funds to their net outstanding campaign obligations. Instead, the Primary Committee sought redesignations from their contributors and transferred \$2,444,557 to the GELAC. This is in direct contravention of the Commission's regulations governing matching funds. 9034.1(b).

In other words, the Committee took contributor checks directly in response to primary solicitations, deposited them into the primary account and submitted \$2,600,519 for matching funds while at the same time taking other contributions from the same solicitations and, claiming they were intended for the GELAC, transferred them to the Legal and Accounting Compliance Fund.

In the Final Audit report, the Audit Division correctly recommended that the candidate had exceeded his entitlement to further matching funds as of the date on which private contributions and matching funds could have retired all debts. This was in accord with the previously cited public funding regulations, their Explanation and Justification, and the Presidential Compliance Manual. The amount the Audit Division calculated the Committee received in excess of its entitlement on this issue was over \$2.9 million. The Audit Division recommended this amount must be repaid to the U.S. Treasury. The Office of General Counsel fully concurred with this recommendation.

In discussing this finding, our colleagues argued that because of the general redesignation language at 11 C.F.R. § 110.1 and the fact that the Committee had received redesignations from many of the contributors, that we should recognize the "contributors' intent" and allow the Committee to transfer the funds to the GELAC.

We believe their analysis is faulty in that it fails to take into account the specific language of the regulations concerning outstanding debts from a Presidential primary at §§ 9003.3(a)(1)(iii) and 9034.1(b).

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However, our colleagues' and the Committee's argument went even farther than simple redesignation. They argued that these contributions were not specifically designated for the primary in the first place but were intended for the GELAC despite the fact that some of these contributions were solicited by the Primary Committee to retire primary debt; and all specifically indicated on the solicitation that the contributions were matchable; and the checks were made to the order of the Primary Committee and were deposited in a Primary Committee account.

The result of the Commission's failure to approve Audit's recommendation left us in the impossible position of accepting the Committee's argument that contributions deposited after the convention were not primary contributions, but rather were undesignated contributions received after the primary election, and pursuant to 11 C.F.R. 110.1 were automatically general election contributions. This apparently holds true despite the fact that contributions received as part of the same solicitations were in fact deposited by the Primary Committee and matched with public funds!

Following the 3-3 split on the Audit's recommendation, which had the effect of calling these funds contributions for the GELAC, the General Counsel and Audit Division recommended that the funds received after the DOI that were matched should be declared ineligible for matching because (as our colleagues had just argued) they too were not designated for the primary. This recommendation was made because the contributions transferred by the Clinton Committee to the GELAC and the contributions that were retained by the primary committee and submitted for matching were indistinguishable in every way: they were solicited by the same mailing, mailed to the same address, made payable to the same committee and received at the same time. This motion recognized that if some of these contributions were not designated for the primary, then none were. Accordingly, the Committee would have had to make a repayment of the amount that was mismatched with public funds. Incredibly, this motion also failed on a 3-3 partisan split.

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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And so the Committee has it both ways. Contributions the Committee received after the convention were considered primary contributions that were matched with public funds used to pay primary debts, while other contributions also received after the convention from the same solicitations were considered undesignated or redesignated to the GELAC -- all at the whim of the Committee.

We see no legal or logical way that these post convention contributions can be both matchable primary contributions and at the Committee's discretion also be undesignated contributions to the GELAC. Such a scheme allowed the Clinton Committee to manipulate its cash balance and debts to receive public money to which it was not entitled. In its 19 year history, the Commission has never tolerated such a result. The Commission's failure to demand repayment of this public money is inconsistent with Commission precedent and squarely at odds with the plain language of the statute and regulations, is arbitrary and capricious, and contrary to law. Failure to approve either of the two motions completely undermines the integrity of the Presidential Public Funding system and will place this agency in an untenable position in trying to enforce the law in future elections.

III. The Clinton Committee's Real Entitlement to Public Money.

In their Statement of Reasons, Commissioners McGarry, McDonald and Thomas make the extraordinary statement that their votes to block repayment actually "furthers the public financing concept" (emphasis in original) because it pumps more taxpayer money into the Clinton campaign than the rules allow. Their argument is that if public financing is good, then more public financing must be better. This philosophy, of course, turns Congress' limited public financing statutes for the primaries and the Commission's audit rules upside down: for in every Presidential audit, until this one, the Commission has sought to protect taxpayer funds by requiring Committees prove they were fully entitled to the matching funds they received.

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Clinton for President Committee
by Commissioner Joan D. Aikens
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Commissioner Trevor Potter

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We believe that, at a minimum, Congress should be consulted before the Commission turns a conditional grant of public funds into a flat entitlement for maximum financing. Furthermore, such a drastic change of course should be subject to the notice and comment and other protections of a rulemaking. Finally, it is grossly improper to adopt such a free-spending standard for only one candidate (the current President of the United States), while every other campaign in the same cycle has been held to a different and stricter rule. Such a singular and capricious result is inappropriate and does not "further" the concept of public financing. Instead, it destroys the public's confidence that its money will be audited in a non-partisan manner and the rules scrupulously followed when it is given to any presidential campaign.

Joan D. Aikens
Joan D. Aikens
Commissioner

December 29, 1994
Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

December 29 '94
Date

Trevor Potter
Trevor Potter
Chairman

December 29, 1994
Date

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Surina
General Counsel Noble
Press Officer Harris

FROM: *[Signature]* Marjorie W. Emmons/Bonnie J. Ross *[Signature]*
Secretary of the Commission

DATE: December 29, 1994

SUBJECT: Statement of Reasons - Final Audit Report on
the Clinton for President Committee

Attached is a copy of the Statement of Reasons for the Final Audit Report on the Clinton for President Committee signed by Commissioners Aikens, Elliott and Potter. This was received in the Commission Secretary's Office on Thursday, December 29, 1994 at 3:51 p.m.

Attachment

c: V. Convery, OGC

950/019411



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

Statement of Reasons
Final Audit Report of the Clinton for President Committee
Commissioners Joan D. Aikens, Lee Ann Elliott, Trevor Potter

On December 15, 1994, the Federal Election Commission considered the Final Audit Report on the Clinton for President Committee. Unfortunately, a major recommendation in this Report that required the Clinton Committee to make a substantial repayment of taxpayer funds was blocked by three Commissioners.

This unprecedented action involved the Clinton Committee's receipt of matching funds from the U.S. Treasury in excess of its entitlement. The Commission's Audit Division found, and the General Counsel agreed, that the Clinton Committee improperly diverted over a million dollars in private contributions from the Primary Committee to a separate "legal and accounting fund" for the General Election. However, the law requires these private contributions be used to pay the remaining debts of the primary committee.

The effect of this impermissible transfer was to artificially inflate the Primary Committee's debt. This caused the U.S. Treasury to make an overpayment of taxpayer funds to the Committee to cover that debt. Accordingly, the Audit Division and General Counsel recommended the Committee repay \$2.9 million to the U.S. Treasury. We voted for this recommendation because this result was clearly required by the Commission's regulations and previous presidential audits. We regretfully conclude that our three colleagues' failure to adhere to these rules, and their vote against this recommendation, can only be considered arbitrary and capricious.

I. Commission Regulations and Procedures Required
the Clinton Committee Make a Repayment

The Commission's regulations at 9034.1(b) limit the amount of public funds a candidate may receive after the nomination to the net debt outstanding at the time a matching fund payment is received. To arrive at this debt calculation, all public and private contributions are subtracted from debts outstanding. Any net debt remaining would increase the candidate's

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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entitlement to public funds to pay the debt. The long history of this regulation makes it clear that it was designed to encourage the payment of campaign debts, to the extent possible, with private contributions.^{1/}

Commission regulations at part 9003.3(a)(1)(iii) also clearly state: Contributions that are made after the convention but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election may be redesignated for the legal and accounting compliance fund if the candidate obtains the contributor's redesignation in accordance with 11 C.F.R. 110.1. Contributions that do not exceed the contributor's limit for the primary election may be redesignated and deposited in the legal and accounting compliance fund only if:

(A) The contributions represent funds in excess of any amount needed to pay remaining primary expenses;...

^{1/} The requirement at 11 C.F.R. § 9034.1(b) that private contributions be used to pay a committee's debts was recently upheld in Lyndon H. LaRouche; LaRouche Democratic Campaign '88 v. FEC, 28 F.3d 137 (D.C. Cir. 1994). In LaRouche, the Court stated "the language (of 9034.1(b)) would appear to be dispositive. A candidate is entitled to receive post-DOI matching payments so long as net campaign obligations remain outstanding, and the regulation defines a candidate's remaining [NOCO] as the difference between the amount of his original NOCO and the sum of the contributions received...plus matching funds received... Whenever the sum of his post-DOI receipts equal the amount of his NOCO-whether those receipts be in the form of private contributions or matching payments from the public fisc - his entitlement to further matching payments comes to an end. Even if we were to find the regulation ambiguous, which we do not, we would still have to accept the Commission's interpretation of section 9034.1(b) unless we found it plainly inconsistent with the wording of the regulation, which it is not. 28 F.3d at 140 (emphasis added).

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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(D) The contributions have not been submitted for matching.

(emphasis added).

This regulation was approved on a 6-0 vote by the Commission after the 1988 election cycle when a similar issue arose in the Dukakis audit. This regulation was designed to more clearly state the consistent position taken by the Commission from the first publicly financed election in 1976. In noting the need for this clearer regulation, Commissioner Thomas pointed out during the Dukakis audit that:

On its face, the (former) regulation would seem to allow the redesignation of post-primary designated contributions if the primary would have a debt afterward. However, it would be inconsistent with the Commission's congressional mandate to allow a committee to, in essence, create debt that would lead to entitlement for post ineligibility matching funds. In other words a committee should not be able to claim a net debt and hence entitlement to post ineligibility matching funds if it dissipated its permissible primary contributions to do so. Taken to its extreme, a committee could redesignate all of its unmatched contributions ... and unnecessarily create a huge deficit with a resulting claim for matching funds.

The current language of 9003.3(a)(1)(iii) pertaining to redesignation of post-primary designated contributions, effective April 8, 1987, evolved from a somewhat similar provision in the previous version of 11 C.F.R. 9003.3. However, the prior version made clear that such redesignations were permissible only if the primary committee retained sufficient funds to pay its remaining debts.

Contributions which are made after the beginning of the expenditure period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: provided that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign...
[11 C.F.R. 9003.3(a)(1)(iii) (effective July 11, 1983).]

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Clinton for President Committee
by Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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Though the current language did not retain this protective phrasing, there appears to have been no intent to alter the prior approach. . . . Indeed, as noted, it would be contrary to public policy to allow the creation of debt and the consequent entitlement to post ineligibility matching funds. Accordingly, the Committee should be permitted to redesignate and transfer-out to the GELAC only so much of the contributions as would not leave the Committee in a net debt position. The remaining amount in question, . . . cannot be redesignated and transferred-out, must be repaid by GELAC, and must therefore be included in Committee's cash on hand figure.^{2/}

In order to clarify any ambiguity that may have occurred during the 1988 Presidential audits, the Commission revised its Presidential regulations for 1992 to make absolutely clear that public and private money be used for debt retirement, and that there is limited permissibility and several prerequisites for any redesignation of private funds. See 11 C.F.R. 9003.3(a)(1) (iii) and 9034.1(b).

II. Application of These Rules to the Clinton Committee

By splitting 3-3 on two repayment motions, the Commission failed to apply these regulations to the Clinton Committee. For example, there is no question that on the date of ineligibility (i.e., the date of Clinton's nomination, July 15, 1992), the Committee had a debt of over \$7 million. Solicitations prior to July 15 had clearly solicited funds for the primary campaign and all contributions received were made payable to the Primary Committee, and deposited into the primary account. Those solicitations reminded the contributor that the contribution could be matched. In fact, the last primary solicitation sent on July 17, which solicited funds to retire the primary debt, again reminded the contributor that the contribution could be matched.^{3/}

^{2/} Quote of Commissioner Scott Thomas from the Final Audit Report on the Dukakis for President Committee, approved by Commission 6-0.

^{3/} Subsequent solicitations were mailed for contributions to the General Election Legal and Accounting and Compliance Fund (the GELAC). Those contributions are not at issue here.

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

Page 5

Contributions deposited by the Primary Committee from these solicitations totaled \$5,863,410 between July 16 and October 2, 1992. In that same time frame, the Committee submitted final matching requests totaling \$6,046,107. The Committee received this inflated amount because they did not apply all of their private funds to their net outstanding campaign obligations. Instead, the Primary Committee sought redesignations from their contributors and transferred \$2,444,557 to the GELAC. This is in direct contravention of the Commission's regulations governing matching funds. 9034.1(b).

In other words, the Committee took contributor checks directly in response to primary solicitations, deposited them into the primary account, and submitted \$2,600,519 for matching funds while at the same time taking other contributions from the same solicitations and, claiming they were intended for the GELAC, transferred them to the Legal and Accounting Compliance Fund.

In the Final Audit report, the Audit Division correctly recommended that the candidate had exceeded his entitlement to further matching funds as of the date on which private contributions and matching funds could have retired all debts. This was in accord with the previously cited public funding regulations, their Explanation and Justification, and the Presidential Compliance Manual. The amount the Audit Division calculated the Committee received in excess of its entitlement on this issue was over \$2.9 million. The Audit Division recommended this amount must be repaid to the U.S. Treasury. The Office of General Counsel fully concurred with this recommendation.

In discussing this finding, our colleagues argued that because of the general redesignation language at 11 C.F.R. § 110.1 and the fact that the Committee had received redesignations from many of the contributors, that we should recognize the "contributors' intent" and allow the Committee to transfer the funds to the GELAC.

We believe their analysis is faulty in that it fails to take into account the specific language of the regulations concerning outstanding debts from a Presidential primary at §§ 9003.3(a)(1)(iii) and 9034.1(b).

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by Commissioner Joan D. Aikens,
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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However, our colleagues' and the Committee's argument went even farther than simple redesignation. They argued that these contributions were not specifically designated for the primary in the first place but were intended for the GELAC despite the fact that some of these contributions were solicited by the Primary Committee to retire primary debt; and all specifically indicated on the solicitation that the contributions were matchable; and the checks were made to the order of the Primary Committee and were deposited in a Primary Committee account.

The result of the Commission's failure to approve Audit's recommendation left us in the impossible position of accepting the Committee's argument that contributions deposited after the convention were not primary contributions, but rather were undesignated contributions received after the primary election, and pursuant to 11 C.F.R. 110.1 were automatically general election contributions. This apparently holds true despite the fact that contributions received as part of the same solicitations were in fact deposited by the Primary Committee and matched with public funds!

Following the 3-3 split on the Audit's recommendation, which had the effect of calling these funds contributions for the GELAC, the General Counsel and Audit Division recommended that the funds received after the DOI that were matched should be declared ineligible for matching because (as our colleagues had just argued) they too were not designated for the primary. This recommendation was made because the contributions transferred by the Clinton Committee to the GELAC and the contributions that were retained by the primary committee and submitted for matching were indistinguishable in every way: they were solicited by the same mailing, mailed to the same address, made payable to the same committee and received at the same time. This motion recognized that if some of these contributions were not designated for the primary, then none were. Accordingly, the Committee would have had to make a repayment of the amount that was mismatched with public funds. Incredibly, this motion also failed on a 3-3 partisan split.

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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And so the Committee has it both ways. Contributions the Committee received after the convention were considered primary contributions that were matched with public funds used to pay primary debts, while other contributions also received after the convention from the same solicitations were considered undesignated or redesignated to the GELAC -- all at the whim of the Committee.

We see no legal or logical way that these post convention contributions can be both matchable primary contributions and at the Committee's discretion also be undesignated contributions to the GELAC. Such a scheme allowed the Clinton Committee to manipulate its cash balance and debts to receive public money to which it was not entitled. In its 19 year history, the Commission has never tolerated such a result. ~~The Commission's~~ failure to demand repayment of this public money is inconsistent with Commission precedent and squarely at odds with the plain language of the statute and regulations, is arbitrary and capricious, and contrary to law. Failure to approve either of the two motions completely undermines the integrity of the Presidential Public Funding system and will place this agency in an untenable position in trying to enforce the law in future elections.

III. The Clinton Committee's Real Entitlement to Public Money.

In their Statement of Reasons, Commissioners McGarry, McDonald and Thomas make the extraordinary statement that their votes to block repayment actually "furthers the public financing concept" (emphasis in original) because it pumps more taxpayer money into the Clinton campaign than the rules allow. Their argument is that if public financing is good, then more public financing must be better. This philosophy, of course, turns Congress' limited public financing statutes for the primaries and the Commission's audit rules upside down: for in every Presidential audit, until this one, the Commission has sought to protect taxpayer funds by requiring Committees prove they were fully entitled to the matching funds they received.

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Statement of Reasons
Clinton for President Committee
by Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott and
Commissioner Trevor Potter

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We believe that, at a minimum, Congress should be consulted before the Commission turns a conditional grant of public funds into a flat entitlement for maximum financing. Furthermore, such a drastic change of course should be subject to the notice and comment and other protections of a rulemaking. Finally, it is grossly improper to adopt such a free-spending standard for only one candidate (the current President of the United States), while every other campaign in the same cycle has been held to a different and stricter rule. Such a singular and capricious result is inappropriate and does not "further" the concept of public financing. Instead, it destroys the public's confidence that its money will be audited in a non-partisan manner and the rules scrupulously followed when it is given to any presidential campaign.

Joan D. Aikens
Joan D. Aikens
Commissioner

December 29, 1994
Date

Lee Ann Elliott
Lee Ann Elliott
Commissioner

December 29 '94
Date

Trevor Potter
Trevor Potter
Chairman

December 29, 1994
Date

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