



AK004735

March 8, 1994

MEMORANDUM

TO: SHARON SNYDER  
PRESS OFFICE

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

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

Attached please find a copy of the final audit report and related documents on Kerrey for President which was approved by the Commission on March 3, 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

REPORT OF THE AUDIT DIVISION  
ON

# Kerrey for President

Approved March 3, 1994



FEDERAL ELECTION COMMISSION  
999 E STREET, N.W.  
WASHINGTON, D.C.

REPORT OF THE AUDIT DIVISION  
ON

**Kerrey for President**

Approved March 3, 1994



FEDERAL ELECTION COMMISSION  
999 E STREET, N.W.  
WASHINGTON, D.C.



FINAL AUDIT REPORT  
ON  
KERREY FOR PRESIDENT  
  
EXECUTIVE SUMMARY

Kerrey for President (the Committee) registered with the Federal Election Commission on September 18, 1991, as the principal campaign committee of Senator J. Robert Kerrey, a candidate for the 1992 Democratic presidential nomination.

The audit was conducted pursuant to 26 U.S.C. §9038(a).

The findings of the audit were presented to the Committee at the exit conferences held at the conclusion of the audit fieldwork relative to the findings (10/1/92 and 1/13/93) and in an interim audit report (the Interim Report) approved by the Commission on May 25, 1993, and ratified by the Commission on November 9, 1993.<sup>1/</sup> The Committee was given an opportunity to respond to the findings both after the exit conferences and after receipt of the Interim Report. Comments and information received have been included in this final report.

The following is an overview of the findings contained in the final audit report (the Report).

Disbursements for Transportation and Services Made Available to Press and Secret Service Personnel - 11 CFR 9034.6(a), 11 CFR 9034.6(b), 11 CFR 9034.6(d)(1), 11 CFR 9033.11(c). A committee that provides transportation and related services to the Press and Secret Service<sup>2/</sup> may charge for the services and accept the resulting reimbursements. With regard to the Press the

<sup>1/</sup> Following the decision by the D.C. Court of Appeals, in FEC v. NRA Political Victory Fund, et al., No. 91-5360, slip op. at 2, that the composition of the Federal Election Commission violated the Constitution's separation of powers, the Commission reconstituted itself of October 26, 1993, and ratified its earlier approval of the Interim Report on November 9, 1993.

<sup>2/</sup> The Report also notes that Secret Service apparently overpaid the Committee \$2,811 in reimbursements.

amount charged must be based on the cost per passenger plus a 10% allowance provided in Commission regulations. The Committee is permitted to retain an amount equal to the per passenger cost plus an allowance for administrative costs of the program. The administrative cost allowance ranges from 3% if no documentation exists, to 10% if the Committee can document more than the 3% basic allowance. Any amounts billed and collected in excess of the cost plus 10% allowance (over charges) must be returned to the travelers. Amounts collected that exceed cost plus the administrative cost allowance (profit) must be paid to the U.S. Treasury.

The Report requires the Committee to pay the U.S. Treasury \$6,672 (profit) and the travelers \$3,939 (over charges). The Committee's responses to the interim audit report did not include documentation sufficient to resolve these issues.

Excessive Contributions Resulting from Staff Advances - 2 U.S.C. §441a(a) and (f), 2 U.S.C. §431(11), 11 CFR 100.7(a)(1)(iii) and (b), 11 CFR 116.5(b). A payment by an individual from his or her personal funds for campaign-related costs is a contribution subject to the \$1,000 limitation unless exempted under 11 CFR 100.7(b)(8) or reimbursed within specific time frames. The Interim Report questioned, as excessive contributions, advanced funds totaling \$6,238 from one staff member. The Committee's response provided no documentation to refute the excessive nature of the advances; however, the staff member had submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. Thus, the Commission determined that any portion of the travel expenses, up to \$1,000, that remains unreimbursed by the Committee is not a contribution. This determination allowed the Committee to avail itself of the \$1,000 transportation exemption at 11 C.F.R. §100.7(b)(8), thus reducing the excessive amount to \$5,238.

Disclosure and Itemization of Financial Activity - 2 U.S.C. §434(b), 2 U.S.C. 431(13), 11 CFR 104.2, 11 CFR 104.3. On its initial disclosure reports, the Committee failed to report adequately the activity related to loans received, disbursements, debts and obligations, Press reimbursements, exempt legal and accounting services, and the identification of contributors. The Committee responded by filing amended reports, which complete the public record.

Undocumented Disbursements - 11 CFR 9033.11 a and 11 CFR 9038.2.b 3. Following the Interim Report's identification of inadequate documentation of 67 disbursements, involving \$24,513, the Committee corrected the problem by providing the necessary documentation.

Stale-dated Committee Checks - 11 CFR 9038.6. Finally, the Committee is required to pay to the U.S. Treasury \$1,175, the total amount of checks outstanding which have not been cashed.

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REPORT OF THE AUDIT DIVISION  
ON  
KERREY FOR PRESIDENT

I. Background

A. Audit Authority

This report is based on an audit of Kerrey for President "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.

B. Audit Coverage

The audit covered the period from the Committee's inception of bank activity, September 17, 1991, through February 29, 1992. During this period, Committee reports reflect an opening cash balance of \$-0-, total receipts of \$5,655,969, total disbursements of \$5,552,108, and a closing cash balance of \$103,861.1/2/. In addition, a limited review of the Committee's transactions was conducted through April 27, 1993, for purposes of determining the Committee's remaining matching fund entitlement based on its financial position.

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1/ These amounts include the activity from an affiliated committee, Texans for Bob Kerrey: \$1,487 of receipts and disbursements. No material findings resulted from a review of the affiliated committee's records.

2/ All figures in this report have been rounded to the nearest dollar.



### C. Campaign Organization

The Committee registered with the Federal Election Commission on September 18, 1991. The Treasurer of the Committee during the period covered by the audit was Hugh Westorock, who is also the current Treasurer.

During the period audited, the campaign established offices in 18 states in addition to its national headquarters located in Washington, D.C.

To manage its financial activity, the campaign used 15 bank accounts at various times. From these accounts the campaign made approximately 3,200 disbursements. Approximately 33,700 contributions were received from 26,600 persons during the audit period. These contributions totaled \$3,235,000.

In addition to contributions, the campaign has received, through February 2, 1993, \$2,195,530 in matching funds from the United States Treasury. This amount represents 16% 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. To date, the campaign has made a total of 14 matching fund requests totaling \$2,228,479. The Commission has certified 99% of the requested amount. For matching fund purposes, the Commission determined that Senator Kerrey's candidacy ended March 5, 1992. This determination was based on a public statement by the candidate. The campaign has continued to receive matching fund payments to defray campaign related expenses incurred through March 5, 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 Committee.

### D. Audit Scope and Procedures

In addition to a review of the Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred by the campaign, the audit covered the following general categories:

1. The campaign's compliance with statutory limitations with respect to the receipt of contributions or loans see Finding II.A. ;
2. the campaign's compliance with the statutory requirements regarding the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Findings II.D. and II.G.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Findings II.C., II.F. and II.G.);
5. proper disclosure of campaign debts and obligations (see Findings II.B. and II.E.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.G.);
7. adequate recordkeeping for campaign transactions;
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.E.);
9. the campaign's compliance with spending limitations; and
10. other audit procedures that were deemed necessary in the situation.

In addition, on April 23, 1992, the Audit staff completed an inventory of the Committee's records to determine if they were materially complete and in an auditable condition. A letter dated April 27, 1992, notified the Committee that records pertaining to several areas of the pending audit were not made available for review. Furthermore, the letter informed the Committee that if at the conclusion of a 30 day period ending June 1, 1992, the items listed on the letter had not been provided, the Commission would issue subpoenas for the production of those records. Records provided in response to our April 27, 1992 request were deemed sufficient to commence fieldwork.

Unless specifically discussed below, no material non-compliance 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

### Introduction to Findings

In light of an October 22, 1993 decision by the Court of Appeals for the D.C. Circuit in FEC v. NRA Political Victory Fund et al., the Commission reconsidered the interim audit report and

voted its approval on November 9, 1993. As a result of this action, the Committee was afforded an additional 30 days to supplement its earlier response received on November 5, 1993. On December 3, 1993, a supplemental response to the interim audit report was received which, along with the earlier response, was considered when this report was prepared. The Committee states in its response that "[b]y submitting this supplemental response, the Committee expressly waives no rights that it otherwise has arising from the decision of the D.C. Court of Appeals in FEC v. NRA Political Victory Fund et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993)."

A. Excessive Contributions Resulting from Staff Advances

Section 441a(a) of Title 2 of the United States Code states, in relevant part, 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 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contributions or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

Section 431(11) of Title 2 of the United States Code states that the term "Person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of Persons, but such term does not include the Federal Government or any authority of the Federal Government.

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

Section 116.5(b) of Title 11 of the Code of Federal Regulations states that 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 a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 C.F.R. §100.7(b)(8). If the payment is not exempted under 11 C.F.R.

107.2 b 9. It shall be considered a contribution by the individual unless the payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual 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. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement. In addition, "subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

During our review of the Committee's expense reimbursements to campaign staff, and of the Committee's contributions received from campaign staff, we noted that one individual advanced funds on behalf of the Committee in excess of the \$1,000 limitation. The excessive portions of contributions and advanced funds totaled \$6,238. The expenses were incurred for travel occurring between October 8, 1991 and February 23, 1992. This individual also contributed \$1,000 on October 28, 1991. As of October 19, 1992, the excessive portion in the amount of \$6,238 remained outstanding.

The Committee Counsel provided written comments and documentation subsequent to the Exit Conference relevant to this finding. He stated that the Committee distributed to each employee a written policy that stated that staff were not to advance their personal funds to purchase goods or services on behalf of the Committee. The Counsel also maintained that time frames allowed for reimbursements of staff advances should be consistent with the time limits imposed upon refunds of excessive contributions. Counsel further contended that the section of the regulations that provide that the obligation arising from a staff advance shall be treated as an outstanding debt until reimbursed "...should be construed to mean that the Committee may have a reasonable period of time in which to 'retire' the debt by making the appropriate reimbursements to staff, or by settling the debt with the staff."

With regard to the resolution of the advance noted above, the Committee presented a debt settlement statement that shows that an obligation of \$8,162 to this individual was settled on November 21, 1992 for \$4,081. Finally, the Committee asserted that "...it exercised best efforts to minimize the frequency of staff advances, that it reimbursed or settled such advances within

a reasonable time and that therefore no excess contributions were accepted that require any repayment or penalty, or other further action by the Commission."

In the interim audit report the Audit staff recommended that the Committee provide evidence that the staff advances are not excessive contributions and any additional comments.

The Committee responded to the interim audit report with narrative arguments and comments which asserted that the Committee had acted reasonably to comply with the regulations governing staff advances.

The Committee restated its advance policy, as discussed above, and noted that the "...interim audit report raises but a single example of a breach of this policy."

Further the Committee stated that once it became aware of the advances which led to the excessive contribution cited in the interim audit report, the Committee treated this advance as an outstanding debt pursuant to 11 CFR 116.5(c). The Committee construes this section of the regulation "...to mean that the Committee may have a reasonable period of time in which to 'retire' the debt..." and that "...[i]f the debt arising from an advance is properly settled, then it too, like vendor debt, should not be considered to be an excess contribution."

Finally the Committee contends that the individual is "...entitled to a \$1,000 travel exemption, as provided in 11 CFR 100.7(b)(8)..."

The Audit staff is of the opinion that the travel exemption does not apply to these expenses submitted for reimbursement.

With respect to the arguments and other comments as presented above, it is the opinion of the Audit staff that the Committee has provided no evidence or additional information that demonstrates that the staff advances do not constitute excessive contributions.

The Commission disagreed with the Audit Division's conclusion that the Committee is not entitled to the \$1,000 travel exemption. The Commission believes that pursuant to 11 C.F.R. §100.7(b)(8), any unreimbursed payment for transportation expenses incurred by an individual on behalf of the candidate is not a contribution, if within the \$1,000 aggregated individual exemption. In this case, Mr. Westbrook submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. The regulations do not address the issue of whether the Committee is required to demonstrate Mr. Westbrook's "intent" to have the travel exemption apply or not apply to his reimbursement request. Therefore, it is the position of the Commission that the portion

of his travel expenses, up to \$1,100 that remains unreimbursed by the Committee is not a contribution. See 11 C.F.R. §100.7(b) 6 and 11 C.F.R. §116.5 b.

Accordingly, the excessive portion is reduced to \$5,133.

#### B. Itemization of Loans Received

Sections 434 b (2) H<sup>3</sup> and 434(b) 3(E) of Title 2 of the United States Code require the disclosure of all loans, and the identification of each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan.

Section 434 b(4) E of Title 2 of the United States Code requires for the reporting period and the calendar year, disclosure of the total amount of all disbursements and the repayment of all loans.

Section 104.2(e) of Title 11 of the Code of Federal Regulations specifies that the authorized committees of a candidate for President shall file reports on FEC Form 3-P. Additionally, the instructions for Schedules A-P and B-P of this form package require the Committee to itemize all loans received and all loan repayments made by the Committee during the reporting period on this schedule.

During the audit period the Committee obtained two loans from American National Bank and a nonconcurrent line of credit from Adams National Bank. Against these loans<sup>3/</sup> the Committee received six advances totaling \$1,560,767, and made six repayments for principal, interest and loan fees totaling \$666,722. Of this activity the Committee did not itemize five advances totaling \$1,335,767 on Schedule A-P, and did not itemize five repayments of principal, interest, and loan fees totaling \$661,722 on Schedule B-P. All loans were repaid in full as of June 2, 1992.

At the Exit Conference the Committee was provided with a schedule listing the loans, advances and repayments which require itemization on Schedules A-P and B-P. The Audit staff clarified the itemization requirements for loan activity and the Committee appeared to concur with the recommendation.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules A-P and B-P itemizing the loan activity.

<sup>3/</sup> The loan activity reviewed occurred prior to April 2, 1992, the effective date of the Commission's revised regulations on loans and new reporting forms.

On August 12, 1993 the Committee complied with the Audit staff recommendation and filed amended Schedules A-P and B-P which itemized the loan activity noted above.

### C. Itemization of Disbursements

Sections 434(b)(4)(A) and 5(A) of Title 2 of the United States Code state that each report shall disclose expenditures made to meet candidate or committee operating expenses; and the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

The Audit staff's review of disbursements identified 150 disbursements, totaling \$74,278, which were not itemized as required. Thirty-seven of these disbursements, totaling \$30,354, were expended from the New Hampshire account in late December 1991. The Committee included the amount of this activity in reported totals but did not itemize these disbursements. The balance of the itemization errors (113 totaling \$43,924) were categorized by the Committee as "Miscellaneous Unitemized Expenses." Generally, these disbursements were checks payable to individuals in the form of reimbursements. The Committee representatives stated that these disbursements were not aggregated and itemized because the funds received were used to cover expenditures to vendors in amounts less than \$200.

At the Exit Conference the Audit staff provided the Committee with schedules of the disbursements that require itemization. The Committee appeared to concur with the recommendation.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules B-P itemizing the disbursements noted above.

On August 12, 1993 the Committee filed Schedules B-P on which these disbursements were itemized.

### D. Disclosure of Occupation and Name of Employer

Section 434(b)(3)(A) of Title 2 of the United States Code requires a political committee to report the identification of each person who makes a contribution to the committee in an aggregate amount or value in excess of \$200 per calendar year together with the date and amount of such contribution.

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

Section 434(a) of Title 2 of the United States Code 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 this Act for the political committee, any report of such committee shall be considered in compliance with this Act.

The Audit staff reviewed a sample of receipts from individuals to determine if the identification of each contributor requiring itemization was adequately disclosed. The sample results showed an error rate of 36% with respect to disclosure of occupation and name of employer. In some cases there was no evidence of a request for the information and in other instances the information was obtained but was not disclosed. With regard to other contributors the Audit staff acknowledged at the Exit Conference that the Committee made efforts subsequent to disclosure dates to obtain the information and was successful in receiving some information.

At the Exit Conference, the Audit staff advised the Committee of the high error rate. The Committee agreed to file, in alphabetical order, amended Schedules A-P to disclose the occupation and name of employer for contributions from individuals.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules A-P to disclose the occupation and name of employer for each contributor requiring itemization.

On August 12, 1993 the Committee filed amended Schedules A-P and corrected materially the omissions noted above.

#### E. Reporting of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code requires that the amount and nature of outstanding debts and obligations owed by or to a political committee be disclosed. Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations states, in relevant part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly recurring administrative expense shall not be reported as a debt before the payment due date.

The Audit staff reviewed selected debts and obligations and determined that the Committee did not disclose on its February



1992 report, 35 obligations totaling \$196,622.4. Twenty-four of these obligations totaling \$125,403 were reported continuously beginning with its March 1991 report; eight obligations totaling \$65,807 were reported continuously beginning with its April 1991 report; three obligations totaling \$5,413 were never reported. At the Exit Conference, the Audit staff recommended that the Committee institute stronger internal control procedures to ensure compliance with the Regulations. The Committee concurred.

In the interim audit report the Audit staff recommended no further action on this matter.

F. Reporting of Press Reimbursements Paid Directly to Charter Air Travel Vendor by Press Organizations

Section 9034.6 of Title 11 of the Code of Federal Regulations requires that the total amount paid by an authorized committee for the cost of transportation or for ground services and facilities be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or for ground services and facilities shall be reported in accordance with 11 CFR 104.3 a)(3)(ix). 11 C.F.R. §104.3 (a)(3)(ix)(A) and (b)(2)(i) requires an authorized committee of a candidate for Federal office to report the total amount of activity within several categories of receipts, including offsets to operating expenditures, and within several categories of disbursements, including operating expenditures.

Section 434(b)(3)(F) of Title 2 of the United States Code states, in relevant part, that each report shall disclose the identification of each person who provides an 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. Subsection (5)(A) of this section also requires the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made together with the date, amount, and purpose of such expenditure. In addition, 2 U.S.C. §431 13 defines "identification", for other than an individual, as the full name and address of such person.

The Committee chartered aircraft for campaign travel to transport the Candidate, Committee staff, Press personnel and Secret Service agents. As a result of incurring expenditures for transportation and services made available to Press personnel, the Committee received reimbursements from the media organizations which totaled \$73,120. The Audit staff noted additional campaign travel activity by some press personnel during late January to early March. For travel during this period seven media

4/ As of September 30, 1992, all payments requiring itemization made to vendors against these obligations were reported on Schedules B-P.

organizations made credit card payments totaling \$30,437 directly to the Committee's charter air travel vendor. These remittances were applied against the total amount owed to the vendor by the Committee. Although it appears that the Committee was provided with information about the transactions, this credit card activity was not disclosed on the Committee's FEC reports; on Line 20(a) as a receipt and Line 23 as a disbursement.

The Audit staff determined that 13 payments from 7 organizations, totaling \$30,252, aggregated in excess of \$200 during calendar year 1992 and were therefore required to be itemized on Schedules A-P (Itemized Receipts - Offsets to Expenditures) and B-P (Itemized Disbursements - Operating) pursuant to 2 U.S.C. §434(b)(3)(F) and (5)(A). Disclosure as both receipt(s) and disbursement(s) provides the complete activity for which the Committee served as intermediary between the air travel vendor and the Press.

At the Exit Conference the Committee was provided with a schedule listing the 13 payments which require itemization on Schedules A-P and B-P as non-cash transactions. Committee Counsel stated that he disagreed with the Audit staff's recommendation. It was his opinion that since the media organizations made their payments for transportation directly to the air travel vendor, no disclosure of these payments by the Committee was warranted. The Audit staff responded that because the Committee arranged for the charter air travel and was responsible for documenting all facets of the Press travel program, disclosure of the payments made directly to the vendor by the media organizations was necessary to ensure full compliance with the disclosure requirements.

In the interim audit report the Audit staff recommended that the Committee file amended reports to include the 14 transactions totaling \$30,437 within total reported receipts and disbursements, and file amended Schedules A-P and B-P itemizing the 13 transactions totaling \$30,252.

On August 12, 1993, the Committee filed amended reports which corrected materially the total reported receipts and disbursements for the transactions totaling \$30,437, and filed amended Schedules A-P and B-P which itemized the 13 transactions totaling \$30,252 noted above.

G. Reporting of Receipts from Individuals and Disbursements for Operating Expenditures

Sections 434(b)(2) and (4) of Title 2 of the United States Code requires a political committee to disclose the total amount of all contributions from individuals and total expenditures made to meet committee operating expenses.

Section 104.3(h) of 11 C.F.R. requires that a committee receiving legal or accounting services pursuant to 11 CFR 100.7(b)(14), which excludes from the definition of contributions

legal and accounting services if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act, shall report as a memo entry, on Schedule A-P, the amounts paid for these services by the regular employer of the person's providing such services; the date's such services were performed; and the name of each person performing such services.

Total reported receipts and total reported disbursements were materially correct for 1991. However, line totals within receipts and within disbursements were misstated. The Committee calculated total receipts independently of calculations for reported line totals and then "derived" the line total for contributions from individuals to reconcile to this total. The Committee "derived" total disbursements as an amount reconcilable to total receipts and ending cash on hand, and then "derived" the line total for operating expenditures to reconcile this total. Because the Committee included memo activity for exempt legal and accounting services within the line totals for both receipts and disbursements but did not include it within the calculations of total receipts and total disbursements, the line totals for unitemized contributions from individuals and for unitemized operating expenditures were understated by \$17,590 (\$18,051 memo activity - \$648 net reconciling adjustments) and \$22,596 (\$18,051 memo activity + \$4,544 net reconciling adjustments), respectively in 1991.

In 1992 the Committee included the memo activity (\$27,628) in its calculations of total receipts and total disbursements. Thus, total reported receipts were overstated by \$25,845 (\$27,628 - \$1,783 net reconciling adjustment) and total reported disbursements were overstated by \$30,924 (\$27,628 + \$3,296 net reconciling adjustment). Finally, 1992 activity was also understated for other receipt and disbursement activity by \$30,437 (see Finding II.F.).

At the Exit Conference the Committee was provided with a schedule detailing the misstatements discussed above. The Committee concurred with the Audit staff conclusions.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules A-P for 1991 and 1992 to disclose correctly the memo activity pursuant to Section 104.3(h), file amended Summary and Detailed Summary pages for 1991 to correct the line totals for receipts and disbursements, and file amended Summary and Detailed Summary pages for 1992 to correct both the overstatements and understatements of line totals.

On August 12, 1993 the Committee complied materially with all recommendations of the Audit staff by filing amended Schedules A-P for both 1991 and 1992 to disclose correctly the memo activity, and by filing Summary and Detailed Summary pages for both 1991 and 1992 to correct the line totals for receipts and disbursements.

III. Findings and Recommendations - Repayment Issues

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 9038.1(c)(1) v of Title 11 of the Code of Federal Regulations states that preliminary calculations regarding future repayments to the U.S. Treasury may be contained within the interim audit report. Pursuant to §9038.2 a(2) of this Title the Commission will notify the candidate of any repayment determinations not later than three years after the end of the matching payment period. The issuance of this interim audit report to the candidate constitutes notice of any repayment determinations for purposes of the three year period.

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

Pursuant to 11 C.F.R. §9033.5(a)(1), the Commission determined Senator Kerrey's date of ineligibility to be March 5, 1992.

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

Total Matching Funds Certified through the Date  
of Ineligibility - March 5, 1992

---

Total Deposits through  
Date of Ineligibility

\$1,266,097  
\$5,330,592

---

= .237515

Thus, the repayment ratio for non-qualified campaign expenses is 23.7515%.

### B. Stale-dated Committee Checks

Section 9038.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission of its efforts to locate the payees, if such efforts 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 reconciled the Committee's reported disbursement activity to the bank activity through February 29, 1992 and identified 14 stale-dated checks totaling \$1,525.

At the Exit Conference the Audit staff provided Committee representatives with a schedule of the stale-dated checks. The Committee stated that they could probably resolve some of the checks and would repay to the U.S. Treasury the remainder.

In the interim audit report the Audit staff recommended that the Committee present evidence that (1) the checks were not outstanding, or (2) the outstanding checks were voided, and (3) the Committee attempted to locate the payees to encourage them to cash the outstanding checks.

Absent evidence to the contrary the Audit staff would recommend that the Commission make an initial determination that \$1,525 in outstanding checks are payable to the U.S. Treasury.

In response to the interim report the Committee stated that one check for \$350 had been voided, and provided an affidavit from the payee attesting that no Committee obligation exists with respect to the disbursement. The Committee did not address the remaining 13 disbursements totaling \$1,175 (\$1,525 - \$350).

#### Recommendation #1

The Audit Division recommends that the Commission make an initial determination that the Committee make a payment of \$1,175 to the United States Secretary pursuant to 11 C.F.R. §9038.6.

### C. Apparent Non-qualified Campaign Expenses - Undocumented Disbursements

Section 9032(9) of Title 26 of the United States Code defines, in part, the term "qualified campaign expense" as a purchase or payment incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination which neither the incurring nor payment of constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

Section 9033.11(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) are qualified campaign expenses. The candidate and his authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate and agents or persons authorized to make expenditures on behalf of the candidate or committee(s).

Section 9038.2(b)(3) of Title 11 of the Code of Federal Regulations states the Commission may determine that amounts spent by the candidate, the candidate's authorized committee(s), or agents, were not documented in accordance with 11 C.F.R. 9033.11.

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states 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 deposits, as of the candidate's date of ineligibility. Total deposits is defined in accordance with 11 C.F.R. 9038.3(c)(2). For the purpose of seeking repayment for non-qualified campaign expenses from committees that have received matching fund payments after the candidate's date of ineligibility, the Commission will review committee expenditures to determine at what point committee accounts no longer contain matching funds. In doing this, the Commission will review committee expenditures from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.

The Audit staff reviewed the Committee's disbursements and in the interim audit report identified 67 disbursements totaling \$36,119 for which amounts totaling \$24,513 were not documented in accordance with 11 C.F.R. §9033.11(b). The undocumented disbursements, categorized by the Committee's purposes, by temporary checks written on January 28, 1992, and by disbursements made after February 29, 1992 were as follows:

1. Miscellaneous Unitemized Disbursements - Eighteen disbursements to 14 payees (12 individuals and 2 cash) totaling \$19,195, for which \$7,789 is undocumented.
2. Volunteer Expenses - Eighteen disbursements to 11 payees, all individuals, totaling \$3,450, for which \$3,250 is undocumented.

3. Petty Cash - Four disbursements to four payees, all individuals, totaling \$1,656, for which \$1,656 is undocumented.
4. Travel - Food Lodging - Nine disbursements to eight payees, all individuals, totaling \$2,825, for which \$2,825 is undocumented.
5. Consulting Contracts - Two disbursements to two payees, both individuals, totaling \$750, for which \$750 is undocumented.
6. New Hampshire Temporary Checks Written January 28, 1992 - Eight disbursements to seven payees, five individuals, one vendor, and cash, totaling \$1,353 for which \$1,353 is undocumented.
7. Disbursements Made After February 29, 1992 - Eight disbursements to eight payees, seven individuals and a bank, totaling \$6,890 for which \$6,890 is undocumented.

At the Exit Conference the Committee was provided a schedule of the disbursements lacking sufficient documentation. The Committee stated that they would attempt to obtain affidavits from the payees as to where, when and how the funds were spent. In addition, the Committee stated that they would provide specifics on the payees and how the activities related to the campaign.

In the interim audit report the Audit staff recommended that the Committee submit documentation which demonstrates that the expenses noted above are qualified campaign expenses. Absent such a demonstration, the Audit staff would recommend that the Commission make an initial determination that the Committee make a pro rata repayment of \$5,822 ( $\$24,513 \times .237515$ ) to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2).

The Committee responded to the interim report by submitting affidavits from payees, signed expense vouchers, per diem worksheets, copies of cancelled checks, receipted bills, and other documentation which supported materially the qualified nature of the disbursements noted above. Accordingly, no further action is necessary.

D. Reimbursements for Transportation and Services Made Available to Press and Secret Service Personnel

Section 9034.6(a) of Title 11 of the Code of Federal Regulations states, in part, that if an authorized committee incurs expenditures for transportation, ground services and facilities made available to media personnel and Secret Service personnel, such expenditures will be considered qualified campaign

expenses and, except for costs relating to Secret Service personnel, subject to the overall expenditure limitations of 11 C.F.R. §9035.1(a).

Section 9034.6(b) of Title 11 of the Code of Federal Regulations states, in part, that if reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each media representative shall not exceed either: the media representative's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the media representative's pro rata share of the actual cost of the transportation and services made available. A media representative's pro rata share shall be calculated by dividing the total cost of the transportation and services by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel and any other individuals to whom such transportation and services are made available. The total amount of reimbursements received from a media representative under this section shall not exceed the actual pro rata cost of the transportation and services made available to that media representative by more than 10%.

Section 9034.6(d)(1) of Title 11 of the Code of Federal Regulations states, in part, that the committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 C.F.R. §9035.1(a) the amount of reimbursements received in payment for the actual cost of transportation and services described in paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section up to the maximum amount that may be received under paragraph (b) shall be repaid to the Treasury.

The Explanation and Justification (E&J) for the above regulations Federal Register, Volume 56, No. 145, Page 35906 states that "...the current rules permit billing the media for up to 110% of the actual pro rata cost, while allowing a deduction from the expenditure limit of no more than 103% of the actual cost." Further, "...the amount between 103% and 110% of the actual cost must be repaid to the Treasury, and amounts received that exceed 110% will have to be returned to the media on a pro rata basis." The E&J further states that this approach

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"recognizes that reimbursements from the media may cover actual transportation costs of administering the program, but should not result in a primary candidate's committee making a profit."

Finally, section 9033.11 of Title 11 of the Code of Federal Regulations states, in part, that the candidate shall retain records, with respect to each disbursement and receipt, including vouchers, worksheets, bills and accounts, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.

#### Background

The Audit staff reviewed documentation related to reimbursements for transportation and services provided to Press and Secret Service personnel. Documentation covering 53 campaign legs via charter aircraft for trips between 10/01/91 and 3/05/92 (the Candidate's date of ineligibility) was provided to the Audit staff as follows:

10/01/91 - 1/19/92, 13 legs: The only documentation provided to the Audit staff were Committee-prepared invoices for travel by specific Press personnel. No passenger manifests or leg cost information was provided. The Audit staff used the amounts billed for specific individuals as the pro rata shares.

1/20/92 - 1/30/92: The Committee provided no documentation relative to travel. During this period the Candidate traveled to New Hampshire, Texas, Maine, Washington, D.C. and Minnesota.

1/31/92 - 2/04/92, 9 legs: 3-5 Press and 3 staff (including the Candidate) per leg. Leg costs were provided by the air charter vendor; pro rata shares (leg cost/number of passengers) were calculated using the number of passengers noted on Committee-prepared manifests or Candidate itineraries, with the exception of the two legs on 2/01/92 for which the Audit staff used the amounts billed per Committee-prepared billings.

2/05/92 - 2/18/92: No documentation provided. The Committee stated that the Candidate used ground transportation in New Hampshire.

2/19/92 - 2/27/92, 17 legs: 3-8 Press, 8-11 Secret Service, and 8-18 staff per leg. Leg costs were provided by the air charter vendor; pro rata shares were calculated using the number of passengers noted on manifests or Secret Service billings, both prepared by the Committee.

2/28/92 - 3/05/92, 14 legs: 6-8 Press, 1 Secret Service and 4-7 staff. Leg costs were provided by the air charter vendor;

pro rata shares were calculated using the number of passengers noted on manifests, Secret Service billings and Candidate itineraries.

The Audit staff analyzed the above information for each leg on which Press or Secret Service personnel were identified as passengers and summarized it as follows:

1. Press Reimbursements

The Audit staff calculated the pro rata costs relative to reimbursable costs by Flight Leg No. for each trip and accumulated these costs. Our review indicated that the pro rata cost of the Press for these flights totals \$90,777. The Commission's regulations provide that a 10% markup on the actual cost of transportation and services may be billed to the Press. Thus the maximum amount billable to the Press (110% of cost) totals \$99,855. The Committee is required to refund to the Press the amount of Press reimbursements received in excess of the maximum amount billable. The Committee received \$103,556<sup>5/</sup> in Press reimbursements for which travel documentation was available. Therefore the Committee is required to refund to the Press on a pro rata basis \$3,701 (\$103,556 - \$99,855).

The 10% markup represents the maximum amount of administrative costs that the Committee may bill the Press. The regulations further require that only a 3% markup may be retained by the Committee unless the Committee can document administrative costs in excess of 3% up to the maximum of 10%. No comment was made by the Committee as to whether administrative costs exceeded 3%. The undocumented difference between 103% of cost (\$93,501) and 110% of cost (\$99,855) must be repaid to the U.S. Treasury. Thus the Committee must repay to the U.S. Treasury \$6,354 (\$99,855 - \$93,501).

The Committee also received reimbursements totaling \$6,642 for which there was no travel or cost documentation. The Audit staff allocated the amounts refundable to the Press and repayable to the U.S. Treasury at the ratios calculated for the documented reimbursements.

Thus, \$3,939 is refundable to the Press and \$6,762 is repayable to the U.S. Treasury.

Committee officials present at the Exit Conference stated that they were not directly involved in the management of the Press travel program and therefore could offer no explanation or comment on this matter.

<sup>5/</sup> Included in this total are credit card payments totaling \$30,437 made directly to the air charter vendor. See Finding II.F.

## 2. Secret Service Overpayment

Secret Service agents were on board the chartered planes for trips between 1 19 91 and 3 25 91. The Committee invoiced the Secret Service for the pro rata shares of providing transportation and services to the Secret Service plus an additional 10% to cover the administrative costs, a total of \$47,886. The Secret Service made payments totaling \$44,640.

According to a Secret Service policy document, the Secret Service reimburses committees the lesser of: 1) first class air fare, or 2) the pro rata share of the cost of the charter for the agents on the trips. The Audit staff determined that the correct billable amount for the Secret Service was \$41,829, based on the accumulation of the lesser of first class air fares or pro rata shares per leg at 100% of cost. The regulations at §9034.6(a) do not provide for billing administrative costs to the Secret Service. Thus, the Secret Service has overpaid the Committee \$2,811 (\$44,640 - \$41,829).

A possible explanation for this overpayment is that the Committee erroneously billed the Secret Service at 110% of the actual pro rata share of cost of providing transportation and services instead of at 100% of actual cost as required by 11 C.F.R. §9034.6(a). At an interim conference, a Committee representative explained that they misinterpreted the applicable regulation and as a result billed the Secret Service at 110% of actual cost, the same "mark-up" they billed the Press organizations. In addition, adherence to the Secret Service policy could possibly have contributed to the difference between the amount the Committee billed the Secret Service and the amount ultimately paid by the Secret Service.

In conclusion, the Secret Service has apparently overpaid the Committee \$2,811 in reimbursements for the cost of providing transportation and services to the Secret Service. At the Exit Conference, Committee officials provided no additional comments on this issue.

The Audit staff will provide the information gathered during the audit to the Secret Service for any action that agency deems necessary. Should the Secret Service determine that no overbilling occurred or that an overbilling occurred in a different amount, the Committee's Statement of Net Outstanding Campaign Obligations (See Finding III.E.) will be adjusted accordingly.

In the interim audit report, the Audit staff recommended that the Committee provide evidence that it did not overbill the Press and that in the absence of such evidence the Committee should:

(1) repay the U.S. Treasury \$6,762, which represents the undocumented difference between 103% and 110% of

the administrative cost of providing transportation and services to the Press, and

2. refund to the Press on a pro rata basis \$3,939, which represents the amount in excess of the 110% maximum amount the Committee may bill the Press. This evidence was to include the calculations used to determine the amount paid to each Press organization and photocopies of the negotiated refund checks (front and back).

It was further recommended that the Committee provide documentation related to any reimbursements for transportation and services provided to Press personnel with respect to the time period 1/20/92 to 1/30/92. The recommendation additionally requested that the Committee provide evidence that the Secret Service was not overbilled.

In response to the interim audit report, the Committee provided documentation relative to Press travel on 3/4/92 and 3/5/92, the final two days of chartered aircraft travel. This documentation included photocopies of Press passenger lists, passenger manifests and several Committee-prepared Press travel invoices. The only additional information included in this documentation was the identities of Press travelers for these two dates; the total number of passengers and leg cost information was previously available.

The Audit staff reviewed the documentation provided for 3/4/92 and 3/5/92 and determined that no change to the amounts repayable to the U.S. Treasury and owed to the Press, as contained in the interim audit report, is warranted. The Committee stated in its response that other than the documentation provided for 3/4/92 and 3/5/92, "...the Committee does not dispute the positions taken by the Audit staff on this matter." No mention of the recommended \$6,762 repayment to the U.S. Treasury was made by the Committee in its response<sup>6/</sup>, nor was any evidence provided regarding the recommended \$3,939 in refunds to the Press.

The Audit staff further notes that the Committee did not respond to the Audit staff recommendation that the Committee provide documentation related to reimbursements for transportation and services provided to Press personnel for the time period 1/20/92 to 1/30/92. Finally, the Committee provided no evidence that the Secret Service was not overbilled.

<sup>6/</sup> The Committee did not document that the administrative cost of providing such services to the Press and seeking reimbursement for them exceeded 3%, as provided by 11 C.F.R. §9034.6(d)(1).

Recommendation #2

The Audit Division recommends that the Commission make an initial determination that the Committee repay the U.S. Treasury \$6,762, the undocumented difference between 103% and 110% of the cost of providing transportation and services to the Press pursuant to 11 C.F.R. §9034.6 d 1, and that the Committee refund to the Press on a pro rata basis \$3,939, which represents the amount in excess of the 110% maximum amount the Committee may receive from the Press.

E. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days of 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.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 C.F.R. §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Senator Kerrey's date of ineligibility was March 5, 1992. The Audit staff reviewed the Committee's financial activity through April 27, 1993, analyzed winding down costs, and prepared the Statement of Net Outstanding Campaign Obligations ("NOCO") as of June 30, 1992 which appears below:

REPORT FOR PRESIDENT  
 Audit Determined NOCO Statement as of June 30, 1992 a/

Assets

Cash	\$ 35,310	
Accounts Receivable	44,262	b/
Capital Assets	<u>20,487</u>	

TOTAL ASSETS

\$100,059

Obligations

Accounts Payable for Qualified Campaign Expenses	(\$502,169)	
Amounts Payable to U.S. Treasury		
State-Dated Checks (III.B.)	( 1,175)	
Press Travel (III.D.1.)	( 6,762)	
Amounts Payable to Press (III.D.1.)	( 3,939)	
Amounts Payable to U.S. Secret Service (III.D.2.)	( 2,811)	
Winding Down Costs:		
Actual (7/01/92 - 4/27/93)	( 375,355)	
Projected (4/28/93 - 5/01/95)	( 46,867)	b/

TOTAL OBLIGATIONS

(\$939,078)

NOCO (DEFICIT)/SURPLUS

(\$839,017)

a/ All figures shown were determined as of 6.30/92 unless otherwise noted.

b/ Since estimates were used in computing this amount, the Audit staff will review the Committee's disclosure reports and Committee records, as necessary, to compare the actual figures with the estimates and prepare adjustments as necessary.

Shown below is an adjustment for private contributions, interest and matching funds received during the period July 1, 1992 through January 31, 1993, the most current financial information available as of the last matching fund payment which was certified on January 29, 1993.

NOCO Deficit at 6 30 92	\$839,017
Interest Received	\$ 995
Matching Funds	\$356,266
Private Contributions	<u>\$469,944</u>
Remaining Entitlement as of January 31, 1993	<u>\$ 11,812</u> 7/

As of January 31, 1993, the Committee has not received matching fund payments in excess of its entitlement. This analysis is subject to change based on future adjustments to the NOCO statement.

IV. Summary of Amounts Repayable to the U.S. Treasury

Presented below is a recap of the amounts recommended by the Audit Division as subject to the repayment provisions of 11 C.F.R. §9038.6 or 11 C.F.R. §9034.6:

Finding III.B. Stale-Dated Checks	\$ 1,175
Finding III.D. Profit from Press Travel	<u>6,762</u>
Total Repayment	<u>\$ 7,937</u>

7/ This figure is conservative in that the amount paid in anticipated settlement of a larger amount owed to certain vendors/individuals was used to develop the Accounts Payable figure. Once a submitted Debt Settlement Plan has been reviewed by the Commission, the amount of Accounts Payable for Qualified Campaign Expenses in the NOCO Statement may increase resulting in both a larger NOCO deficit and remaining entitlement. No change in the Audit staff's conclusion will result from this possible adjustment. The maximum amount of the adjustment would be \$70,000.

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Adjusted Disbursements  
(Through September 30, 1983)

	Operating Expenditures Minus Offsets	Empty Fundraising Minus Offsets	Legal/Accounting Minus Offsets	Other Disburse	Adjusted Total Disbursements	Expenditure Subject to Limit	Latest Cash On Hand	Debit Used by the Campaign
<b>DEMOCRATS</b>								
Larry Agien	\$607,123	\$0	\$0	\$95	\$607,218	\$612,234	\$4,013	\$5,970
Jerry Brown	\$6,373,669	\$2,278,638	\$233,331	\$108,584	\$8,994,222	\$6,686,482	\$159,995	\$4,927
Bill Clinton	\$27,841,299	\$3,572,076	\$2,431,778	\$55,101	\$33,900,254	\$25,549,498	\$1,537,854	\$64,231
Tom Harkin	\$3,872,140	\$1,184,978	\$170,402	\$0	\$5,227,520	\$3,102,198	\$237,687	\$143,369
Bob Kerry	\$5,181,458	\$1,076,978	\$179,911	\$23,404	\$6,461,751	\$6,060,481	\$9,882	\$0
Lyndon LaRouche	\$1,523,341	\$0	\$82,045	\$0	\$1,605,386	\$1,493,033	\$3,327	\$78,229
Paul Teague	\$6,748,671	\$754,978	\$179,329	\$0	\$7,682,978	\$7,001,568	\$27,845	\$190,658
Doug Walker	\$799,365	\$6,568	\$39	\$0	\$805,972	\$799,846	\$6,198	\$0
<b>Total Democrats</b>	<b>\$52,947,288</b>	<b>\$9,874,518</b>	<b>\$3,276,835</b>	<b>\$187,184</b>	<b>\$65,285,801</b>	<b>\$51,297,324</b>	<b>\$1,988,081</b>	<b>\$437,404</b>
<b>REPUBLICANS</b>								
Parrish Buchanan	\$11,551,379	\$0	\$0	\$0	\$11,551,379	\$11,551,381	\$743,332	\$0
George Bush	\$27,584,010	\$5,524,000	\$4,767,327	\$70,319	\$37,945,656	\$27,594,013	\$18,106	\$59,997
David Duke	\$353,838	\$0	\$0	\$1,000	\$354,838	\$0	\$0	\$79,280
<b>Total Republicans</b>	<b>\$39,489,227</b>	<b>\$5,524,000</b>	<b>\$4,767,327</b>	<b>\$71,319</b>	<b>\$49,851,873</b>	<b>\$39,145,394</b>	<b>\$761,438</b>	<b>\$89,247</b>
<b>Other Party</b>								
Andre Marrou	\$415,576	\$160,219	\$0	\$0	\$575,795	\$0	\$0	\$0
Lenora Luttrell	\$4,203,822	\$0	\$0	\$3,236	\$4,206,857	\$4,204,565	\$2,070	\$0
<b>Total Other Party</b>	<b>\$4,619,408</b>	<b>\$160,219</b>	<b>\$0</b>	<b>\$3,235</b>	<b>\$4,782,852</b>	<b>\$4,204,555</b>	<b>\$2,070</b>	<b>\$0</b>
<b>Grand Total</b>	<b>\$97,065,891</b>	<b>\$14,558,735</b>	<b>\$8,034,162</b>	<b>\$261,738</b>	<b>\$119,920,326</b>	<b>\$94,647,273</b>	<b>\$2,752,489</b>	<b>\$528,651</b>



95 Adjusted Receipts | 9 | 10 | 95 |  
(Through September 30, 1993)

	Federal Matching Funds	Individual Contributions Minus Refunds	PAC's and Other Committees From the Candidate	Contributions from the Candidate	Candidate Loans Minus Repayments	Other Loans Minus Repayments	Other Receipts	Adjusted Total Receipts
<b>DEMOCRATS</b>								
Larry Agran	\$289,691	\$331,631	\$0	\$500	\$5,000	\$1,029	\$2,060	\$610,631
Jerry Brown	\$4,230,345	\$5,176,336	\$0	\$0	\$0	\$0	\$4,663	\$9,420,374
Bill Clinton	\$12,516,130	\$25,105,044	\$5,204	\$0	\$0	\$1	\$13,440	\$37,641,819
Tom Harkin	\$2,103,351	\$3,069,474	\$492,069	\$4,533	\$0	\$0	\$11,629	\$5,681,056
Bob Kerry	\$2,198,284	\$3,913,332	\$349,757	\$0	\$0	(\$1,225)	\$5,931	\$5,466,079
Lyndon LaRouche	\$0	\$1,599,640	\$0	\$0	\$0	\$0	\$21	\$1,599,661
Paul Teague	\$3,003,973	\$5,056,620	\$3,566	\$0	\$45,000	(\$9,575)	\$0	\$9,099,584
Doug Winter	\$289,026	\$508,519	\$750	\$0	\$0	\$0	\$1,039	\$799,334
<b>Total Democrats</b>	<b>\$24,671,600</b>	<b>\$44,760,796</b>	<b>\$951,346</b>	<b>\$5,033</b>	<b>\$50,000</b>	<b>(\$9,770)</b>	<b>\$30,733</b>	<b>\$70,316,936</b>
<b>REPUBLICANS</b>								
Patrick Buchanan	\$4,999,963	\$7,167,608	\$24,750	\$0	\$0	\$0	\$22,728	\$12,206,269
George Bush	\$10,656,513	\$27,088,825	\$44,250	\$0	\$0	\$0	\$221,787	\$38,013,375
David Duke*	\$0	\$220,715	\$0	\$0	\$1,000	\$0	\$0	\$221,815
<b>Total Republicans</b>	<b>\$15,656,496</b>	<b>\$34,467,348</b>	<b>\$69,000</b>	<b>\$0</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$244,615</b>	<b>\$50,490,459</b>
<b>OTHER PARTIES</b>								
Andre Marrou*	\$0	\$662,770	\$181	\$116	\$16,000	\$0	\$0	\$678,967
Lenora Fulmer	\$1,935,524	\$2,201,577	\$0	\$325	(\$1,258)	\$1,200	\$0	\$4,137,368
<b>Total Other Party</b>	<b>\$1,935,524</b>	<b>\$2,764,347</b>	<b>\$181</b>	<b>\$441</b>	<b>\$13,742</b>	<b>\$1,200</b>	<b>\$0</b>	<b>\$4,715,435</b>
<b>(Grand Total)</b>	<b>\$42,215,620</b>	<b>\$81,992,491</b>	<b>\$920,527</b>	<b>\$5,474</b>	<b>\$64,742</b>	<b>(\$8,570)</b>	<b>\$294,248</b>	<b>\$125,524,832</b>



October 7, 1993

**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

Abel M6ntez  
Attorney

SUBJECT: Proposed Final Audit Report on  
Kerrey for President  
LRA #4430

The Kerrey for President Committee ("the Committee") is the principal campaign committee of Senator J. Robert Kerrey, a candidate for the 1992 Democratic presidential nomination. The Committee received public financing under the Matching Payment Act.<sup>1/</sup> The Commission determined that Senator Kerrey's date of ineligibility was March 5, 1992. Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1(a)(1), the Audit Division conducted an audit and examination of the Committee's receipts, disbursements, and qualified campaign expenses. The Office of General Counsel has reviewed the proposed Final Audit Report, submitted to this Office on October 19, 1993. If you have any

<sup>1/</sup> Throughout our comments "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031-9042 and "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

questions about our comments, please contact Abel Mantez, the attorney assigned to this audit.

This Office notes initially that it concurs with a number of findings and recommendations in the proposed report which are not discussed separately in this memorandum: 1) itemization of loans received (II.B.); 2) itemization of disbursements (II.C.); 3) disclosure of occupation and name of employer (II.D.); 4) reporting of debts and obligations (II.E.); 5) reporting of press reimbursements (II.F.); 6) reporting of receipts from individuals and disbursements for operating expenditures (II.G.); 7) stale-dated checks totaling \$1,175 (III. B.); 8) undocumented disbursements totaling \$24,925.34 (III.C.); 9) refunds to the press for transportation totaling \$3,939 and a repayment to the U.S. Treasury of \$6,762 (III.D.1.); and (10) secret service overpayment of \$2,811.14 (III.D.2.). 2

#### I. EXCESSIVE CONTRIBUTIONS RESULTING FROM STAFF ADVANCES (II.A.)

Mr. Hugh Westbrook, the Committee's treasurer contributed \$1,000 to the Committee on October 28, 1991 and made several advances to the Committee. These advances consist of \$6,238.42 in air travel expenses incurred on behalf of the Committee from October 8, 1991 to February 19, 1992.3/ In the Interim Audit Report, the Audit Division recommended that the Committee

2/ We note that the Committee filed a debt settlement plan with the Commission on February 2, 1993; the Report Analysis Division is currently reviewing the plan. The Committee is requesting the approval of the settlement of \$186,974.24 in debts with 35 vendors and individuals.

3/ The Committee's debt settlement plan shows that the Committee owed Mr. Westbrook \$8,161.52. The debt settlement plan, which was signed by Mr. Westbrook on November 21, 1992, does not indicate the purpose of the additional \$1,923.10 (\$8,161.52 - \$6,238.42) in expenses. In response to the question in the debt settlement plan requesting a statement of the terms of the initial extension of credit and the nature of the debt, the Committee stated: "Creditor has submitted receipts to be reimbursed; expenses were incurred by [c]reditor during the campaign." The Committee is offering Mr. Westbrook \$4,080.76 50% of \$8,161.52 in settlement of this debt. We note that in supplemental documentation submitted after the exit conference the Committee indicates that it has already paid \$4,080.76 to Mr. Westbrook in consideration for agreeing to settle the debt. The Commission's debt settlement regulations prohibit committees from making any payments to creditors included in the debt settlement plan until the Commission completes its review of the plan. 11 C.F.R. § 116.7 a .

provide evidence that the staff advances were not excessive contributions.

In its response to the Interim Audit Report, the Committee states that the Committee had a written policy that prohibited staff or volunteers from advancing personal funds to purchase goods or services on behalf of the Committee. The Committee states that the policy was consistent with 11 C.F.R. § 116.5, the staff advances regulation.

The Committee contends that it appropriately treated the Westbrook advance as a debt, requiring reimbursement. The Committee maintains that this treatment was consistent with 11 C.F.R. 116.5(c)'s language, which provides that "the obligation arising from" a staff advance shall be treated "as an outstanding debt until reimbursed" (emphasis added). The Committee maintains that section 116.5(c) should be construed to mean that the Committee may have a reasonable period of time in which to "retire" the debt by making the appropriate reimbursements to staff, or by settling the debt with the staff. To bolster its argument, the Committee states that 11 C.F.R. § 116.5 (c) expressly provides that debts to staff can be settled or forgiven.

The Committee also argues that the Commission should treat a debt from an advance similar to vendor debt. The Committee states that under 11 C.F.R. § 116.3, vendor debt is not considered to be an excess contribution unless the extension of credit is made outside the ordinary course of the vendor's business, or on terms not substantially similar to the credit extended to comparable nonpolitical debtors. The Committee reasons that if the debt arising from an advance is properly settled, then this debt, like vendor debt, should not be considered to be an excessive contribution. The Committee maintains that it reported the debt, and then settled the debt on reasonable terms, consistent with its treatment of other debts, and within a similar time frame.

In addition, the Committee also included a statement that Mr. Westbrook was entitled to a \$1,000 travel exemption, as provided in 11 C.F.R. § 100.7 (b) (8). The Committee asserted that Mr. Westbrook "is . . . entitled to a \$1,000 travel exemption (and) (i) if the audit staff has not made an adjustment for his travel exemption, it should do so."

The proposed Final Audit Report concludes that the Committee's response did not provide evidence or additional information to demonstrate that the staff advances do not constitute excessive contributions in the amount of \$6,238.42. With regard to the Committee's statement that Mr. Westbrook was entitled to a \$1,000 travel exemption as provided in 11 C.F.R. § 100.7 (b) (8), the Audit Division concluded that the Committee is not entitled to the exemption, given that Mr. Westbrook

himself "demonstrated no intent to have the travel exemption applied against his reimbursement request.

We disagree with the Committee's contentions with respect to the application of 11 C.F.R. § 116.5 to Mr. Westbrook's advances. This Office believes that Mr. Westbrook's advances should be treated as in-kind contributions pursuant to 11 C.F.R. § 116.5 b. Mr. Westbrook's pattern of advancing funds to pay for travel services and the Committee's failure to make any reimbursements are the type of activities section 116.5 was intended to address. The purpose underlying section 116.5 is to identify situations where "individuals with sizable resources may have the ability to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time." Explanation and Justification of 11 C.F.R. § 116.5, 55 Fed. Reg. 26382 June 27, 1989. Mr. Westbrook incurred expenses on behalf of the Committee from October 8, 1991 to February 19, 1992. The Committee never reimbursed Mr. Westbrook and the Committee did not resolve the debt until November 21, 1992 when Mr. Westbrook agreed to accept 50% of the amount owed in the debt settlement plan.

With regard to the Committee's section 116.5 and 116.3 arguments, we note that these provisions have different underlying purposes and independent procedures. The fact that the Committee has proposed to resolve the outstanding balance owed to Mr. Westbrook through a debt settlement does not entitle the Committee to circumvent the policy underlying 11 C.F.R. § 116.5.4. The Committee and Mr. Westbrook may agree to settle the debt for an amount less than the entire amount owed. 11 C.F.R. § 116.5(d). However, depending on whether Mr. Westbrook used a personal credit card, the reimbursement should have been made within either 30 or 60 days. 11 C.F.R. § 116.5(b)(2). At the expiration of the 30 or 60-day period, the unreimbursed travel expenses, less the \$1,000 allowed for the travel exemption, were an excessive contribution to the Committee. 11 C.F.R. § 116.5(b)(1) and (2). As previously stated, the expenses at issue were incurred as early as October 8, 1991 and Mr. Westbrook did not accept the lower amount offered in the debt settlement until November 21, 1992. During

4. If the Commission determines that the Committee's debt settlement plan, with respect to Hugh Westbrook does not result in an apparent violation of FECA or the Commission's regulations, the proposed settlement may be viewed as a mitigating factor against the violation.

this time, the Committee did not make any reimbursements to Mr. Westbrook for the \$6,238.42 in expenses.<sup>5</sup>

Nevertheless, we disagree with the Audit Division's conclusion that the Committee is not entitled to the \$1,000 travel exemption. Pursuant to 11 C.F.R. § 100.7(b)(8), any unreimbursed payment for transportation expenses incurred by an individual on behalf of the candidate is not a contribution. In this case, Mr. Westbrook submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. We believe that the portion of his travel expenses, up to \$1,000, that remains unreimbursed by the Committee is not a contribution. 11 C.F.R. § 100.7(b)(8); see 11 C.F.R. § 116.5(b). The FECA and the Commission's regulations do not address the issue of whether the Committee is required to demonstrate Mr. Westbrook's "intent" to have the travel exemption apply or not apply to his reimbursement request. While the Materiality Thresholds for the Application of 11 C.F.R. § 116.5 assume that individuals do not intend to take advantage of the exemption if they request reimbursements, the Commission has not addressed this particular issue in any case. We believe that Mr. Westbrook's mere attempt to obtain a reimbursement (by submitting a reimbursement request) does not necessarily reveal that he had previously taken or had intended not to take the \$1,000 exemption. As long as travel expenses of \$1,000 or less remain unreimbursed, they will not be considered contributions.<sup>6</sup> 11 C.F.R. § 100.7(b)(8). Therefore, we recommend that the Audit Division revise the proposed Final Audit Report to reflect the \$1,000 travel exemption.

5/ It is unclear when Mr. Westbrook requested reimbursement for his expenses. If Mr. Westbrook submitted his request in a timely manner and the Committee knew that it would not be able to reimburse him for his expenses within 30 or 60 days, this raises the issue of whether the Committee should have attempted to settle the debt within this time. This Office is not suggesting that a debt settlement plan or a letter of debt forgiveness should have been submitted to the Commission before the expiration of the 30 or 60 days. While there is no precedent on this issue, we believe that there should have been some indication of the Committee's bona fide attempt to settle the debt if it could not make the reimbursement within the prescribed time period.

6/ For instance, the case would be different if the Audit Division had identified documents showing that Mr. Westbrook's air travel expenses were \$6,238.42 and that Mr. Westbrook had requested a \$5,238.42 reimbursement. Under this scenario, the Committee would be unable to claim a \$1,000 travel exemption, since the documentation would prove that the exemption had already been applied.

## II. SUNSHINE RECOMMENDATION

The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on documents submitted to this Office for review. Section 2.4(a) of the Commission's Sunshine Act regulations provides for the consideration of matters in closed session if they are specifically exempted from disclosure by statute. Additional bases for closing such meetings include when an open meeting is likely to result in the disclosure of non-public audit procedures, policies or investigative techniques or information effect on the implementation of a proposed Commission action. 11 C.F.R. §§ 2.4(b)(1) and 2.4(b)(6).

This Office believes that Commission discussion of this document should be conducted in open session as it does not concern any matters exempted from public disclosure under 11 C.F.R. § 2.4.

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March 3, 1994

The Honorable J. Robert Kerrey  
Office of the Honorable J. Robert Kerrey  
U.S. Senate  
Washington, D.C. 20510

Dear Senator Kerrey:

Attached please find the Final Audit Report on Kerrey for President. The Commission approved this report on March 3, 1994. As noted on page 3 of the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 C.F.R. §9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is to repay to the Secretary of the Treasury \$7,937 within 90 days after service of this report (June 6, 1994). Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 C.F.R. §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (April 6, 1994), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 C.F.R. §9038.2(c)(3) permits a Candidate who has submitted written materials, to request an opportunity to make 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.



Letter to J. Robert Kerrey  
Page 2

Any questions you may have related to matters covered during the audit or in the report should be directed to Cornelia Riley or Marty Favin of the Audit Division at 202 219-3722 or toll free at 800 424-9530.

A copy of this report is being provided to the U.S. Secret Service.

Sincerely,



Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

350701210



March 3, 1994

Mr. Hugh Westbrook, Treasurer  
 Kerrey for President  
 c/o Hospice Care, Inc., 15th floor  
 Miami, FL 33131

Dear Mr. Westbrook:

Attached please find the Final Audit Report on Kerrey for President. The Commission approved this report on March 3, 1994. As noted on page 3 of the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 C.F.R. §9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is to repay to the Secretary of the Treasury \$7,937 within 90 days after service of this report (June 6, 1994). Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 C.F.R. §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (April 6, 1994), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 C.F.R. §9038.2(c)(3) permits a Candidate who has submitted written materials, to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

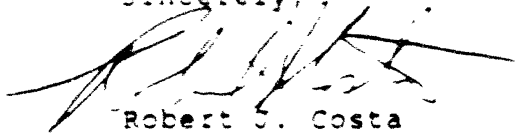
The Commission will consider any written legal and factual materials submitted by the Candidate within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the initial repayment 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.

Letter to Mr. Hugh Westbrook  
Page 2

Any questions you may have related to matters covered during the audit or in the report should be directed to Consuela Riley or Marty Favin of the Audit Division at 202 219-1722 or toll free at 800 424-9590.

A copy of this report is being provided to the U.S. Secret Service.

Sincerely,



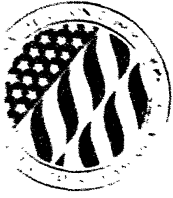
Robert S. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

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CHRONOLOGY - KERREY FOR PRESIDENT

Pre-audit Inventory Commenced	4/6/92
Audit Fieldwork	6/3/92 - 9/4/92
Interim Audit Report to Committee	5/26/93
Response Received to Interim Audit Report	12/3/93
Final Audit Report Approved	3/3/94



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March 3, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA  
STAFF DIRECTOR

FROM: ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: KERREY FOR PRESIDENT - REVISION TO FINDING II.A.  
EXCESSIVE CONTRIBUTIONS RESULTING FROM STAFF  
ADVANCES

Based on the direction received during the Open Session of 3/3/94, the Audit staff has incorporated language at pages 2, 6 and 7 to reflect the Commission's decision with respect to the \$1,000 transportation exemption. The language, "Accordingly, the excessive portion is reduced to \$5,238." has also been included on page 7.

This document is being circulated on an informational basis. If you have any questions, please do not hesitate to contact me.

Attachment as stated

amount charged must be based on the cost per passenger plus a 10% allowance provided in Commission regulations. The Committee is permitted to retain an amount equal to the per passenger cost plus an allowance for administrative costs of the program. The administrative cost allowance ranges from 3% if no documentation exists, to 10% if the Committee can document more than the 3% basic allowance. Any amounts billed and collected in excess of the cost plus 10% allowance (over charges) must be returned to the travelers. Amounts collected that exceed cost plus the administrative cost allowance (profit) must be paid to the U.S. Treasury.

The Report requires the Committee to pay the U.S. Treasury \$6,672 (profit) and the travelers \$3,939 (over charges). The Committee's responses to the interim audit report did not include documentation sufficient to resolve these issues.

Excessive Contributions Resulting from Staff Advances - 2  
 U.S.C. §441a(a) and (f), 2 U.S.C. §431(11), 11 CFR 100.7(a)(1)(iii) and (b), 11 CFR 116.5(b). A payment by an individual from his or her personal funds for campaign-related costs is a contribution subject to the \$1,000 limitation unless exempted under 11 CFR 100.7(b)(8) or reimbursed within specific time frames. The Interim Report questioned, as excessive contributions, advanced funds totaling \$6,238 from one staff member. The Committee's response provided no documentation to refute the excessive nature of the advances; however, the staff member had submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. Thus, the Commission determined that any portion of the travel expenses, up to \$1,000, that remains unreimbursed by the Committee is not a contribution. This determination allowed the Committee to avail itself of the \$1,000 transportation exemption at 11 C.F.R. §100.7(b)(8), thus reducing the excessive amount to \$5,238.

Disclosure and Itemization of Financial Activity - 2 U.S.C. §434(b), 2 U.S.C. 431(13), 11 CFR 104.2, 11 CFR 104.3. On its initial disclosure reports, the Committee failed to report adequately the activity related to loans received, disbursements, debts and obligations, Press reimbursements, exempt legal and accounting services, and the identification of contributors. The Committee responded by filing amended reports, which complete the public record.

Undocumented Disbursements - 11 CFR 9033.11(a) and 11 CFR 9038.2(b)(3). Following the Interim Report's identification of inadequate documentation of 67 disbursements, involving \$24,513, the Committee corrected the problem by providing the necessary documentation.

a reasonable time and that therefore no excess contributions were accepted that require any repayment or penalty, or other further action by the Commission."

In the interim audit report the Audit staff recommended that the Committee provide evidence that the staff advances are not excessive contributions and any additional comments.

The Committee responded to the interim audit report with narrative arguments and comments which asserted that the Committee had acted reasonably to comply with the regulations governing staff advances.

The Committee restated its advance policy, as discussed above, and noted that the "...interim audit report raises but a single example of a breach of this policy."

Further the Committee stated that once it became aware of the advances which led to the excessive contribution cited in the interim audit report, the Committee treated this advance as an outstanding debt pursuant to 11 CFR 116.5(c). The Committee construes this section of the regulation "...to mean that the Committee may have a reasonable period of time in which to 'retire' the debt..." and that "...[i]f the debt arising from an advance is properly settled, then it too, like vendor debt, should not be considered to be an excess contribution."

Finally the Committee contends that the individual is "...entitled to a \$1,000 travel exemption, as provided in 11 CFR 100.7(b)(8)...".

The Audit staff is of the opinion that the travel exemption does not apply to these expenses submitted for reimbursement.

With respect to the arguments and other comments as presented above, it is the opinion of the Audit staff that the Committee has provided no evidence or additional information that demonstrates that the staff advances do not constitute excessive contributions.

The Commission disagreed with the Audit Division's conclusion that the Committee is not entitled to the \$1,000 travel exemption. The Commission believes that pursuant to 11 C.F.R. §100.7(b)(8), any unreimbursed payment for transportation expenses incurred by an individual on behalf of the candidate is not a contribution, if within the \$1,000 aggregated individual exemption. In this case, Mr. Westbrook submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. The regulations do not address the issue of whether the Committee is required to demonstrate Mr. Westbrook's "intent" to have the travel exemption apply or not apply to his reimbursement request. Therefore, it is the position of the Commission that the portion

of his travel expenses, up to \$1,000, that remains unreimbursed by the Committee is not a contribution. See 11 C.F.R. §100.7(b)(6) and 11 C.F.R §116.5(b).

Accordingly, the excessive portion is reduced to \$5,238.

B. Itemization of Loans Received

Sections 434(b)(2)(H) and 434(b)(3)(E) of Title 2 of the United States Code require the disclosure of all loans, and the identification of each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan.

Section 434(b)(4)(E) of Title 2 of the United States Code requires for the reporting period and the calendar year, disclosure of the total amount of all disbursements and the repayment of all loans.

Section 104.2(e) of Title 11 of the Code of Federal Regulations specifies that the authorized committees of a candidate for President shall file reports on FEC Form 3-P. Additionally, the instructions for Schedules A-P and B-P of this form package require the Committee to itemize all loans received and all loan repayments made by the Committee during the reporting period on this schedule.

During the audit period the Committee obtained two loans from American National Bank and a nonconcurrent line of credit from Adams National Bank. Against these loans<sup>3/</sup> the Committee received six advances totaling \$1,560,767, and made six repayments for principal, interest and loan fees totaling \$666,722. Of this activity the Committee did not itemize five advances totaling \$1,335,767 on Schedule A-P, and did not itemize five repayments of principal, interest, and loan fees totaling \$661,722 on Schedule B-P. All loans were repaid in full as of June 2, 1992.

At the Exit Conference the Committee was provided with a schedule listing the loans, advances and repayments which require itemization on Schedules A-P and B-P. The Audit staff clarified the itemization requirements for loan activity and the Committee appeared to concur with the recommendation.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules A-P and B-P itemizing the loan activity.

<sup>3/</sup> The loan activity reviewed occurred prior to April 2, 1992, the effective date of the Commission's revised regulations on loans and new reporting forms.



Public Disclosure  
(Cooper)

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AK004838



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20542

March 31, 1994

TO: THE COMMISSIONERS  
THROUGH: JOHN C. SURINA  
STAFF DIRECTOR  
FROM: ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION  
SUBJECT: PAYMENT OF \$7,937 RECEIVED FROM KERREY FOR PRESIDENT

This informational memorandum is to advise you of a \$7,937 payment received from Kerrey for President. The payment was received in response to the initial repayment determination contained in the final audit report and represents stale dated checks and overpayments from press organizations related to travel.

Attached is a copy of the check, the letter which accompanied the payment, and the receipt showing delivery to the Department of Treasury.

Should you have any questions regarding the payment please contact Ray Lisi at 219-3720.

Attachments as stated

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KERREY FOR PRESIDENT  
1511 A STREET NW SUITE 518  
WASHINGTON DC 20005  
202 393-4110

THE ADAMS NATIONAL BANK  
1627 K STREET NW  
WASHINGTON DC 20006  
15 17 540

7367

3/24/94

PAY TO THE ORDER OF UNITED STATES TREASURY

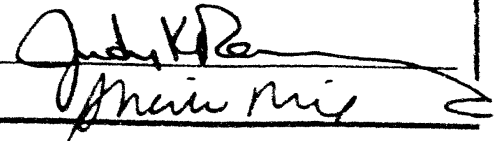
\$\$\$7,937.00

Seven Thousand Nine Hundred Thirty-Seven and 00/100\*\*\*\*\*

DOLLARS

FEDERAL ELECTION COMMISSION  
999 E STREET NW  
WASHINGTON DC 20463

MEMO REPAYMENT TO TREASURY



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# KERREY



For President

March 25, 1994

Federal Election Commission  
ATTN: Audit Division  
999 E Street, N.W.  
Washington, D.C. 20463

To whom it may concern:

In compliance with the final audit report issued March 3, 1994, by the Federal Election Commission, enclosed is check number 7367 in the amount of \$7,937.00 from the Kerrey For President campaign to repay stale-dated checks and overpayment by press organizations for administrative costs related to travel.

If you have any questions regarding this refund, please contact me at the address below, or call me at 202-224-3516.

Sincerely,

Judy Rainey  
Assistant Treasurer  
Kerrey For President  
1511 K Street, NW, Suite 1117  
Washington, DC 20005

MAR 28 8 57 AM '94

1511 K Street N.W., #640 • Washington, DC 20005 • (202) 393-4110



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20543

March 30, 1994

RECEIPT FROM THE  
UNITED STATES DEPARTMENT OF TREASURY  
FOR A  
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on March 30, 1994, from the Federal Election Commission (by hand delivery), a check drawn on The Adams National Bank (Check #7367) in the amount of \$7,937. The check represents a payment from Kerrey for President for stale dated checks (\$1,175) and overpayments from press organizations related to travel (\$6,762).

The payment should be deposited into the General Fund of the U. S. Treasury.

Kerrey for President  
Amount of Payment: \$7,937

Presented by:

Received by:

*Darrell Tablin*  
for the  
Federal Election Commission

*Barbara L. Tabert*  
for the  
United States Treasury

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D. C. 20541

April 8, 1994

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Surina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

**By:** Kim Bright-Coleman *KBC*  
Associate General Counsel

Lorenzo Holloway *LH*  
Assistant General Counsel

Abel M6ntez *Am*  
Attorney

**SUBJECT:** Kerrey for President, Inc.  
Repayment to the United States Treasury  
(LRA #443)

On March 3, 1994, the Commission approved the Final Audit Report on Kerrey for President, Inc. ("the Committee") and made an initial determination that Senator J. Robert Kerrey and the Committee repay \$7,937 to the United States Treasury. On March 25, 1994, the Committee submitted a check for this amount, payable to the United States Treasury.

In the letter accompanying the repayment check, the Committee indicated its compliance with the Final Audit Report. See Attachment 1. Since the Committee will not dispute the initial repayment determination, it is considered a final repayment determination. 11 C.F.R. § 9038.2(c)(1). Therefore, the Office of General Counsel recommends that the Commission conclude that the initial repayment determination for Senator J. Robert Kerrey and Kerrey for President Inc. has become a final repayment determination. Id. The Committee will be notified accordingly.

**RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission:

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

**Attachment**

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

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# KERREY

For President

March 25, 1994

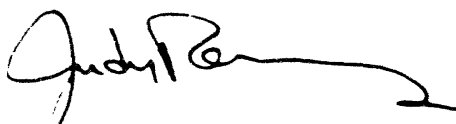
Federal Election Commission  
ATTN: Audit Division  
999 E Street, N.W.  
Washington, D.C. 20463

To whom it may concern:

In compliance with the final audit report issued March 3, 1994, by the Federal Election Commission, enclosed is check number 7367 in the amount of \$7,937.00 from the Kerrey For President campaign to repay stale-dated checks and overpayment by press organizations for administrative costs related to travel.

If you have any questions regarding this refund, please contact me at the address below, or call me at 202-224-3516.

Sincerely,



Judy Rainey  
Assistant Treasurer  
Kerrey For President  
1511 K Street, N.W. Suite 1117  
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ATTACHMENT 1

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