



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
PETE du PONT FOR PRESIDENT

I. Background

A. Overview

This report is based on an audit of Pete du Pont for President ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on June 3, 1986. The Committee maintains its headquarters in Wilmington, Delaware.

The audit covered the period from the Committee's inception, June 3, 1986, through March 31, 1988. During this period, the Committee reported an opening cash balance of \$-0-, total receipts of \$8,806,472.84, total disbursements of \$8,736,410.05, and a closing cash balance of \$70,062.79. In addition, certain financial activity was reviewed through April 30, 1988 for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. § 9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

The Treasurer of the Committee during the period reviewed was Mr. Frank A. Ursomarso.

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C. Scope

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

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

A. Allocation of Expenditures to States

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

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

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of the candidate for the office of the President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

Section 110.8(c)(2) of Title 11 of the Code of Federal Regulations states that for State limitations, expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention or caucus shall be presumed to be attributable to the expenditure limitation for that State.

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During fieldwork, the Audit staff identified a project used by the Committee involving a telemarketing and mail program ("the Program"). Discussions with Committee officials and a review of Committee records made available indicated that the Program operated out of the Committee's headquarters in Wilmington, Delaware primarily from June, 1987 through February, 1988.

The Program was a computer-based system which appears to have accommodated up to 35 telephone stations. Each station accessed one of six predominately used scripts through a CRT screen linked to an automatic dial feature used in placing calls. The operator, using a headset, would work through the screen script inputting responses received from the person contacted. When the call was completed an in-house mailing was automatically generated, if needed. The Program appears to have been operated mainly during evening and weekend hours employing, on a part time basis, two shifts of operators.

The Audit staff reviewed the Committee's expenditure files for the vendors that could be identified as part of the Program and calculated apparent Program costs totaling \$745,439.24.

The Audit staff then reviewed the Committee's allocation of expenditures to states to determine the extent to which these Program costs were allocated to Iowa. The Audit staff determined that \$117,606.04* in Program costs were allocated to Iowa. The following table provides a detailed comparison of identified Program costs and costs allocated to Iowa by the Committee:

	<u>Total Identified Program Costs</u>	<u>Program Costs Allocated by Committee</u>	<u>Program Costs Allocated by Audit</u>
Telephone	\$157,833.32	\$ 21,378.00	\$101,436.29
Computer & related services	171,792.26	2,880.00	42,747.59
Rent & utilities	28,396.39	---	6,708.29
Payroll	277,371.62	72,243.79	197,858.73
Postage	97,202.18	17,020.78	17,020.78
Wiring installation	8,760.00	---	5,694.00
Miscellaneous**/	<u>4,083.47</u>	<u>4,083.47</u>	<u>4,083.47</u>
Totals	<u>\$745,439.24</u>	<u>\$117,606.04</u>	<u>\$375,549.15</u>

*/ Committee allocation workpapers indicated that \$134,293.95 had been allocated to Iowa with respect to the Program. However, the Audit Staff reduced this amount by \$16,687.91 which represented an overallocation made by the Committee in applying the 28 Day Rule. It should be noted that the Committee's overall allocation to Iowa has been adjusted accordingly.

Based on Committee allocation workpapers and documentation made available, costs included in this category could not be directly associated with any of the other categories noted.

During this review it became apparent to the Audit staff that the Program focused to a large extent on Iowa. A March 23, 1987 memorandum from a consultant, directed to Committee representatives, outlined in a fairly detailed fashion the consultant's understanding of the "goals and objectives for the du Pont telemarketing and mail program." Although Committee officials did not acknowledge that this plan was the basis of their telemarketing program, the Audit staff is of the opinion that the basic components of this plan with respect to the telemarketing effort directed at Iowa were implemented by the Committee and indicate a focus on Iowa.

Second, a review of the billings by the long distance telecommunications company used by the Committee for the Program indicated that the majority of the calls were to Iowa. During the period June, 1987 to February, 1988, the Committee incurred \$157,171.32 for the Program's long distance service, or about \$17,500 per month. A review of the bills for the above mentioned period indicated that the costs of calls made to Iowa comprised from 48% to 90% of the cost of all calls made. Further analysis of the cost, the number, and the length of calls, indicates that the Program was used primarily in the evenings, during which hours the calls were directed almost exclusively at Iowa.

Finally, the auditors reviewed all scripts considered for use in the Program by the Committee. Of the 28 scripts reviewed, at least 11 seemed to be targeted at Iowa. The Committee provided an explanatory letter dated May 12, 1988, along with copies of six scripts that according to the Committee were used almost exclusively in the telemarketing program during the period 6/87 through 12/87, and copies of letters^{*} mailed as a result of the response to each script. One of these scripts was a poll, four of the scripts appear political in nature with no appeal for contributions and the final script did contain a fundraising appeal. In all six scripts the text appears specifically directed at Iowa by virtue of the caucus or debate in Iowa being mentioned at some point.

The Committee's letter of May 12, 1988 notes that of these scripts, only two were not fundraising in nature. The Committee's position with respect to the scripts was that money could not be raised from people who did not know or support their issues. The Committee provided, as further support that these scripts were used extensively, workpapers detailing the days and number of calls made daily with respect to each of the scripts. As noted in their May 12, 1988 letter the Committee's position is that the rent, HVAC (utilities) and computer rental "were correctly reported as national office overhead, consistent with the treatment of other computer and office rental within the campaign headquarters...and...both...were used Monday through Friday 7 a.m. to 5 p.m. by both the Legal and Accounting

^{*}/ Of the five follow-up letters mailed as a result of the scripts, three included appeals for contributions.

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operation and the Direct Mail and Event Fundraising staffs." Further, expenses associated with payroll, telephone, postage, and software were charged directly "to either fundraising, the Iowa allocation or Exempt Legal/Accounting as appropriate."

As noted above, the Audit staff calculated the apparent cost of the Program to be \$745,439.24, while the Committee only allocated \$117,606.04, or about 16% of identified Program costs to Iowa, although it is apparent that the Program focused on Iowa. The Audit staff also noted that as of April 30, 1988, according to the State Allocation Report, FEC Form 3P, page 3, the Committee had allocated expenditures totaling \$616,010.80 to the Iowa limitation of \$775,217.60. The Audit staff's review of expenditures allocated to Iowa determined this figure to be materially correct, except as noted with respect to the Program.

Based on the Audit staff's review of the information and documentation made available, it is our opinion that the following Program costs, totaling \$375,549.15, require allocation to Iowa.

o Program Costs Within the 28 Day Rule

The Audit staff reviewed Program costs occurring within 28 days of the Iowa caucus and determined that \$52,709.67 in telephone, rent, utilities, payroll and computer related services should have been allocated to Iowa. As stated in the Committee's letter, dated May 12, 1988, for the period subsequent to January 1, 1988, expenses were allocated 100% against the Iowa limitation due to the "FEC regulation eliminating the Fundraising Exemption within 28 days of a primary election." The Audit staff reviewed Committee allocation workpapers with respect to the Program and determined, based on the information available, that the Committee allocated \$41,500.04 in salary, phone and miscellaneous Program costs to Iowa.

o Program Costs outside the 28 Day Rule

The Audit staff reviewed Program costs occurring outside of the 28 day rule and determined that \$322,839.48 in telephone, rent, utilities, payroll, computer related services, postage, wiring and miscellaneous costs should have been allocated to Iowa. Based upon the scripts and telephone logs provided as part of the Committee's May 12, 1988 letter, it was determined that \$86,378.48 in long distance telecommunication charges and \$168,339.00 in payroll costs with respect to the Program should have been allocated to Iowa. With respect to rent and utilities, the Audit staff determined that, based on the hours of operation as provided by the Committee in their letter dated May 12, 1988, \$5,713.70 in expenditures should have been allocated to Iowa. The Audit staff determined that \$35,610.05 in computer related Program costs should have been allocated to Iowa. Finally, the Audit staff determined that postage totaling \$17,020.78; wiring installation costs of \$5,694 and miscellaneous

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costs totaling \$4,083.47 should have been allocated to Iowa. The Audit staff's review of Committee workpapers indicated that \$76,106 in salary, phone, postage, supplies and computer related costs with respect to the Program were allocated to Iowa.

The following recap and analysis was provided with respect to the Iowa state expenditure limitation in the interim audit report:

Telemarketing Program costs allocable to Iowa per the Audit staff:

Within 28 Day Rule	\$ 52,709.67	
Outside 28 Day Rule	<u>322,839.48</u>	\$375,549.15
Less Program costs allocated by the Committee:		
Within 28 Day Rule	\$ 41,500.04	
Outside 28 Day Rule	<u>76,106.00</u>	(117,606.04)
Additional Program costs requiring allocation to Iowa		\$257,943.11
Expenditures allocated to Iowa per Committee FEC Form 3P, page 3, as of March 31, 1988		<u>616,995.09</u>
Expenditures subject to Iowa limitation		\$873,953.91
Less: 2 U.S.C. Section 441(a) State Spending Limitation		<u>(775,217.60)</u>
Total Expenditures in Excess of State Limitation		<u>\$ 99,720.60</u>

In the interim audit report the Audit staff recommended that within 30 calendar days after service of the report the Committee provide evidence showing that it had not exceeded the limitation as set forth above. Absent such a showing, the Audit staff recommended that the Committee adjust its records to reflect the expenditures allocated in Iowa, and where necessary file amended reports to reflect the correct amount allocable to Iowa.

In addition, the Audit staff recommended that the Committee provide a detail listing for all vendors related to the telemarketing program and an itemization of all associated costs incurred with respect to each vendor. Such costs include those incurred with respect to development and implementation of the telemarketing program.

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Analysis of Committee Response

The Committee filed its response on November 4, 1988.*/ In its response, the Committee stated that it believes the Audit staff's conclusions are incorrect and offered its reasons in support of this position. Each of the topical areas addressed by the Committee are discussed in the following paragraphs.

1. The Telemarketing Effort was a Fundraising Program

The Committee contends that the Program "was conceived and implemented by the campaign as a significant fundraising effort." According to the Committee's response, the Audit staff mischaracterized the Program for three fundamental reasons: (a) misplaced reliance on a memorandum from a consultant; (b) a failure to understand the program's Iowa focus; and (c) a failure to comprehend modern campaign fundraising.

With respect to (a), the Committee submitted an affidavit from the deputy campaign manager which specifically stated that the memorandum from the consultant was not adopted as the campaign's telemarketing plan and that fundraising was a prime objective of telemarketing.

In the Audit staff's opinion, the Committee's contention that "misplaced reliance" existed on the part of the Audit staff is without merit. Although this report refers to the March 23, 1987 memorandum, our conclusion "that the basic components of this plan with respect to the telemarketing effort directed at Iowa were implemented by the Committee and indicate a focus on Iowa" (Report, page 4) is based, as stated in the report, on our review of documentation for expenditures related to the telemarketing effort. The Committee's contention that the consultant's proposal was not adopted does not, in the Audit staff's opinion, change or require revision to the Audit staff's conclusion that a significant telemarketing effort was directed at the voting age population in Iowa.

Concerning the Committee's assertion regarding the Program's Iowa focus (item (b)), the Committee argues that the Audit staff's position "fails to recognize the uniqueness of circumstances surrounding an 'underdog' campaign. An unknown candidate must focus first on Iowa, to present his positions, to become known, and to raise funds to support these efforts. Momentum from success in Iowa permits the candidate to be a factor in New Hampshire." The Committee further states that [since] "Iowa voters could be educated, and would have a stake in the election because of their participation in the early caucuses. That stake would cause them to contribute...once they knew the candidate."

*/ The Committee requested a 60 day extension in which to respond to the interim audit report. The Commission granted a 30 day extension to November 4, 1988.

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The Audit staff does not dispute the Committee's position that a person is not likely to contribute to a candidate about whom he or she knows little. Nor does the Audit staff necessarily disagree with the Committee's statement that the Iowa caucuses and the New Hampshire primary are the beginning and the end for most campaigns. However for the Committee to then conclude "For an unknown like Pete du Pont, it is essential to raise funds in those states, because those are the states in which he is becoming known" seems more appropriate in support of an attempt to influence a candidate's chances of a win or reputable position in the Iowa caucuses or New Hampshire primary rather than a justification that it is essential to that end to raise funds in these two states and thus the telemarketing effort should be viewed as primarily a fundraising program.

The Committee's third point (item (c)) is an attempt to identify similarities between "sophisticated telemarketing" and "traditional direct mail." The Committee provides as an example a situation where a phone call is made and, based on the response/exchange concerning issues without a solicitation being mentioned, a follow-up solicitation is sent. The Committee made the decision "to give Iowans multiple opportunities to know the candidate and the issues, and only then to ask for funds." The Committee's position is simply that both the phone call and the follow-up solicitation should be viewed as components of a single fundraising appeal. The total costs as such would be considered fundraising and not allocable to a state limit, unless occurring within 28 days of the election. The Committee states correctly that the Audit staff viewed the expenses related to the phone calls as separate and distinct from any follow-up mailings^{*/} which may have occurred. Further, the Audit staff viewed as fundraising-related phone calls only those calls made outside the 28 days for which the script used actually contained a solicitation of funds. The Audit staff's position, based on the information submitted by the Committee, remains unchanged in this regard.

2. Expenses for Rent, Computer Equipment and Wiring

The Committee contends that the headquarters expenses for rent, computer expenses, and wiring allocated to Iowa by the Audit staff are general overhead expenses and not allocable to Iowa under 11 C.F.R. § 106.2(c)(1)(i) and § 106.2(b)(2)(iv). These sections, in relevant part, define overhead expenses as rent, utilities, equipment and telephone service base charges, and exempt from allocation [such] operating expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters.

^{*/} The costs of any follow-up mailings were not charged to the Iowa limit outside 28 days before the election.

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Section 106.2(a) of 11 C.F.R. provides the general authority under which expenditures (including overhead) should be allocated to States. The Audit staff is of the opinion that the exemption from State allocation of overhead expenses granted by 11 C.F.R. § 106.2(c)(1)(i) extends to operating expenses of the national campaign headquarters and does not exempt operating expenses of a specific program focused on a particular State simply because it was directed out of the national office. In addition, 11 C.F.R. § 106.2(b)(2)(iv)(B) states that "overhead expenditures of a committee regional office or any committee office (emphasis added) with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. An extension of the Committee's position - that overhead expenses relating to the telemarketing program are not allocable - would permit campaigns to avoid allocation of overhead expenses related to focused programs to any state simply by operating the programs from national headquarters. The Audit staff is of the opinion that the exemption from allocation of overhead expenditures by the national campaign headquarters was not intended to include allocable expenses of focused programs operated from the headquarters office. The Audit staff further notes that if the telemarketing program was performed on the premises of a vendor or if the vendor rented extra space and/or equipment to perform the services, then all the charges for space, equipment, and installation would have been built into the fee charged. Therefore the Audit staff's position, that all expenses relevant to the focused extent of the telemarketing program are allocable expenses, remains unchanged.

3. Payroll

The Committee contends that the Audit staff understated the payroll expenses already allocated by the Committee by \$7,684. The Audit staff notes that this amount is the difference between allocable payroll expenses not included in the Committee's allocation figure and an overallocation of payroll made by the Committee. Because the overallocation made by the Committee was adjusted by the Audit staff for the full amount in the interim audit report (Report p. 3, */ footnote) no further adjustment should be made.

4. Telephone Charges

The Committee also contends that the Audit staff's calculation for telephone toll charges to Iowa is incorrect. The Committee stated that it sampled charges within the time frame used by the telemarketing program and, based on the sampling data, determined that an average of \$34.18 per day in toll charges were unrelated to the telemarketing program. The Committee asserts that the allocation made by the Audit staff is overstated by \$8,372.76. The Committee's allocation figures in

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the Response appear to be derived from the total charges for night and weekend tolls to all area codes less \$34.18 per day (estimated non-telemarketing evening and weekend charges). Furthermore, the Committee did not provide the Audit staff the documentation used in the sampling process.

The Audit staff recognizes the probability that all calls to Iowa were not telemarketing related. Therefore the Audit staff has revised the gross amount of calls to Iowa and has reduced these amounts by credits and a business use (presumed non-telemarketing) percentage. The Audit staff based the business use reduction on the percentage of the toll charges made during business hours relative to the total toll charges. This percentage reduction was applied only to the calls made to Iowa, not to the total evening/weekend tolls. The Audit staff applied an average business use reduction percentage to the Iowa tolls for the month of February because the Committee acknowledged that some daytime calling was made during this period. These Audit staff adjustments have reduced the allocable amount from \$101,436.29 to \$81,173.80. This reduction of \$20,262.49 is reflected in the revised telemarketing program costs allocable to Iowa per the Audit staff. In addition, allocation of wiring installation, based on the allocable percentage of telephone costs, has been reduced accordingly from \$5,694 to \$4,667.60.

5. Application of Advisory Opinion 1988-6

In the alternative the Committee suggests that Advisory Opinion 1988-6 is applicable to the telemarketing program. The Advisory Opinion allowed 50% of the cost of a television advertisement to be allocated to exempt fundraising. The Committee states that "In that opinion, the Commission concluded that a three-second visual listing, 'Vote - Volunteer - Contribute,' plus a voice-over giving a phone number for contributors to call..would permit the allocation of 50% of the ad's cost to exempt fundraising." The Committee further asserts that a greater percentage of the du Pont telemarketing program was directed to fundraising than the corresponding fundraising percentage of time used for fundraising in the television advertisement.

The Committee contends that "telemarketing fundraising has multiple components, which combine to produce results...[and] the audit report treats the phone call and the mailing as two separate events, rather than two components of a fundraising package, and considers the phone call not to be part of the fundraising effort." The Audit staff's discussion and rejection of the Committee's rationale that the telemarketing program was basically a fundraising program and thereby subject to a fundraising exemption was discussed under paragraph (1) of this section.

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The Audit staff is of the opinion that the Advisory Opinion 1988-6 applies only to a specific factual situation - a television commercial - and does not extend beyond the specifics of that case. Both the political issue and solicitation request was contained within one message, whereas the du Pont telemarketing program sought political interest first and then addressed solicitation requests from identified supporters. The Audit staff notes that it did not allocate the costs of any of the follow-up letters sent by the Committee to Iowa outside 28 days before the election.

Finally, the Committee presented in its response an allocation of telemarketing program expenses based on a 50% exemption for fundraising. The Audit staff notes that certain figures used in the Committee's analysis of allocable costs based on a 50% fundraising exemption are incorrect. In one case, the figure shown did not represent total cost, but rather only the non-fundraising portion as determined by the Audit staff. In another instance, the Committee did not include total costs within 28 days of the election. The Audit staff did not perform a detailed analysis of the Committee's figures because the Advisory Opinion exemption does not appear to apply to this program.

Conclusion

Based on the Audit staff's review of the Committee's response to the interim audit report and the information and documentation made available, it is our opinion that the following Program costs, totaling \$354,260.26 require allocation to Iowa.

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	<u>Total Identified Program Costs</u>	<u>Program Costs Allocated by Committee</u>	<u>Program Costs Allocated by Audit</u>
Telephone	\$157,833.32	\$ 21,378.00	\$ 81,173.80
Computer & related services	171,792.26	2,880.00	42,747.59
Rent & utilities	28,396.39	---	6,708.29
Payroll	277,371.62	72,243.79	197,858.73
Postage	97,202.18	17,020.78	17,020.78
Wiring installation	8,760.00	---	4,667.60
Miscellaneous	<u>4,083.47</u>	<u>4,083.47</u>	<u>4,083.47</u>
Totals	<u>\$745,439.24</u>	<u>\$117,606.04</u>	<u>\$354,260.26</u>

The following recap and analysis, as revised for reduced telephone toll charges and wiring installation, is provided with respect to the Iowa state expenditure limitation:

**Revised Telemarketing Program costs
allocable to Iowa per the Audit staff:**

Within 28 Day Rule	\$ 50,358.13	
Outside 28 Day Rule	<u>303,902.13</u>	\$354,260.26

Less Program costs allocated by
the Committee:

Within 28 Day Rule	\$ 41,500.04	
Outside 28 Day Rule	<u>76,106.00</u>	(117,606.04)

Additional Program costs requiring allocation to Iowa		\$236,654.22
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Expenditures allocated to Iowa per Committee FEC Form 3P, page 3, as of April 30, 1988		<u>616,010.80</u>
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Expenditures subject to Iowa limitation		\$852,665.02
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Less: 2 U.S.C. Section 441(a) State Spending Limitation		<u>(775,217.60)</u>
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Revised Total Expenditures in Excess of State Limitation		<u>\$ 77,447.42*/</u>
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Recommendation #1

The Audit staff recommends that within 30 calendar days of service of this report the Committee provide documentation of all associated costs related to the telemarketing program. This documentation will include: (1) a detail listing of all vendors who provided services toward both the development and implementation of the telemarketing program; and (2) an itemization of all associated costs incurred with respect to each vendor. These vendor costs will include both direct services and collateral services (such as materials, printing, and distributive costs) associated with the telemarketing program. Based on our review of the information provided, the Audit staff may require access to all supporting documentation such as vendor invoices and receipted bills.

In addition, the Audit staff recommends that the Committee adjust its records to reflect the expenditures allocated in Iowa, and where necessary file amended reports to reflect the correct amount allocable to Iowa.

*/ Total is based on limited vendor information. The Committee did not respond to the recommendation that it provide a detail listing for all vendors related to the Program.

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B. Itemization of Expenditures

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report shall disclose 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.

During a review of expenditures, the Audit staff noted that the Committee failed to itemize on Schedule B-P two expenditures totaling \$75,966.38 relative to the 1987 Year-end report. This amount was included in reported disbursements on the Committee's Detailed Summary Page, however, a Schedule B-P disclosing these items was omitted from the 1987 Year-end report.

In addition, the Audit staff determined that for 23 itemized expenditures, totaling \$868,943.72, the Committee failed to itemize all required information.

Finally, the Audit staff noted a discrepancy of (\$224,421.55) between the reported total of itemized expenditures and the calculated total of the itemized expenditures for the Schedule B-P's provided with the January 1988 report. The Committee apparently reported payments to a payroll service and the related payroll checks and tax payments, issued by the payroll service. The Committee explained that it had inadvertently failed to annotate as memo entries (non-additive) items totaling \$224,421.55 related to payroll.

During the Exit Conference held on May 6, 1988, Committee officials seemed receptive to filing amended reports to correct the discrepancies noted above.

In the interim audit report the Audit staff recommended that the Committee, within 30 calendar days after service of the report, file amendments (1) to disclose the two unitemized expenditures noted, (2) to correct and complete the disclosure on the 23 items noted, and (3) to disclose correctly the expenditures to a payroll service on the January 1988 report as memorandum entries.

The Committee filed amendments on November 7, 1988 and December 1, 1988*/ correcting the discrepancies noted above.

Recommendation #2

The Audit staff recommends that, despite the untimely filing of the amendments, no further action be taken on this matter.

*/ The Committee was granted a 30 day extension to November 4, 1988 to respond to the interim audit report.

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C. Itemization of Interest Received

Section 434(b)(3)(G) of Title 2 of the United States Code states that each report shall disclose the identification of each person who provides any dividend, interest or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipts.

The term "Person" is defined at 2 U.S.C. § 431(11) as an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. Identification is defined at 2 U.S.C. § 431(13)(B) to mean, in the case of any person, other than an individual, the full name and address of such person.

The Audit staff's review of interest earned by the Committee revealed that 12 transactions totaling \$19,114.03 were not itemized on Schedule A-P relative to the 1986 October Quarterly, 1986 Year-end, 1987 April Quarterly, and 1987 July Quarterly reports.

At the Exit Conference, the Committee officials agreed to file amendments to correct the public record.

In the interim audit report the Audit staff recommended that the Committee, within 30 calendar days after service of the report, file amendments itemizing the receipts noted above.

The Committee filed amendments, received November 7, 1988, itemizing the interest receipts noted above.

Recommendation #3

The Audit staff recommends no further action on this matter.

D. Matter Referred to the Office of General Counsel

A certain matter noted during the audit has been referred to the Commission's Office of General Counsel.

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

A. Calculation of Repayment Ratio

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

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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 amount of deposits of contributions and matching funds as of the candidate's date of ineligibility.

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

$$\begin{array}{r}
 \text{Total Matching Funds Certified Through} \\
 \text{Date of Ineligibility 2/18/88} \\
 \hline
 \text{Numerator + Private Contributions} \\
 \text{Received through 2/18/88}
 \end{array}
 =
 \begin{array}{r}
 \$2,298,064.54 \\
 \hline
 \$7,653,436.93
 \end{array}
 = .300266$$

Thus, the repayment ratio for non-qualified campaign expenses is 30.0266%.

B. Non-qualified Campaign Expenses - Payments Made in Excess of Iowa State Limitation

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

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations states in part that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than defrayal of qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of this Title further states that Commission repayment determinations include determinations that a candidate has made expenditures in excess of the limitation for any one State pursuant to § 9035.1(a)(1).

As noted in Finding II.A., Allocation of Expenditures to States, the Audit staff determined that the Committee exceeded the expenditure limitation in Iowa by \$77,447.42. These expenditures represent amounts paid by the Committee. The amount subject to repayment is calculated below:

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Amount paid in excess of the Iowa State Expenditure Limitation	\$77,447.42
Times the Repayment Ratio from III.A.	<u>.300266</u>
Repayment Amount	<u>\$23,254.83*/</u>

Conclusion

On March 9, 1989, the Commission made an initial determination that the Committee repay \$23,254.83 to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

C. Statement of Net Outstanding Campaign Obligations

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

On February 18, 1988, Pete du Pont announced that he had withdrawn from the race for the Republican nomination for President of the United States. Pursuant to 11 C.F.R. § 9033.5(a), that is the date Mr. du Pont's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee submitted their original NOCO Statement on March 3, 1988 and has continued to submit revised NOCO Statements with each matching fund submission.

The Audit staff reviewed the NOCO Statement dated February 18, 1988 for financial activity through April 30, 1988. This review included verification of cash, accounts receivable, capital assets, other assets, accounts payable for qualified campaign expenses, and actual and estimated winding down costs.

Presented below is the Audit staff's analysis of the Committee's NOCO Statement as of February 18, 1988.

*/ This repayment amount is based on limited vendor information. The Audit staff recommended in Finding II.A. that the Committee provide documentation of all associated costs related to the telemarketing program. Adjustments to this repayment amount may result and will be reflected in the Commission's final repayment determination.

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**Audit Analysis of Committee's
NOCO Statement as of February 18, 1988 a/
as determined on April 30, 1988**

Assets

Cash on Hand	\$ 200.00
Cash in Bank	341,052.28
Deposits and Receivables	93,289.84
Capital Assets	<u>17,280.00</u>

Total Assets \$451,822.12

Obligations

Accounts payable for Qualified Campaign Expenses	\$408,832.11
Accounts payable for contribution refunds	2,962.00

Winddown Costs - Actual
2/19/88 to
4/30/88

Salaries	\$34,808.24	
Miscellaneous	10,845.78	
Operating non-payroll	<u>159,767.09</u>	205,421.11

Amount of non- qualified campaign expenses (in excess of Iowa limitation) included above	(61,518.18) b/
--	----------------

Winddown Costs -
Estimated
5/1/88 to
2/28/89

Salaries	\$160,783.07	
Consulting	21,000.00	
Legal fees - Texas	100,000.00	
Occupancy Operating Costs	17,460.00	
Office Supplies	2,500.00	
Equipment Rental	8,612.00	
Computer/Data Processing	10,800.00	
Fundraising	<u>15,000.00</u>	336,155.07

Total Obligations \$891,852.11

Net Outstanding Campaign
Obligations (Deficit)
as of 2/18/88 \$ (440,029.99)

a/ February 18, 1988 is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

b/ Under 11 C.F.R. § 9034.4(b)(2), an expenditure which is in excess of any of the limitations under 11 C.F.R. Part 9035 shall not be considered a qualified campaign expense, which precludes such expenditures from inclusion in the NOCO presentation as set forth at 11 C.F.R. § 9034.5.

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Shown below is an adjustment for private contributions, interest and matching funds received during the period 2/19/88 to 4/30/88, the most current financial information available at the close of fieldwork.

Net Outstanding Campaign Obligations (Deficit) as of 2/18/88	\$(440,029.99)
Net Private Contributions	177,536.10
Matching Funds Received	238,740.39
Interest Received	<u>3,438.61</u>
Remaining Entitlement as of April 30, 1988	<u>\$(20,314.89) */</u>

As of April 30, 1988, the Committee has not received matching fund payments in excess of its entitlement. Additional fieldwork may be required to assess the impact of future financial activity on the NOCO deficit.

*/ The Committee received its final matching fund payment of \$11,711.56 on May 26, 1988, and reported \$4,663.41 in individual contributions during May 1988. Therefore, the Committee appears not to have exceeded its entitlement.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

January 16, 1990

TO: Fred Eiland
Chief, Press Office

FROM: Kim L. Bright-Coleman *KBC*
Special Assistant General Counsel

SUBJECT: Public Issuance of the Statement of Reasons
for the Final Repayment Determination for
Pete duPont for President Inc.

Attached please find a copy of the above mentioned
Statement of Reasons which the Commission approved on
December 14, 1989.

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

Attachment as stated

cc: Audit Division
FEC Library
Public Disclosure ✓
Reports Analysis Division

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 14, 1989

Frank A. Ursomarso, Treasurer
Pete du Pont for President, Inc.
P.O. Box 1988
Rockland, Delaware 19732

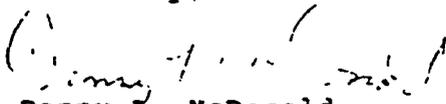
Dear Mr. Ursomarso:

The Commission has considered the responses filed on behalf of Pete du Pont for President, Inc. to the Commission's initial repayment determination contained in the Report of the Audit Division on Pete du Pont for President, Inc. issued on March 9, 1989. On December , 1989, the Commission made a final determination that Governor Pierre S. du Pont and Pete du Pont for President, Inc. must repay \$25,775.49 to the United States Treasury.

Enclosed is a Statement of Reasons in support of the Commission's final determination as required by 11 C.F.R. § 9038.2(c)(4). Judicial review of the Commission's determination is available pursuant to 26 U.S.C. § 9041.

Please note that, under 11 C.F.R. § 9038.2(d)(2), repayment must be made within thirty (30) days from the date of service of this notice. The payment should be sent to the Commission, but made payable to the United States Treasury.

Sincerely,


Danny L. McDonald
Chairman

Enclosure
Statement of Reasons

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

December 14, 1989

Glenn C. Kenton, Esq.
Richards, Layton & Finger
One Rodney Square
Wilmington, Delaware 19899

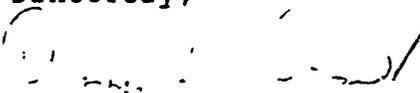
Dear Mr. Kenton:

The Commission has considered the responses filed on behalf of Pete du Pont for President, Inc. to the Commission's initial repayment determination contained in the Report of the Audit Division on Pete du Pont for President, Inc. issued on March 9, 1989. On December , 1989, the Commission made a final determination that Governor Pierre S. du Pont and Pete du Pont for President, Inc. must repay \$25,775.49 to the United States Treasury.

Enclosed is a Statement of Reasons in support of the Commission's final determination as required by 11 C.F.R. § 9038.2(c)(4). Judicial review of the Commission's determination is available pursuant to 26 U.S.C. § 9041.

Please note that, under 11 C.F.R. § 9038.2(d)(2), repayment must be made within thirty (30) days from the date of service of this notice. The payment should be sent to the Commission, but made payable to the United States Treasury.

Sincerely,


Danny L. McDonald
Chairman

Enclosure
Statement of Reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Governor Pierre S. du Pont IV and)
Pete du Pont for President, Inc.)
Final Repayment Determination)

STATEMENT OF REASONS

On December 14, 1989, the Commission made a final determination that Governor Pierre S. du Pont IV, and Pete du Pont for President, Inc. (the "Committee") repay \$25,775.49 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2), representing the portion of public funds used by the Committee to make expenditures in excess of the Iowa state limitation. The repayment is based on expenditures related to a telemarketing and mail program that the Committee did not properly allocate to its Iowa expenditure limitation. Therefore, the Committee is ordered to repay this amount within 30 days of receipt of this determination pursuant to 11 C.F.R. § 9038.2(d)(2). This Statement sets forth the legal and factual basis for the Commission's determination in accordance with 11 C.F.R. § 9038.2 (c)(4).

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I. BACKGROUND

Pete du Pont for President, Inc. (the "Committee") is the principal campaign committee of Governor Pierre S. du Pont IV, a candidate for the Republican presidential nomination in 1988. The Committee operated a telemarketing and mail program from its Wilmington, Delaware headquarters from June 1987 through February 1988. The program costs totaled \$745,439.24. The Committee allocated \$117,606.04 in program costs to Iowa. The Audit Division reviewed the scripts used in the program and the long distance telephone bills, and concluded that Iowa was a primary focus of the telemarketing program and that additional amounts should be allocated to the Committee's Iowa expenditure limit.

The issue first arose in the Interim Audit Report which was approved by the Commission on August 30, 1988. Attachment 1. In the Interim Report, the Audit Division allocated \$375,549.15 of the program costs to Iowa, resulting in expenditures in excess of the Iowa state limitation totaling \$99,720.60. The report recommended that the Committee provide evidence that it had not exceeded the limitation or adjust its records and reports to reflect the correct amount allocable to the Iowa limit. The Committee was also requested to provide a listing of all vendors related to the telemarketing program and an itemization of all expenditures incurred with respect to each vendor. The Interim Report contained a preliminary calculation of the repayment in the amount of \$29,942.71, based on the amount in excess of the Iowa state expenditure limitation.

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The Committee responded to the Interim Report on November 4, 1988. Attachment 2. The Committee's principal argument was that the program was essentially fundraising in nature. Therefore, the Committee asserted that no additional amounts were allocable to the Iowa state expenditure limit as they were exempt fundraising expenses. In the alternative, the Committee argued that Advisory Opinion ("AO") 1988-6 applies to the telemarketing program, and half of its expenses for the program were fundraising costs exempt from allocation under that opinion. Moreover, the Committee argued that expenditures for rent, computer expenses, and wiring allocated to Iowa by the Audit staff are general overhead expenses which are not allocable to Iowa. The Committee also contended that the Audit staff understated payroll expenses, and miscalculated telephone toll charges to Iowa, because certain telephone calls were not related to the telemarketing program.

The Commission approved the Final Audit Report on the Committee on March 9, 1989. Attachment 3. The report recommended that the Committee provide documentation of all associated costs related to the telemarketing program; adjust its records to reflect the expenditures allocated in Iowa; and where necessary, file amended reports to reflect the correct amount allocable to Iowa. The report rejected the Committee's contentions that the program was essentially a fundraising appeal and that AO 1988-6 could be applied to exempt 50% of the costs allocated to the Iowa expenditure limit by the Audit Division. The report also rejected the Committee's contention that certain expenditures were exempt as national campaign headquarters overhead. However, the Audit

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staff accepted the Committee's contention that not all calls to Iowa were related to the program, and accordingly reduced the telephone and wiring allocations. This reduction was determined based on credits on telephone bills which had not previously been included in the allocation, and the application of a business use percentage for presumed non-telemarketing calls. The report concluded that \$354,260.26 in the program costs should be allocated to Iowa, resulting in expenditures in excess of the Iowa State expenditure limitation in the amount of \$77,447.42. Therefore the Commission made an initial determination that the Committee repay \$23,254.83 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

The Committee responded to the Final Audit Report on April 21, 1989. Attachment 4. In the response, counsel for the Committee requested the opportunity to address the Commission in open session regarding the audit report and repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3). The Commission granted the Committee's request for an oral presentation on May 18, 1989. On June 28, 1989, counsel for the Committee made an oral presentation before the Commission. Attachments 5 and 6.

The Commission issued a subpoena on June 2, 1989 for Committee records relating to the telemarketing program. The Committee responded to the Commission's subpoena on August 11, 1989. Attachment 7. The Audit staff reviewed the Committee's response to the subpoena, and concluded that the Committee underallocated postage costs to Iowa. The Committee's description

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of its postage allocation is inadequate because it did not provide detailed documentation. While political mail was sent to Iowa as early as June 11, 1987, and the Committee paid \$20,000 for metered mail between June and August 1987, the Committee did not allocate metered mail postage to Iowa until September 1987. Therefore the Commission concludes that the Committee underallocated postage costs for that period. Moreover, it appears that the Committee underallocated in-house metered mail costs to Iowa during the 28-day period preceding the Iowa caucus. Between January 14, and February 1, 1988, the Committee paid \$20,600 in metered mail costs, but only allocated \$3,600 to Iowa and \$8,605.22 to New Hampshire. The Commission concludes that the balance of metered mail costs should be allocated to Iowa. These costs total \$8,394.78, which increases the total expenditures in excess of the Iowa limitation to \$485,842.20, and the repayment amount to \$25,775.49.

II. THE COMMITTEE'S ARGUMENTS

The Committee's primary argument is that the telemarketing program was a national fundraising effort. Since the Iowa caucuses and the New Hampshire primary are critical for most campaigns, the Committee maintains that it is essential for an unknown candidate such as Pete du Pont to raise funds in those states, "because those are the states in which he is becoming known." Attachment 4, page 3. Moreover, the Committee contends that the program was "a national program that stalled." Attachment 6, page 24. The Committee further argues that the program only appears to have been targeted at Iowa because the

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campaign was unsuccessful. Counsel for the Committee stated that it "would have been a national operation running out of the headquartersthe computers that drove this program were set up so that they could be used on a national basis." Attachment 6, page 23. In the Committee's responses and the oral presentation, the Committee made three arguments to justify its allocation of program costs based on the premise that the program was a national fundraising effort: 1) the expenditures at issue are exempt fundraising costs which are not allocable to the Iowa state expenditure limit; 2) AO 1988-6 applies to the telemarketing program, and thus, half of the program costs are exempt fundraising; and 3) certain expenditures were national headquarters overhead and should not be allocated to Iowa.

The Committee's main contention is that the program expenditures were exempt fundraising costs which are not allocable to the Iowa state limitation under 11 C.F.R. § 106.2(c)(5)(ii). The Committee states that the program used six scripts, of which two were purely political. The other four scripts, it argues, were part of the fundraising program, and should be exempt from allocation. The Audit staff concluded that only one of the six scripts was fundraising in nature, and exempted expenditures related to this script from allocation.

The Committee further argues that the telemarketing program was analogous to a direct mail fundraising effort. The Committee's response to the Final Audit Report states: "All campaign fundraising activities are comprised of multiple components." Attachment 4, page 5. The Committee notes that a

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direct mail fundraising scheme involves postage, printing and the fundraising letter itself, but only the letter contains a fundraising message. The Committee argues that: "[a]s with traditional direct mail, telemarketing fundraising has multiple components, which combine to produce results, but which individually are not productive." Id. at 6. The Committee believes that to treat the phone call and mailing as separate events, rather than two related components of a fundraising package, is similar to treating the postage for a fundraising letter as a separate non-fundraising expenditure. As an example, the Committee states that the "debate" script and follow-up letter are "obviously an integrated fundraising device" in which the script "sets the stage for a written appeal based on watching the first candidate debate." Id. at 7. Therefore, the Committee contends that the telemarketing program costs related to the three scripts are related to fundraising activities and should be exempt from allocation.

Counsel for the Committee elaborated upon this argument during the oral presentation. Counsel stated that there was a "very prompt" follow-up fundraising letter after each telephone call. The fundraising letter was sent "usually within 24 hours after the call." Attachment 6, page 6. Individuals whose names were obtained through the telephone calls often received several fundraising solicitations. Counsel argued that the telemarketing program "created our own vendor list." Id. at 7. Thus, he argued, "[i]f the purchase of a vendor list for a direct mail is a cost associated with fund-raising... a targeted telephone call to

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elicit exactly the same thing, which is a list of people who would be most likely to contribute to the campaign, is also a cost related to fundraising." Id. The telemarketing calls enabled the Committee to "hone in on the issues that moved people" and create a list of potential contributors. Id. at 22.

Moreover, the Committee believes that AO 1988-6 applies to this situation. In that opinion, a three-second fundraising statement in a 60-second political advertisement supported the exemption of 50% of the commercial's cost as fundraising expenses. The Committee argues that "far more than one-tenth" of the program costs had a "clear fundraising purpose." Attachment 4, page 8. Thus, it argues, "even accepting arguendo the audit report's conclusion" that program expenditures relate to Iowa, half of the costs are exempt fundraising. Id. The Committee contends that this instance "is not materially distinguishable from [AO 1988-6], and the principle established there may not be ignored." Id. Therefore, the Committee concludes that "under either method" it has not exceeded the Iowa limit, and no repayment is required. Id.

Finally, the Committee contends that certain program expenditures for rent, utilities, computer expenses and wiring, allocated to Iowa in the Final Audit Report, are national headquarters overhead and thus, not allocable to Iowa. The Committee argues that these expenditures were general overhead expenses "which would have been incurred regardless of whether the telemarketing program ever called Iowa residents." Id. at 6. Counsel for the Committee stated that the telephones and computers

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used in the program were also used for other national headquarters functions. Attachment 6, pages 12-13.

III. LEGAL ANALYSIS

Section 441a(b)(1)(A), Title 2, United States Code establishes national and state expenditure limitations for candidates seeking the presidential nomination who receive public financing. The Commission's regulations, at 11 C.F.R. § 106.2, contain rules governing the allocation of expenditures by publicly-financed primary candidates to particular states. Generally, expenditures incurred by a candidate's authorized committee for the purpose of influencing the nomination of that candidate with respect to a particular state must be allocated to that state on a reasonable basis. 11 C.F.R. § 106.2(a)(1).

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455 ("FECA") and Commission regulations exclude from the definition of expenditure any fundraising costs to the extent that the aggregate of such costs does not exceed 20% of the expenditure limitation applicable to the candidate. 2 U.S.C. § 431(9)(B)(vi); 11 C.F.R. § 100.8(b)(21). Such expenditures are not allocable to any state. However, under section 110.8(c)(2), expenditures for fundraising activities targeted at a particular state, and occurring within 28 days before that state's primary election are presumed to be allocable to the expenditure limitation for that state, the fundraising exemption of section 100.8(b)(21) notwithstanding. A fundraising cost is any cost incurred in connection with the solicitation of contributions. 2 U.S.C. § 431(9)(B)(vi). Examples of exempt fundraising

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expenditures include printing and postage for solicitations, airtime for fundraising advertisements, and the cost of refreshments for fundraising receptions and dinners. 11 C.F.R. § 106.2(c)(5)(ii).

The fundraising exemption was the focus of AO 1988-6, which concerned broadcast media time buys by a presidential campaign committee. The advertisements at issue were 60-second spots which included a three-second fundraising message. The Commission concluded that the committee could allocate 50% of the advertisement to fundraising, since the presence of the solicitation in the advertisement indicated that fundraising was one of the purposes of the advertisement. Thus, the application of the fundraising exemption did not depend upon the proportion of time in the advertisement which included the fundraising message, but upon the fact that a solicitation was present in the advertisement.

The Committee's arguments are based upon the assumption that the telemarketing program was essentially fundraising in nature. However, the evidence does not support this assumption. Only one of the scripts used in the telemarketing program contained an overt fundraising message. The Committee relies on the premise that a voter contact program with several discrete elements which may eventually lead to an explicit fundraising appeal should be considered entirely fundraising in nature. Although the Committee contends that the telephone calls without any apparent fundraising message had a fundraising purpose of educating potential contributors for subsequent fundraising appeals, the absence of a

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fundraising appeal in the calls makes them indistinguishable from campaign devices intended to educate voters and garner voting support. The Committee's contention that the prompt follow-up letter renders the initial telephone call fundraising is equally flawed. Proximity in time is insufficient to establish a connection. For example, two television advertisements broadcast on the same day are not both exempt for fundraising if only one contains a fundraising message. The only evidence that there was a fundraising intention is the Committee's assertion that the program was a fundraising effort. This is insufficient. The limited fundraising exemption was not intended to cover expenditures with no apparent fundraising message.

Counsel for the Committee contends that the program was a national operation cut short by the failure of the campaign. He asserts that the program only appears targeted at Iowa because the campaign ended before the program expanded to other areas. However, there is no documentation of the nationwide nature of the program. There is no evidence of telephone calls or mailings to Iowa voters after the caucus. Moreover, this argument begs the question. In a successful campaign, any program which has proven useful in the early states could be expanded to other states. Nevertheless, since the program was in actuality limited to Iowa, the program cost should be allocated to Iowa.

The Committee's attempt to analogize the program with the creation of a list of potential contributors for a direct mail operation is similarly flawed. The Committee purchased vendor lists for Iowa, and based the program on a list of 60,000 likely

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contributors. These facts contradict the contention that the program was used to create a list of potential contributors. Moreover, the Committee ignores a crucial difference between the telemarketing program and direct mail. The initial telephone call had a purely political message, devoid of a fundraising solicitation. In an exempt direct mail program, each mailing contains a fundraising message and each contact with the public consists of one mailing with a fundraising message. Conversely, the telemarketing program consisted of several contacts with voters, but only some of these contacts contained a fundraising message.

Furthermore, the Committee's reliance on AO 1988-6 is misplaced. The opinion applied to a specific factual situation which is distinguishable from the facts at issue here. In the opinion, both the political issue and solicitation request were contained in one cohesive advertisement, so that the fundraising message was clearly related to the entire advertisement. Application of the opinion arguably requires the presence of some overt fundraising message in a communication as basis for the exemption. In contrast, the Committee asserts that telephone calls and mailings which did not contain any fundraising message should be exempt. The Commission's decision in AO 1988-6 would not permit a candidate to exempt as fundraising expenses a fundraising program which includes several disparate messages and

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contacts with potential voters which do not contain an explicit fundraising message.

The Committee's contention that the program costs are exempt national headquarters overhead is also not tenable. The exemption for overhead operating expenses of a national campaign headquarters does not exempt the operating expenses of a specific program focused on a particular state simply because it was conducted from the national office. The regulations exempt operating expenditures of the national campaign headquarters from allocation to any state. 11 C.F.R. § 106.2(c)(1)(i). Generally, however, state allocations are based upon whether an expenditure is intended to influence the nomination of a candidate in a particular state. Thus, the exemption for general overhead expenses should not be applied to costs directed toward the Iowa election, as distinguished from the general costs of running the national headquarters.

IV. FINAL REPAYMENT DETERMINATION

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9038.2(c)(4) that for the foregoing reasons Governor Pierre S. du Pont IV and Pete du Pont for President, Inc. must repay \$25,775.49 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

Staff Assigned: Delanie DeWitt Painter

ATTACHMENTS

1. Interim Audit Report on Pete du Pont for President, Inc., approved by the Commission, August 8, 1988.

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2. Response of Pete du Pont for President, Inc. to the Interim Report of the Audit Division, dated November 4, 1988.
3. Final Audit Report on Pete du Pont for President, Inc., approved by the Commission, March 9, 1989.
4. Response of Pete du Pont for President, Inc. to the Final Audit Report and Initial Repayment Determination, dated April 21, 1989.
5. Memorandum to the Commission on the Oral Presentation of Pete du Pont for President, Inc., dated June 23, 1989.
6. Oral Presentation to the Commission on Behalf of Pete du Pont for President, Inc., June 28, 1989.
7. Response of Pete du Pont for President, Inc. to the Commission's Subpoenas, dated August 11, 1989.

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Alert

DUPL/090288



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 2, 1988

*P. Lowe called
9/8 to advise
re: report on 9/7*

Mr. Frank A. Ursomarso, Treasurer
Pete du Pont for President, Inc.
P.O. Box 1988
Rockland, Delaware 19732

Dear Mr. Ursomarso:

This report is to formally advise you of the findings and recommendations of the Audit staff resulting from the audit of Pete du Pont for President, Inc.

You are requested to comply with the recommendations within 30 days of receipt of this letter. After expiration of the 30 day period and receipt of your response, the Audit staff will present a final audit report to the Commission for approval and subsequent public release. If the recommendations contained in this report are followed, such efforts will be noted in the final audit report. However, adherence to these recommendations will not necessarily preclude the institution of enforcement proceedings with regard to apparent violations of the Federal Election Campaign Act of 1971, as amended.

If you have any questions regarding these matters, please contact either Ms. Cornelia Riley or Mr. Alex Boniewicz at (202) 376-5320 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Robert J. Costa
Assistant Staff Director
for the Audit Division

Attachment as stated

cc: Mr. Dan Swillinger .

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ATTACHMENT 1



FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

INTERIM REPORT OF THE AUDIT DIVISION

ON

PETE du PONT FOR PRESIDENT

I. Background

A. Overview

This report is based on an audit of Pete du Pont for President ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on June 3, 1986. The Committee maintains its headquarters in Wilmington, Delaware.

The audit covered the period from the Committee's inception, June 3, 1986, through March 31, 1988. During this period, the Committee reported an opening cash balance of \$-0-, total receipts of \$8,806,472.84, total disbursements of \$8,736,410.05, and a closing cash balance of \$70,062.79. In addition, certain financial activity was reviewed through April 30, 1988 for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. § 9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

The Treasurer of the Committee during the period reviewed was Mr. Frank A. Ursomarso.

C. Scope

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

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

A. Itemization of Expenditures

Section 434(b) (5) (A) of Title 2 of the United States Code states that each report shall disclose 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.

During a review of expenditures, the Audit staff noted that the Committee failed to itemize on Schedule B-P two expenditures totaling \$75,966.38 relative to the 1987 Year-end report. This amount was included in reported disbursements on the Committee's Detailed Summary Page, however, a Schedule B-P disclosing these items was omitted from the 1987 Year-end report.

In addition, the Audit staff determined that for 23 itemized expenditures, totaling \$868,943.72, the Committee failed to itemize all required information. See Attachment I.

Finally, the Audit staff noted a discrepancy of (\$224,421.55) between the reported total of itemized expenditures and the calculated total of the itemized expenditures for the Schedule B-P's provided with the January 1988 report. The Committee apparently reported payments to a payroll service and the related payroll checks and tax payments, issued by the payroll service. The Committee explained that it had inadvertently failed to annotate as memo entries (non-additive) items totaling \$24,421.55 related to payroll.

During the Exit Conference held on May 6, 1988, Committee officials seemed receptive to filing amended reports to correct the discrepancies noted above.

Recommendation #1

The Audit staff recommends that the Committee, within 30 calendar days after service of this report file amendments (1) to disclose the two unitized expenditures noted, (2) to correct and complete the disclosure on the 23 items noted, and (3) to correctly disclose the expenditures to a payroll service on the January 1988 report as memorandum entries.

B. Itemization of Interest Received

Section 434(b)(3)(G) of Title 2 of the United States Code states that each report shall disclose the identification of each person who provides any dividend, interest or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipts.

The term "Person" is defined at 2 U.S.C. § 431(11) as an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. Identification is defined at 2 U.S.C. § 431(13)(B) to mean, in the case of any person, other than an individual, the full name and address of such person.

The Audit staff's review of interest earned by the Committee revealed that 12 transactions totaling \$19,114.03 were not itemized on Schedule A-P relative to the 1986 October Quarterly, 1986 Year-end, 1987 April Quarterly, and 1987 July Quarterly reports. See Attachment II.

At the Exit Conference, the Committee officials agreed to file amendments to correct the public record.

Recommendation #2

The Audit staff recommends that the Committee, within 30 calendar days after service of this report, file amendments itemizing the receipts noted above.

C. Allocation of Expenditures to States

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of the candidate for the office of the President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

Section 110.8(c)(2) of Title 11 of the Code of Federal Regulations states that for State limitations, expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention or caucus shall be presumed to be attributable to the expenditure limitation for that State.

During fieldwork, the Audit staff identified a project used by the Committee involving a telemarketing and mail program ("the Program"). Discussions with Committee officials and a review of Committee records made available indicated that the Program operated out of the Committee's headquarters in Wilmington, Delaware primarily from June, 1987 through February, 1988.

The Program was a computer-based system which appears to have accommodated up to 35 telephone stations. Each station accessed one of six predominately used scripts through a CRT screen linked to an automatic dial feature used in placing calls. The operator, using a headset, would work through the screen script inputting responses received from the person contacted. When the call was completed an in-house mailing was automatically generated, if needed. The Program appears to have been operated mainly during evening and weekend hours employing, on a part time basis, two shifts of operators.

The Audit staff reviewed the Committee's expenditure files for the vendors that could be identified as part of the Program and calculated apparent Program costs totaling \$745,439.24.

The Audit staff then reviewed the Committee's allocation of expenditures to states to determine the extent to which these Program costs were allocated to Iowa. The Audit staff determined that \$117,606.04^{2/} in Program costs were allocated to Iowa. The following table provides a detailed comparison of identified Program costs and costs allocated to Iowa by the Committee:

^{2/} Committee allocation workpapers indicated that \$134,293.95 had been allocated to Iowa with respect to the Program. However, the Audit Staff reduced this amount by \$16,687.91 which represented an overallocation made by the Committee in applying the 28 Day Rule. It should be noted that the Committee's overall allocation to Iowa has been adjusted accordingly.

	<u>Total Identified Program Costs</u>	<u>Program Costs Allocated by Committee</u>	<u>Program Costs Allocated by Audit</u>
Telephone	\$157,833.32	\$ 21,378.00	\$101,436.29
Computer & related services	171,792.26	2,880.00	42,747.59
Rent & utilities	28,396.39	---	6,708.29
Payroll	277,371.62	72,243.79	197,858.73
Postage	97,202.18	17,020.78	17,020.78
Printing installation	8,760.00	---	5,694.00
Miscellaneous ^{2/}	<u>4,083.47</u>	<u>4,083.47</u>	<u>4,083.47</u>
Totals	<u>\$745,439.24</u>	<u>\$117,606.04</u>	<u>\$375,549.15</u>

During this review it became apparent to the Audit staff that the Program focused to a large extent on Iowa. A March 23, 1987 memorandum (see Attachment III) from a consultant, directed to Committee representatives, outlined in a fairly detailed fashion the consultant's understanding of the "goals and objectives for the du Pont telemarketing and mail program." Although Committee officials did not acknowledge that this plan was the basis of their telemarketing program, the Audit staff is of the opinion that the basic components of this plan with respect to the telemarketing effort directed at Iowa were implemented by the Committee and indicate a focus on Iowa.

Second, a review of the billings by the long distance telecommunications company used by the Committee for the Program indicated that the majority of the calls were to Iowa. During the period June, 1987 to February, 1988, the Committee incurred \$157,171.32 for the Program's long distance service, or about \$17,500 per month. A review of the bills for the above mentioned period indicated that the costs of calls made to Iowa comprised from 48% to 90% of the cost of all calls made. Further analysis of the cost, the number, and the length of calls, indicates that the Program was used primarily in the evenings, during which hours the calls were directed almost exclusively at Iowa.

Finally, the auditors reviewed all scripts considered for use in the Program by the Committee. Of the 28 scripts reviewed, at least 11 seemed to be targeted at Iowa. The Committee provided an explanatory letter dated May 12, 1988, along with copies of six scripts that according to the Committee were used almost exclusively in the telemarketing program during the period 6/87 through 12/87.

^{2/} Based on Committee allocation workpapers and documentation made available, costs included in this category could not be directly associated with any of the other categories noted.

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and copies of letters / mailed as a result of the response to each script. See Attachment IV. One of these scripts was a poll (Attachment IV, page 21), four of the scripts appear political in nature with no appeal for contributions (Attachment IV, pages 4-20) and the final script did contain a fundraising appeal (Attachment IV, pages 22-23). In all six scripts the text appears specifically directed at Iowa by virtue of the caucus or debate in Iowa being mentioned at some point.

The Committee's letter of May 12, 1988 notes that of these scripts, only two were not fundraising in nature (Attachment IV, pages 3, 16-17, 21). The Committee's position with respect to the scripts was that money could not be raised from people who did not know or support their issues. The Committee provided, as further support that these scripts were used extensively, workpapers detailing the days and number of calls made daily with respect to each of the scripts.

As noted in their May 12, 1988 letter the Committee's position is that the rent, HVAC (utilities) and computer rental were correctly reported as national office overhead, consistent with the treatment of other computer and office rental within the campaign headquarters...and...both...were used Monday through Friday 7 a.m. to 5 p.m. by both the Legal and Accounting operation and the Direct Mail and Event Fundraising staffs." Further, expenses associated with payroll, telephone, postage, and software were charged directly "to either fundraising, the Iowa allocation or Exempt Legal/Accounting as appropriate."

As noted above, the Audit staff calculated the apparent cost of the Program to be \$745,439.24, while the Committee only allocated \$117,606.04, or about 16% of identified Program costs to Iowa, although it is apparent that the Program focused on Iowa. The Audit staff also noted that as of March 31, 1988, according to the State Allocation Report, FEC Form 3P, page 3, the Committee had allocated expenditures totaling \$616,995.09 to the Iowa limitation of \$775,217.60. The Audit staff's review of expenditures allocated to Iowa determined this figure to be materially correct, except as noted with respect to the Program.

Based on the Audit staff's review of the information and documentation made available, it is our opinion that the following Program costs, totaling \$375,549.15, require allocation to Iowa. See Attachment V.

/ Of the five follow-up letters mailed as a result of the scripts, three included appeals for contributions.

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o Program Costs Within the 28 Day Rule

The Audit staff reviewed Program costs occurring within 28 days of the Iowa caucus and determined that \$52,709.67 in telephone, rent, utilities, payroll and computer related services should have been allocated to Iowa. As stated in the Committee's letter, dated May 12, 1988, for the period subsequent to January 1, 1988, expenses were allocated 100% against the Iowa limitation due to the "FEC regulation eliminating the Fundraising Exemption within 28 days of a primary election." The Audit staff reviewed Committee allocation workpapers with respect to the Program and determined, based on the information available, that the Committee allocated \$41,500.04 in salary, phone and miscellaneous Program costs to Iowa.

o Program Costs outside the 28 Day Rule

The Audit staff reviewed Program costs occurring outside of the 28 day rule and determined that \$322,839.48 in telephone, rent, utilities, payroll, computer related services, postage, wiring and miscellaneous costs should have been allocated to Iowa. Based upon the scripts and telephone logs provided as part of the Committee's May 12, 1988 letter, it was determined that \$86,378.48 in long distance telecommunication charges and \$168,339.00 in payroll costs with respect to the Program should have been allocated to Iowa. With respect to rent and utilities, the Audit staff determined that, based on the hours of operation as provided by the Committee in their letter dated May 12, 1988, \$5,713.70 in expenditures should have been allocated to Iowa. The Audit staff determined that \$35,610.05 in computer related Program costs should have been allocated to Iowa. Finally, the Audit staff determined that postage totaling \$17,020.78; wiring installation costs of \$5,694 and miscellaneous costs totaling \$4083.47 should have been allocated to Iowa. The Audit staff's review of Committee workpapers indicated that \$76,106 in salary, phone, postage, supplies and computer related costs with respect to the Program were allocated to Iowa.

The following recap and analysis is provided with respect to the Iowa state expenditure limitation:

Telemarketing Program costs allocable
to Iowa per the Audit staff:

Within 28 Day Rule	\$ 52,709.67	
Outside 28 Day Rule	<u>322,839.48</u>	\$375,549.15

Less Program costs allocated by
the Committee:

Within 28 Day Rule	\$ 41,500.04	
Outside 28 Day Rule	<u>76,106.00</u>	(<u>117,606.04</u>)

Additional Program costs requiring allocation to Iowa		\$257,943.11
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Expenditures allocated to Iowa per Committee FEC Form 3P, page 4		<u>616,995.09</u>
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Expenditures subject to Iowa limitation		\$874,938.20
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Less: 2 U.S.C. Section 441(a) State Spending Limitation		(<u>775,217.60</u>)
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Total Expenditures in Excess of State Limitation		<u>\$ 99,720.60</u>
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Recommendation #3

The Audit staff recommends that within 30 calendar days after service of this report the Committee provide evidence showing that it has not exceeded the limitation as set forth above. Absent such a showing, the Audit staff recommends that the Committee adjust its records to reflect the expenditures allocated in Iowa, and where necessary file amended reports to reflect the correct amount allocable to Iowa.

In addition the Audit staff recommends that the Committee provide a detail listing for all vendors related to the telemarketing program and an itemization of all associated costs incurred with respect to each vendor. Such costs include those incurred with respect to development and implementation of the telemarketing program. Based on our review of the documentation provided, the Audit staff may require access to all supporting documentation.

Further recommendations may be forthcoming.

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D. Refunds of Excessive Contributions

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

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states in part that contributions which exceed the contribution limits when aggregated with other contributions from the same contributor may be either deposited into a campaign depository or returned to the contributor. If deposited, the treasurer may request reattribution of the contribution by the contributor. If the reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

During fieldwork the Audit staff reviewed the contributions refunded by the Committee and noted that for 41 contributors whose excessive portions totaled \$15,541, the Committee did not refund the excessive portions timely. A schedule of these contributions was presented to the Committee at the Exit Conference.

Subsequent to the conclusion of fieldwork, the Committee refunded excessive portions of contributions totaling \$7,216 from 50 contributors and provided documentation to support the reattribution of excessive portions totaling \$650 from 2 contributors. However, of these excessive portions, 16 refunds totaling \$2,972 were not made timely.

Thus, the Committee did not refund in a timely manner excessive portions of contributions totaling \$18,513 (\$15,541 + \$2,972) from 57 (41 + 16) contributors. See Attachment VI.

Recommendation #4

The Audit staff recommends that the Committee, within 30 calendar days after service of this report, provide an explanation, including an account of any mitigating circumstances, as to why these refunds were not accomplished in a timely manner.

Further recommendations may be forthcoming.

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

A. Calculation of Repayment Ratio

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

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 amount of deposits of contributions and matching funds as of the candidate's date of ineligibility.

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

$$\frac{\text{Total Matching Funds Certified Through Date of Ineligibility 2/18/88}}{\text{Numerator + Private Contributions Received through 2/18/88}} =$$

$$\frac{\$2,298,064.54}{\$7,653,436.93} = .300266$$

Thus, the repayment ratio for non-qualified campaign expenses is 30.0266%.

B. Use of Funds for Non-Qualified Campaign Expenses

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

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations provides, in part, that the Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of Title 11 of the Code of Federal Regulations states that an example of a Commission repayment determination under paragraph (b)(2) of this section includes determinations that a candidate, a candidate's

authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 C.F.R. § 9035.

As noted in Finding II.D., the Audit staff determined that the Committee has exceeded the expenditure limitation in Iowa by \$99,720.60. The amount subject to repayment is calculated below:

Amount in excess of the Iowa State Expenditure Limitation	\$99,720.60
Times the Repayment Ratio from III.A.	<u>.300266</u>
Preliminary Calculation of the Repayment Amount	<u>\$29,942.71*</u>

Recommendation #5

The Audit staff recommends that, within 30 calendar days after service of this report, the Committee demonstrate that it has not exceeded the Iowa state expenditure limitation. Absent such a showing, the Audit staff will recommend that the Commission make an initial determination that the pro rata portion of \$29,942.71 (\$99,720.60 x .300266) be repaid to the U.S. Treasury.

C. Statement of Net Outstanding Campaign Obligations

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

On February 18, 1988, Pete du Pont announced that he had withdrawn from the race for the Republican nomination for President of the United States. Pursuant to 11 C.F.R. § 9033.5(a), that is the date Mr. du Pont's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee submitted their original NOCO Statement on March 3, 1988 and has continued to submit revised NOCO Statements with each matching fund submission.

* This amount may increase if additional allocable costs are identified based on our review of information provided in response to Recommendation #5.

The Audit staff reviewed the NOCO Statement dated February 18, 1988 for financial activity through April 30, 1988. This review included verification of cash, accounts receivable, capital assets, other assets, accounts payable for qualified campaign expenses, and actual and estimated winding down costs.

Presented below is the Audit staff's analysis of the Committee's NOCO Statement as of February 18, 1988.

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**Audit Analysis of Committee's
WOCO Statement as of February 18, 1988 ²/₂
as determined on April 30, 1988**

Assets

Cash on Hand	\$ 200.00
Cash in Bank	341,032.20
Deposits and Receivables	93,289.84
Capital Assets	<u>17,280.00</u>

Total Assets**\$451,822.12****Obligations**

Accounts payable for Qualified Campaign Expenses	\$408,832.11
Accounts payable for contribution refunds	2,962.00

**Winddown Costs - Actual
2/19/88 to
4/30/88**

Salaries	\$34,808.24
Miscellaneous	10,845.78
Operating non-payroll	<u>159,767.09</u>
	205,421.11

**Amount of non-
qualified campaign
expenses (in excess
of Iowa limitation)
included above**

(57,877.11) ²/₂

**Winddown Costs -
Estimated
3/1/88 to
2/28/89**

Salaries	\$160,783.07
Consulting	21,000.00
Legal fees - Texas	100,000.00
Occupancy Operating Costs	17,450.00
Office Supplies	2,500.00
Equipment Rental	8,622.00
Computer/Data Processing	10,000.00
Fundraising	<u>15,000.00</u>
	225,122.07

Total Obligations**\$125,492.18**

**Net Outstanding Campaign
Obligations (Deficit)
as of 2/18/88**

\$ (442,671.90)

²/₂ February 18, 1988 is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

²/₂ Under 11 C.F.R. § 9034.6(b)(2), an expenditure which is in excess of any of the limitations under 11 C.F.R. Part 9035 shall not be considered a qualified campaign expense, which precludes such expenditures from inclusion in the WOCO

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Shown below is an adjustment for private contributions, interest and matching funds received during the period 2/19/88 to 4/30/88, the most current financial information available at the close of fieldwork.

Net Outstanding Campaign Obligations (Deficit) as of 2/18/88	\$(443,671.06)
Net Private Contributions	177,536.10
Matching Funds Received	238,740.39
Interest Received	<u>3,438.61</u>
Remaining Entitlement as of April 30, 1988	<u>\$(23,955.96)</u>

As of April 30, 1988, the Committee has not received matching fund payments in excess of its entitlement. Additional fieldwork may be required to assess the impact of future financial activity on the NOCO deficit.

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BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RESPONSE OF
PETE DU PONT FOR PRESIDENT
TO THE INTERIM REPORT OF THE AUDIT DIVISION

I. INTRODUCTION

Pete du Pont for President, the principal campaign committee of Pete du Pont, candidate for the 1988 Republican nomination, files this response to the Audit Division's Interim Audit Report, dated September 2, 1988.

This response will follow the format of the audit report, and respond to each of the recommendations therein.

II. TITLE 2 FINDINGS AND RECOMMENDATIONS

A. & B. Itemization

The committee has no objection to recommendations 1 and 2, calling for the amendment of committee reports to more accurately reflect certain expenditures and interest receipts. The amendments will be filed with the Commission under separate cover.

C. Allocation of Expenditures to States

1. Introduction

The central issue raised by the audit report is the allocation of the costs of a telemarketing program, among headquarters overhead, fundraising costs and the Iowa expenditure limit.

The audit staff's view is that an additional \$258,000 in telemarketing costs should be allocated to the Iowa limit, which would cause the committee to exceed the \$775,000 limit by more than \$99,000. The committee believes that the staff's conclusion is incorrect, and will so demonstrate that the expenditures are exempt fundraising costs which are not allocable to state expenditure limits.

The additional \$258,000 proposed by the audit staff is the result of a differing view of the allocation of the costs of a fundraising telemarketing program.

The committee used six different scripts to contact voters and to raise money. Two of the scripts are political in nature; the committee allocated those costs to the Iowa limit. The audit staff agreed that one script, which contained words of solicitation, was a fundraising device, and therefore exempt from the Iowa limit.

The committee believes that the other three scripts were also part of a fundraising program, and the costs associated with them are also exempt from allocation to the limit.

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2. Telemarketing -- a Fundraising Program

Contrary to the audit staff's view, the telemarketing program was conceived and implemented by the campaign as a significant fundraising effort. The audit staff mischaracterized the program for three fundamental reasons: (a) misplaced reliance on a memorandum from a consultant (Attachment III to the audit report); (b) a failure to understand the program's Iowa focus; and (c) a failure to comprehend modern campaign fundraising. The audit report also includes in the Iowa allocation certain overhead expenses which should have remained as overhead expenses. In addition, expenses for payroll and toll charges were incorrectly treated as telemarketing costs, when, in fact, they were part of general overhead.

(a) The Templeton memo.

This document was received in response to the campaign management's request for a proposal memorandum outlining the establishment of a telephone telemarketing program, i.e. what telecommunications and computer equipment was needed to run a telemarketing program. The response considerably exceeded the scope of the information requested, and represented a considerable expansion of the consultant's task (presumably in the consultant's hope that he would be hired to do the larger job).

The attached affidavit of Robert W. Perkins (see Attachment B), the deputy campaign manager, specifically states that the Templeton memo was not adopted as the campaign's telemarketing plan. It further states that fundraising was a prime objective

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of telemarketing, a fact which the Templaton memorandum fails to address.

The audit staff ignored both the statements of campaign management, as well as the memo itself, to arrive at its conclusion.

(b) The Iowa Focus.

The audit staff indicated, both in the field audit exit conference and in the report itself (see p. 5), that the campaign's lack of a national focus, and its particular focus on Iowa, was a keystone of its conclusions regarding the allocation of telemarketing expenses, i.e., that these costs were political rather than fundraising in nature.

This position fails to recognize the uniqueness of circumstances surrounding an "underdog" campaign. An unknown candidate must focus first on Iowa, to present his positions, to become known, and to raise funds to support these efforts. Momentum from success in Iowa permits the candidate to be a factor in New Hampshire. Pete du Pont was not known nationally, and he was not known in Iowa. A nationwide contributor base would be understandably reluctant to contribute to a candidate whom they did not know. To reach and to educate a national audience was beyond the resources of the campaign. Indeed, each effort to do national direct mail "prospecting" fundraising lost money -- the cost of the lists, the printing and the postage exceeded the revenue.

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However, Iowa voters could be educated, and would have a stake in the election because of their participation in the early caucuses. That stake would cause them to contribute -- once they knew the candidate.

By contrast, more traditional fundraising was carried out in New Hampshire, where Gov. du Pont was better known, and where he had the support of the state's largest newspaper.

The audit staff's conclusion regarding the lack of a national effort and a focus on Iowa seems to ignore the reality of modern Presidential campaigns: the Iowa caucuses and the New Hampshire primary are the beginning and the end for most campaigns. If a candidate is not successful in both, the candidacy is over, as it was for almost all of the Democratic and Republican candidates in 1988. For an unknown like Pete du Pont, it is essential to raise funds in those states, because those are the states in which he is becoming known.

(c) Campaign Fundraising.

All campaign fundraising activities are comprised of multiple components. A traditional direct mail effort requires renting a list; creating a mailing "package," with a letter, and other inserts; printing the package; affixing postage; mailing the piece; and processing the returns. Only one of the components -- the letter -- actually contains words of solicitation. Yet the Commission has consistently treated all of the expenses associated with direct mail as an exempt fundraising cost.

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Sophisticated telemarketing is a relatively new method of raising campaign funds. Rather than renting a mailing list, individuals are called from lists of phone numbers obtained from various sources -- local election boards, commercial lists covering neighborhoods with certain demographic characteristics; political party membership lists, etc. As with traditional direct mail, telemarketing fundraising has multiple components, which combine to produce results, but which individually are not productive.

For example, a phone call asking for a contribution even from a du Pont supporter will produce no response unless a follow-up letter asks for the money, and provides a reply card and envelope. A "cold" call to an Iowa voter who knows nothing about Pate du Pont will produce no revenue; someone who identifies himself as a supporter as the result of the telephone message is much more likely to give money when a follow-up mailing is received.

This approach is especially important here since Gov. du Pont ran an issues-based campaign; the issues were complex; the decision was made to give Iowans multiple opportunities to know the candidate and the issues, and only then to ask for funds.

The audit report treats the phone call and the mailing as two separate events, rather than two components of a fundraising package, and considers the phone call not to be part of the fundraising effort. Following that logic could lead to the conclusion that the cost of the list rental for a traditional direct mail piece is not a fundraising cost.

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The campaign used six basic scripts for the telemarketing program (see Audit Report Attachment IV, p. 3). Two of these were clearly not fundraising. The campaign has never claimed them to be exempt, and their costs were allocated against the Iowa limit. The committee believes that the other four scripts were components of a fundraising program, and along with list costs, follow-up mailings, etc., the wages, toll charges, and computer services related to the use of those scripts are exempt fundraising costs, and should not be allocated to the Iowa limit. The audit staff treated as fundraising only one of these four -- the one which contained words of solicitation.

For example, the "debate" script and follow-up letter containing a "debate scorecard" are obviously an integrated fundraising device. The script does not ask for funds, but rather sets the stage for a written appeal based on watching the first candidate debate. Each of the other scripts operates in similar fashion.

The audit report, however, considers as exempt only the costs surrounding the script which itself asks for a contribution. The committee believes that the three additional scripts and surrounding costs are exempt as part of a fundraising program.

(d) Other Expenses.

The Commission's regulations, 11 CFR 106.2(c)(1)(i) and 106.2(b)(iv), state that headquarters expenses for rent, office

equipment, etc., are national overhead. The audit report includes \$52,269.88 in rent, computer expenses and wiring as allocable to Iowa, even though these are general overhead expenses. To the committee's knowledge, the Commission has never allocated to the Iowa limit the office rent for the headquarters staff person who works full-time on Iowa. Neither should it allocate these overhead costs.

The committee also disputes the accuracy of the audit staff's calculation of expenses allocable to the telemarketing program. The committee believes there should be adjustments to the audit staff's calculation of telemarketing expenses for payroll and telephone toll charges.

The audit report increases "allocable Iowa expenses" by the difference between the expenses the audit staff purports are allocable and the expenses allocated by the committee. In doing so for payroll expenses, the audit staff understated the payroll expenses already allocated by the committee by \$7,684.00. Attachment D details the payroll expenses originally allocated by the committee. The committee requests that the "program costs allocated by the Committee" for payroll be increased by this amount, which would reduced the proposed "additional program costs requiring allocation to Iowa" accordingly.

Finally, the committee believes the methodology used by the audit staff significantly overstates the telemarketing costs allocable to the telemarketing program. The committee has, and has offered to present, documented evidence (in the form of payroll time cards) of the hours of operation of the

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telemarketing program. This program was utilized exclusively during the evening and weekend calling periods.

The committee based its telephone toll charge allocation method on long distance charges occurring within this period. The committee also sampled to determine what portion of calls within this time period were unrelated to the telemarketing program. It determined an average of \$34.18 per day in evening and weekend toll charges were due to calls unrelated to the telemarketing program. The workpapers in Attachment C detail what the committee believes is a reasonable calculation of telephone charges related to the telemarketing program. Assuming the audit staff's proration percentages of 76% outside the 28 day rule and 100% within 28 days of the primary, this would reduce the "program costs allocated by audit" for telephone toll charges to \$93,063.53. Once again there would be a corresponding reduction in the "additional program costs requiring allocation to Iowa" of \$8,372.76.

The cumulative impact of these corrections in the method of calculating telemarketing expenses result in a reduction of \$16,056.76 to the audit staff's recommendation with respect to the Iowa limit.

3. Conclusion

(a) The committee's original allocation to the Iowa limit telemarketing program costs is the appropriate allocation. It

recognizes that two of the telemarketing scripts were not part of a fundraising program. It further recognizes that the other four were part of a fundraising program.

The Federal Election Campaign Act of 1971, as amended, at 2 U.S.C. Sec. 431(9)(B)(vi), provides that "any costs incurred by a . . . [Presidential candidate] in connection with the solicitation of contributions on behalf of" the candidate are excluded from state expenditure limits. [Emphasis added.]

The Commission's regulations interpreting the statute define the fundraising exclusion to mean "any cost reasonably related to" or "associated with" the solicitation of contributions. 11 CFR 100.8(b)(21)(ii), 106.2(i)(5)(ii). [Emphasis added.]

The committee has amply demonstrated that the telemarketing program costs related to the three scripts in dispute are "in connection with," "associated with," and "reasonably related to" fundraising activities. They are therefore not allocable to the Iowa expenditure, but rather are exempt fundraising expenses.

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The committee would therefore revise the calculation on page 8 of the report:

Telemarketing Program costs allocable to Iowa:

Within 28-day rule	\$52,709.67	
Outside 28-day rule	\$76,106.99	128,815.67
Less costs allocated by the committee:		117,606.00
Additional program costs requiring allocation to Iowa:		11,209.67
Expenditures allocated to Iowa by committee:		616,995.09
Expenditures subject to Iowa limit:		639,414.43
Less Iowa limit:		775,217.60
Amount under Iowa limit:		135,803.17

(b) In the alternative the committee suggests that the Commission's holding in Advisory Opinion 1988-6 (CCH Paragraph 5811), that 50% of the cost of a television advertisement for Sen. Albert Gore may be allocated to exempt fundraising, also applies to this situation.

In that opinion, the Commission concluded that a three-second visual listing, "Vote - Volunteer - Contribute," plus a voice-over giving a phone number for contributors to call, as part of a 30-second issue campaign advertisement, would permit the allocation of 50% of the ad's cost to exempt fundraising.

Given the clear fundraising purpose of far more than one-tenth of the du Pont telemarketing program, the committee submits that, even accepting arguendo the audit report's conclusion that

\$322,839.48 of the telemarketing costs outside 28 days relate to Iowa, half of the costs are exempt fundraising.

Audit staff conclusions:	\$322,839.48
Less Committee allocation:	<u>-76,106.00</u>
Additional allocation to Iowa:	246,733.48
Less 50¢ per AO 1988-6:	123,366.74
Committee allocation to Iowa:	<u>+616,995.09</u>
Total allocated to Iowa:	740,361.83

This total is \$35,000 under the Iowa limit.

The committee therefore concludes that under either method, it has not exceeded the Iowa limit. The audit report's recommendations, and repayment calculations, should therefore be modified to so reflect this conclusion.

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D. Contribution Refunds

In response to recommendation #4 of the interim audit findings, the committee acknowledges that the specified refunds were not made within 60 days of receipt. There were, however, mitigating circumstances with respect to the majority of these instances.

The du Pont campaign expended considerable resources to assure that adequate systems were in place to screen for potential excessive contributions. This included a combination of thorough manual screening procedures and contractual data processing support from a third party vendor.

Attachment A details the circumstances surrounding the delay in refunding specific contributions or groups or contributions. In 37 separate instances the delay in identifying an excess contribution is directly traced to the creation of a second or third contributor record for a prior contributor, due to a discrepancy in the name, title, suffix or address of the individual.

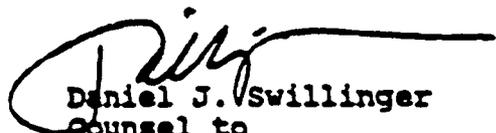
There were two periods in which the refunds were delayed due to the difficulty in coping with unusually heavy volumes of work. The first of these was due to a massive direct mail effort in November 1987. Many of these refunds were not identified until the end of January or the first week of February 1988. The last occurred subsequent to the candidate's withdrawal when the demands of multiple NOCO statements and monthly report preparations swamped the remaining skeleton staff.

9 2 0 7 0 1 6 4 5 1 6

The du Pont campaign had total private contributions in excess of \$6.25 million from some 42,000 contributors. The committee is convinced that the burden imposed by the sheer volume of transactions, compounded by the lack of a truly unique identifier (such as Social Security number), makes 100% compliance with such tight time guidelines virtually impossible.

Given the minimal dollar value of the refunds in question (0.000295 of total private receipts), and the stability of the campaign's finances, there was clearly no material cash flow advantage. The committee strongly believes that the number of occurrences (0.001357 of contributors) in light of the volume of activity supports the existence of exemplary efforts to comply with FEC guidelines. Accordingly, the Committee urges that no penalties or sanctions are appropriate in this case.

Respectfully submitted,


Daniel J. Swillinger
Counsel to
Pete du Pont for President

November 4, 1988

Adm File

DUP2/031089



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 1989

Frank A. Ursomarso, Treasurer
Pete du Pont for President
P.O. Box 1988
Rockland, DE 19732

Dear Mr. Ursomarso:

Attached please find the Final Audit Report on Pete du Pont for President. The Commission approved the report on March 9, 1989.

In accordance with 11 C.F.R. 59038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is to repay to the Secretary of the Treasury \$23,254.83 within 90 days after service of this report (June 11, 1989). Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 C.F.R. 59038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (April 12, 1989), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the Candidate within this 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate does not dispute this initial determination within the 30 day period provided, it will be considered final.

The recommendation for Finding II.A., Allocation of Expenditures to States, also recommends that the Committee provide documentation of all associated costs related to the telemarketing program within the 30 day period noted above. In addition, the Audit staff recommends that the Committee amend its reports to reflect the correct amount allocable to Iowa.

The Commission approved copy of the Final Audit Report will be placed on the public record within approximately 24 hours. Should you have any questions regarding the public release of this report, please contact Mr. Fred S. Ziland of the Commission's Press Office at (202) 376-3155 or toll free at (800) 424-9530. Any questions you may have related to matters covered

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ATTACHMENT 3

Frank A. Ursomarso, Treasurer
Pete du Pont for President
Page 2

during the audit or in the report should be directed to Cornelia
Riley of the Audit Division at (202) 376-5320 or toll free at
(800) 424-9530.

sincerely,



Robert J. Costa
Assistant Staff Director
of the Audit Division

cc: Daniel J. Swillinger

Attachment as stated

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
PETE du PONT FOR PRESIDENT

I. Background

A. Overview

This report is based on an audit of Pete du Pont for President ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037."

In addition, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necessary.

The Committee registered with the Federal Election Commission on June 3, 1986. The Committee maintains its headquarters in Wilmington, Delaware.

The audit covered the period from the Committee's inception, June 3, 1986, through March 31, 1988. During this period, the Committee reported an opening cash balance of \$-0-, total receipts of \$8,806,472.84, total disbursements of \$8,736,410.05, and a closing cash balance of \$70,062.79. In addition, certain financial activity was reviewed through April 30, 1988 for purposes of determining the Committee's remaining matching fund entitlement based on its net outstanding campaign obligations. Under 11 C.F.R. § 9038.1(e)(4), additional audit work may be conducted and addenda to this report issued as necessary.

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

B. Key Personnel

The Treasurer of the Committee during the period reviewed was Mr. Frank A. Ursomarso.

C. Scope

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

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

A. Allocation of Expenditures to States

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

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

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of the candidate for the office of the President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

Section 110.8(c)(2) of Title 11 of the Code of Federal Regulations states that for State limitations, expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention or caucus shall be presumed to be attributable to the expenditure limitation for that State.

During fieldwork, the Audit staff identified a project used by the Committee involving a telemarketing and mail program ("the Program"). Discussions with Committee officials and a review of Committee records made available indicated that the Program operated out of the Committee's headquarters in Wilmington, Delaware primarily from June, 1987 through February, 1988.

The Program was a computer-based system which appears to have accommodated up to 35 telephone stations. Each station accessed one of six predominately used scripts through a CRT screen linked to an automatic dial feature used in placing calls. The operator, using a headset, would work through the screen script inputting responses received from the person contacted. When the call was completed an in-house mailing was automatically generated, if needed. The Program appears to have been operated mainly during evening and weekend hours employing, on a part time basis, two shifts of operators.

The Audit staff reviewed the Committee's expenditure files for the vendors that could be identified as part of the Program and calculated apparent Program costs totaling \$745,439.24.

The Audit staff then reviewed the Committee's allocation of expenditures to states to determine the extent to which these Program costs were allocated to Iowa. The Audit staff determined that \$117,606.04^{*/} in Program costs were allocated to Iowa. The following table provides a detailed comparison of identified Program costs and costs allocated to Iowa by the Committee:

	<u>Total Identified Program Costs</u>	<u>Program Costs Allocated by Committee</u>	<u>Program Costs Allocated by Audit</u>
Telephone	\$157,833.32	\$ 21,378.00	\$101,436.29
Computer & related services	171,792.26	2,880.00	42,747.59
Rent & utilities	28,396.39	---	6,708.29
Payroll	277,371.62	72,243.79	197,858.73
Postage	97,202.18	17,020.78	17,020.78
Wiring installation	8,760.00	---	5,694.00
Miscellaneous ^{**/}	<u>4,083.47</u>	<u>4,083.47</u>	<u>4,083.47</u>
Totals	<u>\$745,439.24</u>	<u>\$117,606.04</u>	<u>\$375,549.15</u>

^{*/} Committee allocation workpapers indicated that \$134,293.95 had been allocated to Iowa with respect to the Program. However, the Audit Staff reduced this amount by \$16,687.91 which represented an overallocation made by the Committee in applying the 28 Day Rule. It should be noted that the Committee's overall allocation to Iowa has been adjusted accordingly.

^{**/} Based on Committee allocation workpapers and documentation made available, costs included in this category could not be directly associated with any of the other categories noted.

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During this review it became apparent to the Audit staff that the Program focused to a large extent on Iowa. A March 23, 1987 memorandum from a consultant, directed to Committee representatives, outlined in a fairly detailed fashion the consultant's understanding of the "goals and objectives for the du Pont telemarketing and mail program." Although Committee officials did not acknowledge that this plan was the basis of their telemarketing program, the Audit staff is of the opinion that the basic components of this plan with respect to the telemarketing effort directed at Iowa were implemented by the Committee and indicate a focus on Iowa.

Second, a review of the billings by the long distance telecommunications company used by the Committee for the Program indicated that the majority of the calls were to Iowa. During the period June, 1987 to February, 1988, the Committee incurred \$157,171.32 for the Program's long distance service, or about \$17,500 per month. A review of the bills for the above mentioned period indicated that the costs of calls made to Iowa comprised from 48% to 90% of the cost of all calls made. Further analysis of the cost, the number, and the length of calls, indicates that the Program was used primarily in the evenings, during which hours the calls were directed almost exclusively at Iowa.

Finally, the auditors reviewed all scripts considered use in the Program by the Committee. Of the 28 scripts reviewed, at least 11 seemed to be targeted at Iowa. The Committee provided an explanatory letter dated May 12, 1988, along with copies of six scripts that according to the Committee were used almost exclusively in the telemarketing program during the period 6/87 through 12/87, and copies of letters*7 mailed as a result of the response to each script. One of these scripts was a poll, four of the scripts appear political in nature with no appeal for contributions and the final script did contain a fundraising appeal. In all six scripts the text appears specifically directed at Iowa by virtue of the caucus or debate in Iowa being mentioned at some point.

The Committee's letter of May 12, 1988 notes that of these scripts, only two were not fundraising in nature. The Committee's position with respect to the scripts was that money could not be raised from people who did not know or support their issues. The Committee provided, as further support that these scripts were used extensively, workpapers detailing the days and number of calls made daily with respect to each of the scripts. As noted in their May 12, 1988 letter the Committee's position is that the rent, HVAC (utilities) and computer rental "were correctly reported as national office overhead, consistent with the treatment of other computer and office rental within the campaign headquarters...and...both...were used Monday through Friday 7 a.m. to 5 p.m. by both the Legal and Accounting

*/ Of the five follow-up letters mailed as a result of the scripts, three included appeals for contributions.

operation and the Direct Mail and Event Fundraising staffs." Further, expenses associated with payroll, telephone, postage, and software were charged directly "to either fundraising, the Iowa allocation or Exempt Legal/Accounting as appropriate."

As noted above, the Audit staff calculated the apparent cost of the Program to be \$745,439.24, while the Committee only allocated \$117,606.04, or about 16% of identified Program costs to Iowa, although it is apparent that the Program focused on Iowa. The Audit staff also noted that as of April 30, 1988, according to the State Allocation Report, FEC Form 3P, page 3, the Committee had allocated expenditures totaling \$616,010.80 to the Iowa limitation of \$775,217.60. The Audit staff's review of expenditures allocated to Iowa determined this figure to be materially correct, except as noted with respect to the Program.

Based on the Audit staff's review of the information and documentation made available, it is our opinion that the following Program costs, totaling \$375,549.15, require allocation to Iowa.

o Program Costs Within the 28 Day Rule

The Audit staff reviewed Program costs occurring within 28 days of the Iowa caucus and determined that \$52,709.67 in telephone, rent, utilities, payroll and computer related services should have been allocated to Iowa. As stated in the Committee's letter, dated May 12, 1988, for the period subsequent to January 1, 1988, expenses were allocated 100% against the Iowa limitation due to the "FEC regulation eliminating the Fundraising Exemption within 28 days of a primary election." The Audit staff reviewed Committee allocation workpapers with respect to the Program and determined, based on the information available, that the Committee allocated \$41,500.04 in salary, phone and miscellaneous Program costs to Iowa.

o Program Costs outside the 28 Day Rule

The Audit staff reviewed Program costs occurring outside of the 28 day rule and determined that \$322,839.48 in telephone, rent, utilities, payroll, computer related services, postage, wiring and miscellaneous costs should have been allocated to Iowa. Based upon the scripts and telephone logs provided as part of the Committee's May 12, 1988 letter, it was determined that \$86,378.48 in long distance telecommunication charges and \$168,339.00 in payroll costs with respect to the Program should have been allocated to Iowa. With respect to rent and utilities, the Audit staff determined that, based on the hours of operation as provided by the Committee in their letter dated May 12, 1988, \$5,713.70 in expenditures should have been allocated to Iowa. The Audit staff determined that \$35,610.05 in computer related Program costs should have been allocated to Iowa. Finally, the Audit staff determined that postage totaling \$17,020.78; wiring installation costs of \$5,694 and miscellaneous

costs totaling \$4,083.47 should have been allocated to Iowa. The Audit staff's review of Committee workpapers indicated that \$76,106 in salary, phone, postage, supplies and computer related costs with respect to the Program were allocated to Iowa.

The following recap and analysis was provided with respect to the Iowa state expenditure limitation in the interim audit report:

Telemarketing Program costs allocable to Iowa per the Audit staff:

Within 28 Day Rule	\$ 52,709.67	
Outside 28 Day Rule	<u>322,839.48</u>	\$375,549.15
Less Program costs allocated by the Committee:		
Within 28 Day Rule	\$ 41,500.04	
Outside 28 Day Rule	<u>76,106.00</u>	<u>(117,606.04)</u>
Additional Program costs requiring allocation to Iowa		\$257,943.11
Expenditures allocated to Iowa per Committee FEC Form 3P, page 3, as of March 31, 1988		<u>616,995.09</u>
Expenditures subject to Iowa limitation		\$873,953.91
Less: 2 U.S.C. Section 441(a) State Spending Limitation		<u>(775,217.60)</u>
Total Expenditures in Excess of State Limitation		<u>\$ 99,720.60</u>

In the interim audit report the Audit staff recommended that within 30 calendar days after service of the report the Committee provide evidence showing that it had not exceeded the limitation as set forth above. Absent such a showing, the Audit staff recommended that the Committee adjust its records to reflect the expenditures allocated in Iowa, and where necessary file amended reports to reflect the correct amount allocable to Iowa.

In addition, the Audit staff recommended that the Committee provide a detail listing for all vendors related to the telemarketing program and an itemization of all associated costs incurred with respect to each vendor. Such costs include those incurred with respect to development and implementation of the telemarketing program.

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Analysis of Committee Response

The Committee filed its response on November 4, 1988.*/ In its response, the Committee stated that it believes the Audit staff's conclusions are incorrect and offered its reasons in support of this position. Each of the topical areas addressed by the Committee are discussed in the following paragraphs.

1. The Telemarketing Effort was a Fundraising Program

The Committee contends that the Program "was conceived and implemented by the campaign as a significant fundraising effort." According to the Committee's response, the Audit staff mischaracterized the Program for three fundamental reasons: (a) misplaced reliance on a memorandum from a consultant; (b) a failure to understand the program's Iowa focus; and (c) a failure to comprehend modern campaign fundraising.

With respect to (a), the Committee submitted an affidavit from the deputy campaign manager which specifically stated that the memorandum from the consultant was not adopted as the campaign's telemarketing plan and that fundraising was a prime objective of telemarketing.

In the Audit staff's opinion, the Committee's contention that "misplaced reliance" existed on the part of the Audit staff is without merit. Although this report refers to the March 23, 1987 memorandum, our conclusion "that the basic components of this plan with respect to the telemarketing effort directed at Iowa were implemented by the Committee and indicate a focus on Iowa" (Report, page 4) is based, as stated in the report, on our review of documentation for expenditures related to the telemarketing effort. The Committee's contention that the consultant's proposal was not adopted does not, in the Audit staff's opinion, change or require revision to the Audit staff's conclusion that a significant telemarketing effort was directed at the voting age population in Iowa.

Concerning the Committee's assertion regarding the Program's Iowa focus (item (b)), the Committee argues that the Audit staff's position "fails to recognize the uniqueness of circumstances surrounding an 'underdog' campaign. An unknown candidate must focus first on Iowa, to present his positions, to become known, and to raise funds to support these efforts. Momentum from success in Iowa permits the candidate to be a factor in New Hampshire." The Committee further states that [since] "Iowa voters could be educated, and would have a stake in the election because of their participation in the early caucuses. That stake would cause them to contribute...once they knew the candidate."

*/ The Committee requested a 60 day extension in which to respond to the interim audit report. The Commission granted a 30 day extension to November 4, 1988.

The Audit staff does not dispute the Committee's position that a person is not likely to contribute to a candidate about whom he or she knows little. Nor does the Audit staff necessarily disagree with the Committee's statement that the Iowa caucuses and the New Hampshire primary are the beginning and the end for most campaigns. However for the Committee to then conclude "For an unknown like Pete du Pont, it is essential to raise funds in those states, because those are the states in which he is becoming known" seems more appropriate in support of an attempt to influence a candidate's chances of a win or reputable position in the Iowa caucuses or New Hampshire primary rather than a justification that it is essential to that end to raise funds in these two states and thus the telemarketing effort should be viewed as primarily a fundraising program.

The Committee's third point (item (c)) is an attempt to identify similarities between "sophisticated telemarketing" and "traditional direct mail." The Committee provides as an example a situation where a phone call is made and, based on the response/exchange concerning issues without a solicitation being mentioned, a follow-up solicitation is sent. The Committee made the decision "to give Iowans multiple opportunities to know the candidate and the issues, and only then to ask for funds." The Committee's position is simply that both the phone call and the follow-up solicitation should be viewed as components of a single fundraising appeal. The total costs as such would be considered fundraising and not allocable to a state limit, unless occurring within 28 days of the election. The Committee states correctly that the Audit staff viewed the expenses related to the phone calls as separate and distinct from any follow-up mailings^{2/} which may have occurred. Further, the Audit staff viewed as fundraising-related phone calls only those calls made outside the 28 days for which the script used actually contained a solicitation of funds. The Audit staff's position, based on the information submitted by the Committee, remains unchanged in this regard.

2. Expenses for Rent, Computer Equipment and Wiring

The Committee contends that the headquarters expenses for rent, computer expenses, and wiring allocated to Iowa by the Audit staff are general overhead expenses and not allocable to Iowa under 11 C.F.R. § 106.2(c)(1)(i) and § 106.2(b)(2)(iv). These sections, in relevant part, define overhead expenses as rent, utilities, equipment and telephone service base charges, and exempt from allocation [such] operating expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters.

^{2/} The costs of any follow-up mailings were not charged to the Iowa limit outside 28 days before the election.

Section 106.2(a) of 11 C.F.R. provides the general authority under which expenditures (including overhead) should be allocated to States. The Audit staff is of the opinion that the exemption from State allocation of overhead expenses granted by 11 C.F.R. § 106.2(c)(1)(i) extends to operating expenses of the national campaign headquarters and does not exempt operating expenses of a specific program focused on a particular State simply because it was directed out of the national office. In addition, 11 C.F.R. § 106.2(b)(2)(iv)(B) states that "overhead expenditures of a committee regional office or any committee office (emphasis added) with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. An extension of the Committee's position - that overhead expenses relating to the telemarketing program are not allocable - would permit campaigns to avoid allocation of overhead expenses related to focused programs to any state simply by operating the programs from national headquarters. The Audit staff is of the opinion that the exemption from allocation of overhead expenditures by the national campaign headquarters was not intended to include allocable expenses of focused programs operated from the headquarters office. The Audit staff further notes that if the telemarketing program was performed on the premises of a vendor or if the vendor rented extra space and/or equipment to perform the services, then all the charges for space, equipment, and installation would have been built into the fee charged. Therefore the Audit staff's position, that all expenses relevant to the focused extent of the telemarketing program are allocable expenses, remains unchanged.

3. Payroll

The Committee contends that the Audit staff understated the payroll expenses already allocated by the Committee by \$7,684. The Audit staff notes that this amount is the difference between allocable payroll expenses not included in the Committee's allocation figure and an overallocation of payroll made by the Committee. Because the overallocation made by the Committee was adjusted by the Audit staff for the full amount in the interim audit report (Report p. 3, ²/ footnote) no further adjustment should be made.

4. Telephone Charges

The Committee also contends that the Audit staff's calculation for telephone toll charges to Iowa is incorrect. The Committee stated that it sampled charges within the time frame used by the telemarketing program and, based on the sampling data, determined that an average of \$34.18 per day in toll charges were unrelated to the telemarketing program. The Committee asserts that the allocation made by the Audit staff is overstated by \$8,372.76. The Committee's allocation figures in

the Response appear to be derived from the total charges for night and weekend tolls to all area codes less \$34.18 per day (estimated non-telemarketing evening and weekend charges). Furthermore, the Committee did not provide the Audit staff the documentation used in the sampling process.

The Audit staff recognizes the probability that all calls to Iowa were not telemarketing related. Therefore the Audit staff has revised the gross amount of calls to Iowa and has reduced these amounts by credits and a business use (presumed non-telemarketing) percentage. The Audit staff based the business use reduction on the percentage of the toll charges made during business hours relative to the total toll charges. This percentage reduction was applied only to the calls made to Iowa, not to the total evening/weekend tolls. The Audit staff applied an average business use reduction percentage to the Iowa tolls for the month of February because the Committee acknowledged that some daytime calling was made during this period. These Audit staff adjustments have reduced the allocable amount from \$101,436.29 to \$81,173.80. This reduction of \$20,262.49 is reflected in the revised telemarketing program costs allocable to Iowa per the Audit staff. In addition, allocation of wiring installation, based on the allocable percentage of telephone costs, has been reduced accordingly from \$5,694 to \$4,667.60.

5. Application of Advisory Opinion 1988-6

In the alternative the Committee suggests that Advisory Opinion 1988-6 is applicable to the telemarketing program. The Advisory Opinion allowed 50% of the cost of a television advertisement to be allocated to exempt fundraising. The Committee states that "In that opinion, the Commission concluded that a three-second visual listing, 'Vote - Volunteer - Contribute,' plus a voice-over giving a phone number for contributors to call..would permit the allocation of 50% of the ad's cost to exempt fundraising." The Committee further asserts that a greater percentage of the du Pont telemarketing program was directed to fundraising than the corresponding fundraising percentage of time used for fundraising in the television advertisement.

The Committee contends that "telemarketing fundraising has multiple components, which combine to produce results...[and] the audit report treats the phone call and the mailing as two separate events, rather than two components of a fundraising package, and considers the phone call not to be part of the fundraising effort." The Audit staff's discussion and rejection of the Committee's rationale that the telemarketing program was basically a fundraising program and thereby subject to a fundraising exemption was discussed under paragraph (1) of this section.

The Audit staff is of the opinion that the Advisory Opinion 1988-6 applies only to a specific factual situation - a television commercial - and does not extend beyond the specifics of that case. Both the political issue and solicitation request was contained within one message, whereas the du Pont telemarketing program sought political interest first and then addressed solicitation requests from identified supporters. The Audit staff notes that it did not allocate the costs of any of the follow-up letters sent by the Committee to Iowa outside 28 days before the election.

Finally, the Committee presented in its response an allocation of telemarketing program expenses based on a 50% exemption for fundraising. The Audit staff notes that certain figures used in the Committee's analysis of allocable costs based on a 50% fundraising exemption are incorrect. In one case, the figure shown did not represent total cost, but rather only the non-fundraising portion as determined by the Audit staff. In another instance, the Committee did not include total costs within 28 days of the election. The Audit staff did not perform a detailed analysis of the Committee's figures because the Advisory Opinion exemption does not appear to apply to this program.

Conclusion

Based on the Audit staff's review of the Committee's response to the interim audit report and the information and documentation made available, it is our opinion that the following Program costs, totaling \$354,260.26 require allocation to Iowa.

	<u>Total Identified Program Costs</u>	<u>Program Costs Allocated by Committee</u>	<u>Program Costs Allocated by Audit</u>
Telephone	\$157,833.32	\$ 21,378.00	\$ 81,173.80
Computer & related services	171,792.26	2,880.00	42,747.59
Rent & utilities	28,396.39	---	6,708.29
Payroll	277,371.62	72,243.79	197,858.73
Postage	97,202.18	17,020.78	17,020.78
Wiring installation	8,760.00	---	4,667.60
Miscellaneous	<u>4,083.47</u>	<u>4,083.47</u>	<u>4,083.47</u>
Totals	<u><u>\$745,439.24</u></u>	<u><u>\$117,606.04</u></u>	<u><u>\$354,260.26</u></u>

The following recap and analysis, as revised for reduced telephone toll charges and wiring installation, is provided with respect to the Iowa state expenditure limitation:

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Revised Telemarketing Program costs allocable to Iowa per the Audit staff:

Within 28 Day Rule	\$ 50,358.13	
Outside 28 Day Rule	<u>303,902.13</u>	\$354,260.26

Less Program costs allocated by the Committee:

Within 28 Day Rule	\$ 41,500.04	
Outside 28 Day Rule	<u>76,106.00</u>	<u>(117,606.04)</u>

Additional Program costs requiring allocation to Iowa		\$236,654.22
---	--	--------------

Expenditures allocated to Iowa per Committee FEC Form 3P, page 3, as of April 30, 1988		<u>616,010.80</u>
--	--	-------------------

Expenditures subject to Iowa limitation		\$852,665.02
---	--	--------------

Less: 2 U.S.C. Section 441(a) State Spending Limitation		<u>(775,217.60)</u>
---	--	---------------------

Revised Total Expenditures in Excess of State Limitation		<u>\$ 77,447.42*</u>
--	--	----------------------

Recommendation #1

The Audit staff recommends that within 30 calendar days of service of this report the Committee provide documentation of all associated costs related to the telemarketing program. This documentation will include: (1) a detail listing of all vendors who provided services toward both the development and implementation of the telemarketing program; and (2) an itemization of all associated costs incurred with respect to each vendor. These vendor costs will include both direct services and collateral services (such as materials, printing, and distributive costs) associated with the telemarketing program. Based on our review of the information provided, the Audit staff may require access to all supporting documentation such as vendor invoices and receipted bills.

In addition, the Audit staff recommends that the Committee adjust its records to reflect the expenditures allocated in Iowa, and where necessary file amended reports to reflect the correct amount allocable to Iowa.

* Total is based on limited vendor information. The Committee did not respond to the recommendation that it provide a detail listing for all vendors related to the Program.

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B. Itemization of Expenditures :

Section 434(b)(5)(A) of Title 2 of the United States Code states that each report shall disclose 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.

During a review of expenditures, the Audit staff noted that the Committee failed to itemize on Schedule B-P two expenditures totaling \$75,966.38 relative to the 1987 Year-end report. This amount was included in reported disbursements on the Committee's Detailed Summary Page, however, a Schedule B-P disclosing these items was omitted from the 1987 Year-end report.

In addition, the Audit staff determined that for 23 unitemized expenditures, totaling \$868,943.72, the Committee failed to itemize all required information.

Finally, the Audit staff noted a discrepancy of (\$224,421.55) between the reported total of itemized expenditures and the calculated total of the itemized expenditures for the Schedule B-P's provided with the January 1988 report. The Committee apparently reported payments to a payroll service and the related payroll checks and tax payments, issued by the payroll service. The Committee explained that it had inadvertently failed to annotate as memo entries (non-additive) items totaling \$224,421.55 related to payroll.

During the Exit Conference held on May 6, 1988, Committee officials seemed receptive to filing amended reports to correct the discrepancies noted above.

In the interim audit report the Audit staff recommended that the Committee, within 30 calendar days after service of the report, file amendments (1) to disclose the two unitemized expenditures noted, (2) to correct and complete the disclosure on the 23 items noted, and (3) to disclose correctly the expenditures to a payroll service on the January 1988 report as memorandum entries.

The Committee filed amendments on November 7, 1988 and December 1, 1988^{*} correcting the discrepancies noted above.

Recommendation #2

The Audit staff recommends that, despite the untimely filing of the amendments, no further action be taken on this matter.

^{*}/ The Committee was granted a 30 day extension to November 4, 1988 to respond to the interim audit report.

C. Itemization of Interest Received

Section 434(b)(3)(G) of Title 2 of the United States Code states that each report shall disclose the identification of each person who provides any dividend, interest or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipts.

The term "Person" is defined at 2 U.S.C. § 431(11) as an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. Identification is defined at 2 U.S.C. § 431(13)(B) to mean, in the case of any person, other than an individual, the full name and address of such person.

The Audit staff's review of interest earned by the Committee revealed that 12 transactions totaling \$19,114.03 were not itemized on Schedule A-P relative to the 1986 October Quarterly, 1986 Year-end, 1987 April Quarterly, and 1987 July Quarterly reports.

At the Exit Conference, the Committee officials agreed to file amendments to correct the public record.

In the interim audit report the Audit staff recommended that the Committee, within 30 calendar days after service of the report, file amendments itemizing the receipts noted above.

The Committee filed amendments, received November 7, 1988, itemizing the interest receipts noted above.

Recommendation #3

The Audit staff recommends no further action on this matter.

D. Matter Referred to the Office of General Counsel

A certain matter noted during the audit has been referred to the Commission's Office of General Counsel.

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

A. Calculation of Repayment Ratio

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

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 amount of deposits of contributions and matching funds as of the candidate's date of ineligibility.

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

$$\frac{\text{Total Matching Funds Certified Through Date of Ineligibility 2/18/88}}{\text{Numerator + Private Contributions Received through 2/18/88}} =$$

$$\frac{\$2,298,064.54}{\$7,653,436.93} = .300266$$

Thus, the repayment ratio for non-qualified campaign expenses is 30.0266%.

B. Non-qualified Campaign Expenses - Payments Made in Excess of Iowa State Limitation

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

Section 9038.2(b)(2)(i)(A) of Title 11 of the Code of Federal Regulations states in part that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than defrayal of qualified campaign expenses. Section 9038.2(b)(2)(ii)(A) of this Title further states that Commission repayment determinations include determinations that a candidate has made expenditures in excess of the limitation for any one State pursuant to § 9035.1(a)(1).

As noted in Finding II.A., Allocation of Expenditures to States, the Audit staff determined that the Committee exceeded the expenditure limitation in Iowa by \$77,447.42. These expenditures represent amounts paid by the Committee. The amount subject to repayment is calculated below:

Amount paid in excess of the Iowa State Expenditure Limitation	\$77,447.42
Times the Repayment Ratio from III.A.	<u>.300266</u>
Repayment Amount	<u>\$23,254.83*</u>

Conclusion

On March 9, 1989, the Commission made an initial determination that the Committee repay \$23,254.83 to the U.S. Treasury pursuant to 26 U.S.C. §9038(b)(2).

C. Statement of Net Outstanding Campaign Obligations

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

On February 18, 1988, Pete du Pont announced that he had withdrawn from the race for the Republican nomination for President of the United States. Pursuant to 11 C.F.R. § 9033.5(a), that is the date Mr. du Pont's candidacy terminated for the purpose of incurring qualified campaign expenses.

The Committee submitted their original NOCO Statement on March 3, 1988 and has continued to submit revised NOCO Statements with each matching fund submission.

The Audit staff reviewed the NOCO Statement dated February 18, 1988 for financial activity through April 30, 1988. This review included verification of cash, accounts receivable, capital assets, other assets, accounts payable for qualified campaign expenses, and actual and estimated winding down costs.

Presented below is the Audit staff's analysis of the Committee's NOCO Statement as of February 18, 1988.

*/ This repayment amount is based on limited vendor information. The Audit staff recommended in Finding II.A. that the Committee provide documentation of all associated costs related to the telemarketing program. Adjustments to this repayment amount may result and will be reflected in the Commission's final repayment determination.

Audit Analysis of Committee's
WOCO Statement as of February 18, 1988 ^{a/}
as determined on April 30, 1988

Assets

Cash on Hand	\$ 200.00
Cash in Bank	341,052.28
Deposits and Receivables	93,289.84
Capital Assets	<u>17,280.00</u>

Total Assets \$451,822.12

Obligations

Accounts payable for Qualified Campaign Expenses	\$408,832.11
Accounts payable for contribution refunds	2,962.00

Winddown Costs - Actual
2/19/88 to
4/30/88

Salaries	\$34,808.24	
Miscellaneous	10,845.78	
Operating non-payroll	<u>159,767.09</u>	205,421.11

Amount of non-qualified campaign expenses (in excess of Iowa limitation) included above (61,518.18) ^{b/}

Winddown Costs -
Estimated
5/1/88 to
2/28/89

Salaries	\$160,783.07	
Consulting	21,000.00	
Legal fees - Texas	100,000.00	
Occupancy Operating Costs	17,460.00	
Office Supplies	2,500.00	
Equipment Rental	8,612.00	
Computer/Data Processing	10,800.00	
Fundraising	<u>15,000.00</u>	<u>336,155.07</u>

Total Obligations \$891,852.11

Net Outstanding Campaign
Obligations (Deficit)
as of 2/18/88 \$ (440,029.99)

^{a/} February 18, 1988 is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

^{b/} Under 11 C.F.R. § 9034.4(b)(2), an expenditure which is in excess of any of the limitations under 11 C.F.R. Part 9035 shall not be considered a qualified campaign expense, which precludes such expenditures from inclusion in the WOCO presentation as set forth at 11 C.F.R. § 9034.5.

Shown below is an adjustment for private contributions, interest and matching funds received during the period 2/19/88 to 4/30/88, the most current financial information available at the close of fieldwork.

Net Outstanding Campaign Obligations (Deficit) as of 2/18/88	\$(440,029.99)
Net Private Contributions	177,536.10
Matching Funds Received	238,740.39
Interest Received	<u>3,438.61</u>
Remaining Entitlement as of April 30, 1988	<u>\$(20,314.89) */</u>

As of April 30, 1988, the Committee has not received matching fund payments in excess of its entitlement. Additional fieldwork may be required to assess the impact of future financial activity on the NOCO deficit.

*/ The Committee received its final matching fund payment of \$11,711.56 on May 26, 1988, and reported \$4,663.41 in individual contributions during May 1988. Therefore, the Committee appears not to have exceeded its entitlement.

LAW OFFICES

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AUDIT DIVISION

OFFICES IN:
ATLANTA GEORGIA
FRANKFORT KENTUCKY
LOUISVILLE KENTUCKY
MIAMI FLORIDA
NASHVILLE TENNESSEE
NEW ALBANY INDIANA
PALM BEACH FLORIDA

DANIEL J. SWILLINGER
PARTNER

April 21, 1989

BY MESSENGER

Mr. Robert J. Costa
Audit Division
Federal Election Commission
Suite 725
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Costa:

Attached are the original and two copies of Pete du Pont's
President's response to the Final Audit Report and Repair
Determination.

Sincerely,

Daniel J. Swillinger (MJD)

Daniel J. Swillinger

DJS:mnd
Enclosures

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ATTACHMENT 4

REC'D AT FEC

BEFORE THE
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463
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CIVIL DIVISION

RESPONSE OF
PETE DU PONT FOR PRESIDENT
TO THE FINAL AUDIT REPORT
AND INITIAL REPAYMENT DETERMINATION

I. INTRODUCTION

Pete du Pont for President, the principal campaign committee of Pete du Pont, candidate for the 1988 Republican nomination, files this response to the Commission Final Audit Report, approved March 9, 1988.

This response will follow the outline of the final audit report, and respond to the conclusions therein.

II. TITLE 2 FINDINGS AND RECOMMENDATIONS

A. Allocation of Expenditures to States

1. Introduction

The central issue raised by the audit report is the allocation of the costs of a telemarketing program, among headquarters

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overhead, fundraising costs and the Iowa expenditure limit.

The Commission's conclusion is that an additional \$236,000 in telemarketing costs should be allocated to the Iowa limit, which would cause the Committee to exceed the \$775,000 limit by more than \$77,000. The Committee believes that this conclusion is incorrect, and that the expenditures are exempt fundraising costs which are not allocable to state expenditure limits.

The additional \$236,000 allocation to the Iowa limit is the result of a differing view of the allocation of the costs of a fundraising telemarketing program.

The Committee used six different scripts to contact voters and to raise money. Two of the scripts are political in nature; the committee allocated those costs to the Iowa limit. The audit staff agreed that one script, which contained words of solicitation, was a fundraising device, and therefore exempt from the Iowa limit.

The Committee believes that the other three scripts were also part of a fundraising program, and the costs associated with them are also exempt from allocation to the limit. The Commission concluded that these costs were not fundraising and therefore allocable to the Iowa limit.

2. Telemarketing as Fundraising

The telemarketing program was conceived and implemented by the campaign as a significant fundraising effort. The audit report mischaracterizes the program because it fails to understand modern campaign fundraising. The audit report also includes in the Iowa allocation certain overhead expenses which should have remained as overhead expenses. In addition, expenses for payroll and toll charges were incorrectly treated as telemarketing costs, when, in fact, they were part of general overhead.

The campaign's particular focus on Iowa was a keystone of the Commission's conclusions regarding the allocation of telemarketing expenses, i.e., that these costs were political rather than fundraising in nature.

The conclusion regarding the lack of a national effort and a focus on Iowa seems to ignore the reality of modern Presidential campaigns: the Iowa caucuses and the New Hampshire primary are the beginning and the end for most campaigns. If a candidate is not successful in both, the candidacy is over, as it was for almost all of the Democratic and Republican candidates in 1988. For an unknown like Pete du Pont, it is essential to raise funds in those states, because those are the states in which he is becoming known.

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All campaign fundraising activities are comprised of multiple components. A traditional direct mail effort requires renting a list; creating a mailing "package," with a letter, and other inserts; printing the package; affixing postage; mailing the piece; and processing the returns. Only one of the components -- the letter -- actually contains words of solicitation. Yet the Commission has consistently treated all of the expenses associated with direct mail as an exempt fundraising cost.

Sophisticated telemarketing is a relatively new method of raising campaign funds. Rather than renting a mailing list, individuals are called from lists of phone numbers obtained from various sources -- local election boards, commercial lists covering neighborhoods with certain demographic characteristics political party membership lists, etc. As with traditional direct mail, telemarketing fundraising has multiple components, which combine to produce results, but which individually are not productive.

For example, a phone call asking for a contribution even from a du Pont supporter will produce no response unless a follow-up letter asks for the money, and provides a reply card and envelope. A "cold" call to an Iowa voter who knows nothing about Pete du Pont will produce no revenue; someone who identifies himself as a supporter as the result of the telephone message is much more likely to give money when a follow-up mailing is received.

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The Commission considers as exempt only the costs surrounding the script which itself asks for a contribution. The Committee believes that the three additional scripts and surrounding costs are exempt as part of a fundraising program.

The Commission's regulations, 11 CFR 106.2(c)(1)(i) and 106.2(b)(iv), state that headquarters expenses for rent, office equipment, etc., are national overhead. The audit report includes over \$54,000 in rent and utilities, computer expenses and wiring as allocable to Iowa, even though these are general overhead expenses which would have been incurred regardless of whether the telemarketing program ever called Iowa residents. To the Committee's knowledge, the Commission has never allocated to the Iowa limit the office rent for the headquarters staff person, who works full-time on Iowa. Neither should it allocate these overhead costs.

The Committee's original allocation to the Iowa limit telemarketing program costs is the appropriate allocation. It recognizes that two of the telemarketing scripts were not part of a fundraising program. It further recognizes that the other four were part of a fundraising program.

The Federal Election Campaign Act of 1971, as amended, at 2 U.S.C. Sec. 431(9)(B)(vi), provides that "any costs incurred by a . . . [Presidential candidate] in connection with the

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solicitation of contributions on behalf of" the candidate are excluded from state expenditure limits. [Emphasis added.]

The Commission's regulations interpreting the statute define the fundraising exclusion to mean "any cost reasonably related to" or "associated with" the solicitation of contributions. 11 CFR 100.8(b)(21)(ii), 106.2(i)(5)(ii). [Emphasis added.]

The Committee has amply demonstrated that the telemarketing program costs related to the three scripts in dispute are "in connection with," "associated with," and "reasonably related to" fundraising activities. They are therefore not allocable to the Iowa expenditure, but rather are exempt fundraising expenses.

B. Applicability of AO 1988-6

The Committee believes that the Commission's holding in Advisory Opinion 1988-6 (CCH Paragraph 5811), that 50% of the cost of a television advertisement for Sen. Albert Gore may be allocated to exempt fundraising, also applies to this situation.

In that opinion, the Commission concluded that a three-second visual listing, "Vote - Volunteer - Contribute," plus a voice-over giving a phone number for contributors to call, as part of a 30-second issue campaign advertisement, would permit the allocation of 50% of the ad's cost to exempt fundraising.

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Given the clear fundraising purpose of far more than one-tenth of the du Pont telemarketing program, the Committee submits that, even accepting arguendo the audit report's conclusion that \$303,903.13 of the telemarketing costs outside 28 days relate to Iowa, half of the costs are exempt fundraising.

The report asserts that AO 1988-6 applies only to television commercials, as if it established no principle regarding allocation of fund raising costs. The matter at hand is not materially distinguishable from the Gore situation, and the principle established there may not be ignored.

C. Conclusion

The Committee therefore concludes that under either method, it has not exceeded the Iowa limit, and that no repayment is required.

III. VENDOR LIST

The report recommends that the Committee provide a list of all vendors, and a list of all costs, associated with the telemarketing program.

The Committee made this information available to the staff during the fieldwork nearly a year ago. As stated in the attached affidavit of Peter Nellius, Committee controller, the

audit staff told the Committee that it had compiled all of the records it needed regarding the telemarketing program. (Para. 4). Relying on that advice, all Committee records were placed in storage. Retrieval of the specific documents now requested would entail considerable expense to the Committee, and constitutes an unreasonable burden. (Para. 5).

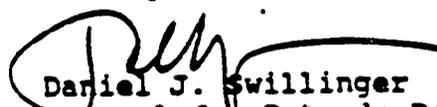
Mr. Nellius also states that the vendor and associated costs listed in the audit report include all costs associated with the telemarketing program. (Para. 3).

The Committee believes it is unreasonable to ask the Committee to produce information which the audit staff possesses.

IV. ORAL PRESENTATION

Pursuant to 11 CFR §9038.2(c)(3), the Committee requests the opportunity to address the Commission in open session regarding the audit report and repayment determination.

Respectfully submitted,



Daniel J. Swillinger
Counsel for Pete du Pont for President

April 21, 1989

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AFFADAVIT OF
PETER C. NELLIUS

State of Delaware
County of New Castle, ss:

Peter C. Nellius, being duly sworn, states as follows:

1. My name is Peter C. Nellius. I am a U.S. citizen over 21 years of age.

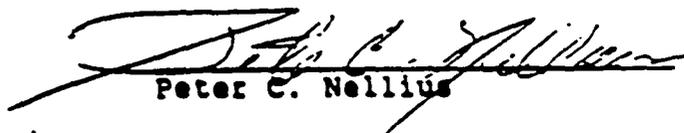
2. I served as Controller of the Pete du Pont for President Committee from July 1987 to the present. As such, I was responsible for the Committee's financial activity, including the preparation for and conduct of, the Committee's compliance with the audit provisions of the Federal Election Campaign Act.

3. During the course of the Federal Election Commission's audit staff field audit, the Committee made available to the auditors all information in the Committee's files regarding the telemarketing program, including information on all vendors and related expenditures.

4. At the conclusion of the audit, I was told by Cornelia Ri. of the audit staff, (at my inquiry), that - since my review of related audit workpapers provided the Committee indicated that they had identified, in detail, all costs associated with the telemarketing program - it would not be necessary to provide a separate list which simply duplicated information which the audit staff had already been given.

5. Based on that conclusion, Committee records were placed in storage. The telemarketing documents were not segregated. Finding these documents at this point would require enormous time and expense.

Further affiant sayeth not.


Peter C. Nellius

Subscribed and sworn before me this 20 day of April 1989.


Notary Public

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1989

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LM*
General Counsel

Kim L. Bright-Coleman *KBC*
Special Assistant General Counsel

SUBJECT: Oral Presentation--Pete du Pont for President, Inc.
(LRA #299)

On March 9, 1989, the Commission made an initial determination that Pete du Pont for President, Inc. (the "Committee") repay \$23,254.83 to the United States Treasury, representing the portion of public funds used by the Committee to make expenditures in excess of the Iowa state limitation. The repayment is based on expenditures related to a telemarketing and mail program that the Committee did not properly allocate to Iowa.

The Commission approved the Final Audit Report containing the initial repayment determination on March 9, 1989. Attachment 3. The Committee responded to the report on April 21, 1989. Attachment 4. In the response, counsel for the Committee requested the opportunity to address the Commission in open session regarding the audit report and repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3). The Commission granted the Committee's request for an oral presentation on May 18, 1989, and set the date of Wednesday, June 28, 1989 for the oral presentation. A letter notifying the Committee of this decision was mailed to the Committee's counsel on May 22, 1989. Attachment 6.

The following memorandum is the General Counsel's analysis of the major issues raised by the allocation of the telemarketing program expenses and the primary arguments presented by the Committee in response to the initial repayment determination.

ATTACHMENT 5

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I. BACKGROUND

The allocation of the telemarketing program costs is the basis of the Commission's initial repayment determination. The Committee operated a telemarketing and mail program from its Wilmington, Delaware headquarters from June 1987 through February 1988. The program costs totalled \$745,439.24. The Committee allocated \$117,606.04 in program costs to Iowa. The Audit Division reviewed the scripts used in the program and the long distance telephone bills, and concluded that Iowa was a primary focus of the telemarketing program and that additional amounts should be allocated to the Committee's Iowa expenditure limit.

The issue first arose in the Interim Audit report, which was approved by the Commission on August 30, 1988. Attachment 1. In the Interim report, the Audit Division allocated \$375,549.15 of the program costs to Iowa, resulting in expenditures in excess of the Iowa state limitation totalling \$98,736.31. The report recommended that the Committee provide evidence that it has not exceeded the limitation or adjust its records and reports to reflect the correct amount allocable to Iowa. It also requested that the Committee provide a listing of all vendors related to the telemarketing program and an itemization of all expenditures incurred with respect to each vendor. The Interim Report contained a preliminary calculation of the repayment in the amount of \$29,942.71, based on the amount in excess of the Iowa state expenditure limitation.

The Committee responded to the Interim Report on November 4, 1988. Attachment 2. The Committee's principal arguments in the response focused on the fundraising exemption of 11 C.F.R. § 106.2(c)(5). Section 106.2(c)(5) provides that an amount equal to 10% of the salaries and overhead expenditures in a particular state may be exempted from allocation as fundraising expenditures. Exempt fundraising expenditures are those expenses associated with the solicitation of contributions, and include printing and postage for solicitations, airtime for fundraising advertisements, and the cost of meals for fundraising receptions and dinners. 11 C.F.R. § 106.2(c)(5)(ii). See also 11 C.F.R. § 100.8(b)(21). The Committee contended that the program was essentially fundraising in nature, and therefore not allocable to the Iowa state expenditure limit because it was an exempt fundraising expense. To support this contention, the Committee submitted an affidavit from the deputy campaign manager that states that fundraising was a prime objective of the program.

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Memorandum to the Commission
Oral Presentation--Pete du Pont
for President, Inc.
Page 3

the alternative, the Committee argued that Advisory Opinion ("AO") 1988-6 applies to the telemarketing program, and half of its expenses for the program are exempt fundraising costs under that opinion.

Furthermore, the Committee argued that expenditures for rent, computer expenses, and wiring allocated to Iowa by the Audit staff are general overhead expenses which are not allocable to Iowa under 11 C.F.R. §§ 106.2(c)(1)(i) and 106.2(b)(2)(iv). The regulations provide that expenditures for administrative, staff and overhead expenses of the national campaign headquarters are exempt from allocation to any state. 11 C.F.R. § 106.2(c)(1)(i). Overhead expenditures include rent, utilities, office equipment, furniture, supplies and telephone service base charges. 11 C.F.R. § 106.2(b)(2)(iv). The Committee also contended that the Audit staff understated payroll expenses, and miscalculated telephone toll charges to Iowa, because certain telephone calls were not related to the telemarketing program.

The Commission approved the Final Audit Report on the Committee on March 9, 1989. The report recommended that the Committee provide documentation of all associated costs related to the telemarketing program; adjust its records to reflect the expenditures allocated in Iowa; and where necessary, file amended reports to reflect the correct amount allocable to Iowa. The report rejected the Committee's contentions that the program was essentially a fundraising appeal and that AO 1988-6 could be applied to exempt 50% of the costs allocated to the Iowa expenditure limit by the Audit Division. The report also rejected the Committee's contention that certain expenditures were exempt as national campaign headquarters overhead. However, Audit staff accepted the Committee's contention that not all calls to Iowa were related to the program, and accordingly reduced the telephone and wiring allocations. This reduction was determined based on credits on telephone bills which had not previously been included in the allocation, and the application of a business use percentage for presumed non-telemarketing calls. The report concluded that \$354,260.26 in the program costs should be allocated to Iowa, resulting in expenditures in excess of the Iowa State expenditure limitation in the amount of \$77,447.42. Therefore, the Commission made an initial determination that the Committee repay \$23,254.83 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2).

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II. THE COMMITTEE'S RESPONSE

In its responses to the Interim and Final Audit Reports, the Committee made three arguments: 1) the expenditures are exempt fundraising costs which are not allocable to the Iowa state expenditure limit; 2) certain expenditures were national headquarters overhead and should not be allocated to Iowa; and 3) AO 1988-6 applies to the telemarketing program, and thus, half of the program costs are exempt fundraising.

The Committee's primary argument is that the program expenditures were exempt fundraising costs which are not allocable to the Iowa State limitation under 11 C.F.R. § 106.2(c)(5)(ii). The Committee states that the program used six scripts, of which two were purely political. The other four scripts, it argues, were part of the fundraising program, and should be exempt from allocation. The Audit staff concluded that only one of the six scripts was fundraising in nature, and exempted expenditures related to this script from allocation.

The Committee contends that the telemarketing program was "conceived and implemented by the campaign as a significant fundraising effort." The Committee argues that the audit report "mischaracterizes the program because it fails to understand modern campaign fundraising." The Audit Division's conclusion that Iowa was a primary focus of the program "seems to ignore the reality of modern Presidential campaigns." Since the Iowa caucuses and the New Hampshire primary are critical for most campaigns, the Committee maintains that it is essential for an unknown candidate such as Pete du Pont to raise funds in those states, "because those are the states in which he is becoming known."

The Committee further argues that the telemarketing program was analogous to a direct mail fundraising effort. The response states: "All campaign fundraising activities are comprised of multiple components." A direct mail fundraising scheme involves postage, printing and the fundraising letter itself, but only the letter contains a fundraising message. The Committee argues that: "[a]s with traditional direct mail, telemarketing fundraising has multiple components, which combine to produce results, but which individually are not productive." The Committee believes that to treat the phone call and mailing as separate events, rather than two related components of a fundraising package, is similar to treating the postage for a fundraising letter as a separate non-fundraising expenditure. As

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an example, the Committee states that the "debate" script and follow-up letter are "obviously an integrated fundraising device" in which the script "sets the stage for a written appeal based on watching the first candidate debate." Therefore, the Committee contends that the telemarketing program costs related to the three scripts are related to fundraising activities and should be exempt from allocation.

Moreover, the Committee believes that Advisory Opinion 1988-6 applies to this situation. In that opinion, a three second fundraising statement in a 30-second political advertisement supported the allocation of 50% of the commercial's cost to exempt fundraising. The Committee argues that "far more than one-tenth" of the program costs had a "clear fundraising purpose." Thus, it argues, "even accepting arguendo the audit report's conclusion" that program expenditures relate to Iowa, half of the costs are exempt fundraising. The Committee contends that this instance "is not materially distinguishable from the Gore situation, and the principle established there may not be ignored." Therefore, the Committee concludes that "under either method" it has not exceeded the Iowa limit, and no repayment is required.

Finally, the Committee contends that certain program expenditures for rent, utilities, computer expenses and wiring, allocated to Iowa by the Audit Report, are national headquarters overhead and thus, not allocable to Iowa. The Committee argues that these expenditures were general overhead expenses "which would have been incurred regardless of whether the telemarketing program ever called Iowa residents."

III. ANALYSIS OF RESPONSE

The Committee's arguments are based upon the assumption that the telemarketing program was essentially fundraising in nature. The evidence does not support this assumption. Only one of the scripts used in the telemarketing program contained an overt fundraising message. The Committee relies on the premise that a voter contact program with several discrete elements which may eventually lead to an explicit fundraising appeal should be considered entirely fundraising in nature. Although the Committee contends that the telephone calls without any apparent fundraising message had a fundraising purpose of educating potential contributors for subsequent fundraising appeals, the absence of a fundraising appeal in the calls makes them indistinguishable from campaign devices intended to educate

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voters and garner voting support. If the Committee's position were accepted, virtually any method used to educate potential voters could arguably have a fundraising purpose. The only evidence that there was a fundraising intention is the Committee's assertion that the program was a fundraising effort. This is insufficient. The limited fundraising exemption was not intended to cover expenditures with no apparent fundraising message.

Moreover, the Committee's reliance on AO 1988-6 is misplaced. In AO 1988-6, the Commission permitted the Gore campaign to exempt 50% of the cost of an advertisement under the fundraising exemption of sections 100.8(b)(21) and 106.2(c)(5). The opinion applied to a specific factual situation which is distinguishable from the facts at issue here. In the opinion, both the political issue and solicitation request were contained in one cohesive advertisement, so that the fundraising message was clearly related to the entire advertisement. Application of the opinion arguably requires the presence of some overt fundraising message in a communication as a basis for the exemption. In contrast, the Committee asserts that telephone calls and mailings which did not contain any fundraising message should be exempt. The Commission's decision in AO 1988-6 would not permit a candidate to exempt as fundraising expenses a long-range fundraising program which includes several disparate messages and contacts with potential voters which do not contain an explicit fundraising message. However, even if 50% of the telemarketing program expenditures were considered exempt fundraising expenditures, the Committee would have exceeded the Iowa expenditure limitation. The Audit staff has also noted that the Committee's allocations based on their application of AO 1988-6 contain a number of errors; in particular, the Committee used figures developed by the Audit staff which had already been reduced to account for the fundraising exemption.

Finally, the exemption for overhead operating expenses of a national campaign headquarters does not exempt the operating expenses of a specific program focused on a particular state simply because it was directed out of the national office. The regulations exempt operating expenditures of the national campaign headquarters from allocation to any state. 11 C.F.R. § 106.2(c)(1)(i). Generally, however, state allocations are based upon whether an expenditure is intended to influence the nomination of a candidate in a particular state. Thus, the exemption for general overhead expenses should not be applied to costs directed toward the Iowa election, as distinguished from the general costs of running the national headquarters.

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IV. CONCLUSION

The Office of General Counsel concludes that the Committee's arguments are without merit. The telemarketing program focused on Iowa, and the allocation of the program expenditures should reflect this focus. The telemarketing program expenditures were not exempt fundraising expenditures, or national headquarters overhead. The Audit Division's allocation has taken the fundraising purpose of one script into account, and the other scripts provide no evidence of a fundraising message or purpose. Moreover, AO 1988-6 is inapplicable to the scripts that lack a fundraising message. Therefore, we conclude that the allocation and initial repayment determination of \$23,254.83 is correct.

The oral presentation will allow the Committee to present its arguments in response to the initial determination, which it has set forth in its written response. The oral presentation also provides an opportunity for Commissioners and staff to discuss the issues involved, and to ask questions of the Committee's counsel in order to clarify the issues. Following the presentation, the Office of General Counsel will analyze the Committee's oral and written responses in preparing the draft Statement of Reasons for the Commission to make a final determination in this matter.

Attachments

1. Interim Audit Report and letter dated 9/2/88
2. Pete du Pont for President, Inc.-Response to Interim Audit report dated 11/4/88.
3. Final Audit Report and letter dated 3/10/89
4. Pete du Pont for President, Inc.-Response to Final Audit Report dated 4/21/89.
5. Memorandum to Commission Re: Request for Oral Presentation, dated 5/10/89, Agenda Document #89-28.
6. Letter to Pete du Pont for President, Inc. dated 5/22/89.

Staff Assigned: Delanie DeWitt Painter

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V-7

FEDERAL ELECTION COMMISSION

* * *

ORAL PRESENTATION
TO THE COMMISSION
ON BEHALF OF

PETE duPONT FOR PRESIDENT COMMITTEE

Federal Election Commission
999 F Street, N. W.
Ninth Floor
Washington, D. C.

Wednesday, June 28, 1989
10:05 a.m.

PRESENTATION BY:

GLENN C. KENTON, ESQ.
Counsel for Pete duPont
for President Committee

ATTACHMENT 6

ACE-FEDERAL REPORTERS, INC.

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PROCEEDINGS

(10:05 a.m.)

CHAIRMAN MCDONALD: Good morning. The special open meeting on June 28, 1989 of the Federal Election Commission will please come to order.

On the agenda for today special open session is an oral presentation on behalf of the Pete duPont For President Committee, Governor duPont's principal campaign committee for the 1988 Republican Presidential Nomination.

The committee has requested the opportunity to address the Commission in open session concerning the Commission's initial repayment determination.

On March 9, 1989, the Commission made an initial determination that the duPont For President Committee must repay \$23,254.83 to the United States Treasury. This amount represents the portions of the fund used by the committee to make expenditures in excess of Iowa State expenditure limitations.

The repayment is based on expenditures related to telemarketing and mail program that the committee operated from its national headquarters.

Upon reviewing the expenditures related to the program, the audit division determined that the committee had not properly allocated the expenses to its Iowa expenditure limitation.

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1 The committee responded to the initial repayment
 2 determination on April 21, 1989, and requested an
 3 opportunity to address the Commission in open session.

4 The Commission granted this request.

5 We are here today to hear the committee's oral
 6 presentation. The sole purpose of this meeting is to give
 7 the committee an opportunity to address the Commission and
 8 to demonstrate that no repayment, or a lesser repayment is
 9 required.

10 This is not an adversarial or a trial type
 11 hearing. The committee's representative, Mr. Glenn Kenton,
 12 will have 30 minutes to make his remarks.

13 At the conclusion of his presentation, each
 14 Commissioner and ex-officio representative will have an
 15 opportunity to ask questions.

16 I will then ask the General Counsel and the Audit
 17 Division if they have any questions.

18 After this hearing, the committee will have an
 19 opportunity to submit additional materials for the
 20 Commission's consideration. And then the Commission will
 21 make a final determination and issue a statement of reasons
 22 in support of that determination.

23 Mr. Kenton.

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ORAL PRESENTATION

BY MR. KENTON:

MR. KENTON: Thank you, Mr. Chairman, and members of the Commission. My name is Glenn Kenton. I am a lawyer with the law firm in Wilmington, Delaware of Richards, Layton and Finger, and more particularly, I am the chairman of the Pete duPont For President Campaign.

And I wish to speak to you today more as the chairman of the campaign than as a lawyer, because it is not the intent -- it is not my intent today to spend a lot of time arguing a lot of details, but to try to argue, or at least explain to you our view of what I might call the larger issues involved.

First, I would like to take a moment just to thank the staff of the Commission, Mr. Chairman -- Mr. Noble's office, Ms. Bright-Coleman, and the Audit Office. They have been terrific to work with, helpful, courteous, thoughtful, prompt, although a little too careful.

(Laughter.)

And we do appreciate working with them.

And I would like to say that for the record. To begin with, I think what I would like to do, Mr. Chairman, and members of the staff, is try to boil this down to two issues. Let me say that with respect to the numbers and the calculations, Mr. Chairman, and Ms. Vice-Chairman, in the

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1 audit report, the final report, it is not my purpose today
2 to dispute those numbers, specifically their method of
3 calculation or any details.

4 I would like to argue today generally that
5 numbers are either all in or all out. And it's not my
6 purpose here today to suggest that \$23,000 ought to be
7 \$26,000 or \$22,000 or some other number on the allocation.
8 We will quibble forever on a few thousand dollars of the
9 allocation.

10 So, if there is such a thing as a stipulation,
11 Mr. Chairman, I would be happy to stipulate, that if you
12 Mr. Chairman, that the numbers are accurate.

13 It is the law that I would like to argue today,
14 or at least discuss.

15 The issue really boils down to the telemarketing
16 program that the Pete duPont For President Campaign
17 Committee ran out of its National headquarters. There were
18 in a sense, in essence, six phone calls made into Iowa from
19 national headquarters of which two, the staff and the staff
20 of the campaign agreed were, quote, "clearly political."
21 End quote. In that they did not involve a very prompt
22 financial follow-up or request for funds.

23 There were four other calls made and one of those
24 was allowed by the staff to be a fund-raising call because
25 it specifically, in the call, we asked for money.

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1 The issue and the question here are the remaining
2 three calls. None of those three calls, did the callers or
3 did our committee ask for money directly.

4 But what happened in those calls is there was a
5 very prompt follow-up, usually within 24 hours after the
6 call, to the targeted person using the information we got on
7 the telephone for financial follow-up into Iowa.

8 And, therefore, it is our contention that these
9 are fund-raising costs -- the cost of the calls are
10 fundraising costs. I think the term of the statute,
11 although I don't want to getting to quibbling over the
12 statute is, quote, "in connection with or associated with."
13 I think the reg says "fund-raising".

14 If they are fund-raising calls, they are not
15 subject to the Iowa limit and, therefore, under that
16 circumstance, the committee would owe no money, if they were
17 fund-raising calls.

18 And I guess I would like to argue basically
19 only...or suggest, not argue...two points.

20 Number one, that the language in the regulations
21 is quite broad. It says costs associated with or in
22 connection with fund-raising.

23 And I would like to maybe draw an analogy.
24 Direct mail costs that are related to fund-raising, that ask
25 for money through the mail, are costs that are fund-raisi

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1 costs and would not be allocable to Iowa or to any other
2 State.

3 In that situation, the costs associated with or
4 in connection with that are fund-raising costs, for example,
5 this would include the buying or purchasing of vendor lists,
6 vendor lists for direct mail purposes.

7 And, essentially, what we have in the
8 telemarketing program is, rather than purchase a vendor list
9 from the New Republic -- heaven forbid, the New Republic --
10 or Human Events, for example, or something like that, we
11 have, in effect, created our own vendor list.

12 We have used the telemarketing to create a vendor
13 list, a list of names. And after we understand what those
14 people's issues are, and if they are the same issues and of
15 the same concerns as our candidate's concerns, we then hit
16 them immediately with the follow-up letter.

17 If the purchase of a vendor list for a direct
18 mail is a cost associated with fund-raising, it seems to me
19 that a targeted telephone call to elicit exactly the same
20 thing, which is a list of people who would be most likely to
21 contribute to the campaign, is also a cost related to fund-
22 raising.

23 Now I'm not going to sit here and suggest to you
24 that the telemarketing calls into Iowa didn't have political
25 import or political impact. Of course they did.

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1 But so does direct mail. A direct mail letter
 2 would be two or three pages long, talking about everything
 3 in the world. And at the end it says, "And by the way,
 4 please send money."

5 That is a fund-raising cost, all of it allocable
 6 to fund-raising, none of it allocable to politics or to
 7 political and, therefore, not to the Iowa, New Hampshire, as
 8 the case may be, limit.

9 So it seems to me that if the Commission is going
 10 to and has allowed all of the costs associated with direct
 11 mail, including purchase of vended vendor lists to be part
 12 of the costs in connection with or associated with fund-
 13 raising even though they also have political impact as well.
 14 it seems to me that the same thing ought to be done here.

15 Now, the Commission points out that this is a
 16 slippery slope, one I would point out of many slippery
 17 slopes in the regs. That if you allow this to happen, well,
 18 my heavens, everybody's going to set up telemarketing
 19 programs and phone into Iowa and New Hampshire, (the only
 20 places, by the way, that a person whose been down this road
 21 can tell you, the only places where the limits make any
 22 difference at all), and that everybody's going to be doing
 23 telemarketing.

24 I don't think that is really the case.

25 First of all, I think that there is a much bi-

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1 loophole, if you would call it that, in the Senator Gore
 2 ruling that you all made, the advisory ruling which
 3 basically says you can put three seconds on a television
 4 spot and allocate that 50 percent to fund-raising.

5 I think that is much more of a slippery slope
 6 than this. You already are on the slippery slope, it seems
 7 to me, because of the direct mail exception. You can mail
 8 into Iowa or New Hampshire and ask for money and say
 9 anything political you want and it is a fund-raising
 10 expense.

11 And so I would say to you that I just don't think
 12 that it's that much of a slippery slope if you're talking
 13 about targeted calls, to named individuals, followed very
 14 promptly, in our case 24 or 48 hours, by a fund-raising
 15 follow up and that fund-raising follow up is directly
 16 connected to that telephone call. I just don't see that
 17 there is that much difference and that much potential for
 18 abuse between that and the direct mail program into Iowa or
 19 New Hampshire.

20 And let me also say, and I'll say this with
 21 respect to my second point that I would like to make, that I
 22 think it's a close call. I mean I don't think the staff's
 23 position is quote "unreasonable" end quote, or an abuse of
 24 discretion or anything like that. I think it's a close
 25 call, and I see how the argument could go either way. And I

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1 I guess that one of the points I'd like to make here today is
 2 that for a committee that has done its very best to comply
 3 with the statute and the laws, who has spent \$600,000 out of
 4 a \$7,000,000 campaign in FEC compliance, that was run,
 5 unlike the Vice President's campaign and the majority leader
 6 of the Senate's campaign or minority leader, by basically by
 7 volunteers from a home state, we've gotten really good
 8 reviews by this staff and by these people for how careful we
 9 were. We had terrific matching funds reports as I've been
 10 led to relieve by my staff and the Counsel's staff.

11 And so, what I'm basically saying is that if you
 12 think this telemarketing is going to be an abuse in the
 13 future, pass a regulation in the future to deal with it.
 14 Give us the benefit of the doubt. I mean I think it's a
 15 close call and I'm not going to sit here and tell you'd be
 16 unreasonable or wicked. And I'm not going to appeal this to
 17 the United States Court of Appeals; I couldn't afford to if
 18 I wanted to.

19 And so what I am saying is that we really did the
 20 best that we could and it wasn't an amateur effort either.
 21 But our accounting firm who did it was a good accounting
 22 firm. They did a terrific job. They worked as volunteers,
 23 a couple of the people, except for expenses. So I guess
 24 what I would say is that I don't think that if you give us
 25 the close call here, there will be a problem. And if

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1 want to stop this kind of stuff in the future -- and I don't
2 really think that you really need to if you will let direct
3 mail go on I don't know why you don't let telemarketing go
4 on if you follow up quickly.

5 If you do think that it is just across the line,
6 pass a regulation to stop it for the next time. I don't
7 think there's any need to hammer us for \$23,000 and the
8 potential fine, I might point out, for a call that is this
9 close.

10 And the second point I would like to make, to
11 summarize it the same way, is that almost all of the \$77,000
12 (about \$53,000) would go away if you did not accept the
13 staff's position that certain parts of our overhead back in
14 the campaign headquarters, the national headquarters, were
15 allocable to Iowa.

16 Now, what the staff has said is that their view
17 is that, if there is a very special program run out of the
18 national headquarters, targeted to a special State like Iowa
19 or New Hampshire, that the costs, the overhead costs that
20 are reasonably associated with that are to be allocable to
21 the State.

22 We say no. There is a specific exemption for
23 national overhead that says I think, roughly translated,
24 "staff costs, associated costs and overhead costs that are
25 in the national headquarters are not allocable to a State."

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1 Now, the staff basically says:

2 "Well, if it is a targeted program, they should
3 be."

4 I will make the same argument. If that is going
5 to be the position of the Commission in the future, fine.
6 Pass a regulation saying that a targeted program run out of
7 the national headquarters is going to be allocable to that
8 State.

9 But the regulation basically doesn't say except
10 for special programs run to a specific State. It says:

11 National overhead. Overhead, and staff expenses
12 at the national level shall not be allocable to a State.

13 The reason for that exception is very simple.
14 This phone-bank, if you will, this telemarketing program, we
15 used it lots of other times during the day.

16 The program into Iowa ran only from 7-9 at night.
17 We had phones sitting there that were doing lots of other
18 things during the day. They were calling volunteers, for
19 example, to come in and work. They were calling volunteers
20 to go on buses to New Hampshire and Iowa. They were calling
21 other people -- following up fund-raising events in New York
22 and places like that.

23 If you are going to start trying to segregate in
24 the national headquarters all of the expenses that are
25 allocable to Iowa or New Hampshire or the other States,

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1 particularly the early States, you are going to get into a
2 nightmare of a problem, whether it is the Bush campaign or
3 the Dole campaign or any of the other ones. There are lots
4 of people working and lots of efforts at the national
5 headquarters that are working on Iowa.

6 And the Commission in its wisdom saw fit to
7 exempt national expenses because it is just too hard to
8 segregate out I presume, one of the reasons, is that people
9 are doing lots of different things and the resources are
10 used for lots of different things.

11 And it seems to me that the staff basically is
12 saying that if it is really a special program and it is
13 really targeted, you should have to allocate it to Iowa.

14 And I will make the same argument that I did
15 before.

16 Okay. If you really believe that, let's argue
17 about it. Sit down and decide what regulations should say,
18 decide how you're going to allocate all of those funds, how
19 you're going to go into the Bush National Headquarters and
20 figure out who was working in there on a targeted program in
21 Iowa and who wasn't. It's pretty easy for us because we
22 didn't have many people to count.

23 But I think that is going to be a nightmare of a
24 problem. I think the regulation is right the way it is, but
25 if you want to change it in the future and you want to set

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1 some guidelines for what a targeted program out of the
 2 national headquarters is, pass the regulation, say what a
 3 targeted program is, give the next campaigns notice.

4 But, don't make us pay back \$23,000, which, by
 5 the way, we don't have. And hold us subject to a fine.

6 And let me say kind of in summary that we were in
 7 this campaign as a balanced budget. It is the only way the
 8 Governor would run it. And we finished with a \$100,000
 9 reserve for lawyers and accounting fees. That was the only
 10 mistake in judgment we made in this campaign, that was
 11 woefully inadequate. We are now a year and a quarter later.

12 One of the reasons I am here in addition to being
 13 the chairman of the campaign is that I couldn't in good
 14 conscience ask for lawyers to keep coming here without
 15 getting paid. We've gone through that \$100,000 reserve. It
 16 is a year and a quarter later. We still have additional
 17 legal and accounting fees. And this is from a clean
 18 campaign. Nobody's suggesting we did anything illicit.

19 These are close calls in both of these cases.
 20 They are close calls and I acknowledge that they are close
 21 calls.

22 But at some point this thing has got to come to
 23 an end. And the campaign has zero balance at this point.
 24 It has paid all of its vendors.

25 The only person potentially that owes now is th

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1 Federal Election Commission and the United States Treasury.

2 And it seems to me that enough is enough. And
3 that if you really think that these things go over the line
4 for the future, go through your regulatory process, your
5 rule-making process, and argue about how you're going to
6 allocate national headquarters costs. And not do it, in my
7 judgment, ex post facto.

8 The statute says:

9 Overhead costs are exempt. Period.

10 It doesn't say: Overhead costs are exempt unless
11 they are targeted for specific programs.

12 So I think that is generally about what I need to
13 say. And, once again, I want to thank the staff and the
14 members of the Commission and everyone else for being very
15 helpful to us all the way through. And I've tried to be as
16 candid as I could today and to tell you a little bit about
17 what we are thinking and why I am here.

18 It is that I just think that we really did our
19 very, very best and got credit for doing a good job in
20 complying with the guidelines. And to have to be dragged
21 out here a year and a quarter later to pay back \$23,000,
22 which we don't have, and the potential fine strikes me as
23 being unfair.

24 Thank you.

25 CHAIRMAN MCDONALD: Thank you, Mr. Kenton.

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Just a few brief remarks and then I'll turn to my colleagues.

One is that it is evident by at least in the initial determination that you did, certainly by all measure, have a clean campaign. I don't really think that is up for debate.

I would say to you that -- I don't know how comforting it is, but two things. One is that we have for years made recommendations to do away with the State by State limits because we do know their problems. And I couldn't help but think when you were talking about, gee, you ought to sit down and think about these matters and be prepared for the next time, some of us think that that is all we do.

It is a very difficult procedure and frustrating. It is not any easier for the auditors, I might add, than it is the Presidential candidates. They are asked to perform a pretty difficult task.

And as counsel's office, everyone wants to see these matters be resolved as quickly as possible. We have had a number of candidates who were out much longer than a year and a quarter, I must say, which is a problem as well.

I'm going to start by giving you some aid and comfort because I'm going to start with Commissioner Aikens, who has a theory about the advisory opinion.

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1 It was not, by the way, my theory and, in fact, I
 2 will be anxious to discuss that with you in a little detail
 3 when it gets to be my turn, which is somewhere down the
 4 road.

5 But, as a general overview, the Commission has
 6 been concerned about that. We have taken the posture that
 7 is clearly a public posture that we have had forever, which
 8 is one that we would like to see those limits done away
 9 with, because they are very difficult.

10 And by the same token, they have not been done
 11 away with. And as long as they are not done away with,
 12 obviously, we are put in a position that we don't have any
 13 choice but to try to make our best judgment on what needs
 14 be done.

15 Commissioner Aikens.

16 COMMISSIONER AIKENS: Thank you, Mr. Chairman.

17 Mr. Kenton, we thank you for coming today. And I
 18 hope, as the Chairman has indicated, you will express your
 19 concern about the State limits to the members of our
 20 oversight committee, so that maybe we can get some action on
 21 this.

22 MR. KENTON: It is just ludicrous, ma'am.

23 COMMISSIONER AIKENS: It is absolutely
 24 ridiculous.

25 MR. KENTON: The Bush people had hundreds of

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1 people living across the State Line in Rapid City, in
 2 Vermont, going in for three days and coming out for three
 3 days because of the four-day rule. It is just -- the hoops
 4 you have to jump through, it is just ludicrous.

5 COMMISSIONER AIKENS: It is an absolute
 6 nightmare. I couldn't agree more. We have been going
 7 through it since '76 every four years. And it is the
 8 biggest job the Audit Division has to do, is to try to
 9 satisfy --

10 MR. KENTON: I don't know how we do it.

11 COMMISSIONER AIKENS: I don't know either. It is
 12 difficult. As the Chairman indicated, I did not agree with
 13 the 886 Gore Opinion because of the State limits.

14 I think that the Congress passed them and we have
 15 to do our best to enforce them. I do have great sympathy
 16 for your position.

17 I appreciate the fact that you are admitting that
 18 it is a close call and I don't know how I'm going to vote on
 19 it as yet. But I really do have some pity for you.

20 And I think that you have presented a very good
 21 argument. I think, in light of the Gore decision, we are
 22 going to have to consider it very, very carefully. I think
 23 you have presented your picture very clearly, and I don't
 24 have any specific questions.

25 But I do appreciate your coming and giving us

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1 your presentation.

2 MR. KENTON: I appreciate it, Ms. Aikens.

3 The Gore Opinion, if you're going to allow that,
4 then to hold us accountable for this \$23,000, it is just
5 ludicrous in my humble judgment. I'm not saying the Gore
6 Opinion is wrong.

7 (Laughter.)

8 COMMISSIONER AIKENS: Well, I was.

9 CHAIRMAN MCDONALD: You would be hard-pressed,
10 given the scenario you have painted.

11 MR. KENTON: But, to hold us accountable for
12 \$23,000 and then fine us whatever you are thinking of fining
13 us, I don't think it is fair.

14 COMMISSIONER AIKENS: I tend to agree with you.
15 And that's why I say I don't know how I'm going to vote yet.

16 MR. KENTON: Thank you.

17 COMMISSIONER AIKENS: Thank you, Mr. Chairman.

18 CHAIRMAN MCDONALD: Thank you.

19 Commissioner McGarry.

20 COMMISSIONER MCGARRY: Well, I feel much the same
21 way. I did vote for the Gore advisory opinion. And one of
22 the problems that we face and the reason why I voted for it,
23 among other reasons, was I was trying to make it simplistic
24 and make it a mathematical formula. And try to remove some
25 of the subjectivity.

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1 But you make, Mr. Kenton, the very best argument,
 2 in my opinion, that anyone could make for your client. And,
 3 believe me, I have total sympathy with the situation, and
 4 you couldn't have stated it better.

5 And I really cannot tell you how I'm going to
 6 come out on this, but I really appreciate your appearing
 7 here. And I certainly will give it every consideration.

8 MR. KENTON: Thank you, sir.

9 CHAIRMAN MCDONALD: Thank you, Commissioner
 10 McGarry.

11 Vice-Chairman Elliott.

12 VICE-CHAIRMAN ELLIOTT: Thank you, Mr. Kenton.

13 I cannot tell you, words cannot express how
 14 important and how helpful it is to me to hear from people
 15 who are on the firing line, who are trying so hard to
 16 administer our laws.

17 I think it gives us great insight and I thank you
 18 for requesting this opportunity. And we would, as a group,
 19 I think, like to hear even more from others who are
 20 participating, particularly when we request rule-making
 21 comments. Because, hearing how things are applied and how
 22 they affect different campaigns is always helpful.

23 And I am sure that you recognize that our
 24 regulations always are behind the practice. So we only help
 25 things along or hurt things in our regulatory vein after the

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IV - 20

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1 fact.

2 But I can understand your frustration when your
3 three phone calls at issue would have been not before us,
4 not under question, if you had added to those register, vote
5 and contribute. It would have all been over.

6 But I have a practical question for you.

7 You are claiming and making the point that the
8 calls that you made were to solicit, in effect, the
9 prospecting list for fund-raising.

10 Now let me ask you:

11 Did every phone call get a fund-raising letter of
12 some sort?

13 In other words, I am trying to determine whether
14 if someone had expressed interest in the environment, did
15 they get an environment letter? And that. Or did everybody
16 get something?

17 MR. KENTON: The answer is yes to both questions.

18 If they said they were going to vote for George
19 Bush and nobody else, they didn't get a letter.

20 VICE-CHAIRMAN ELLIOTT: Okay.

21 MR. KENTON: Practically everybody else got a
22 letter, but the letter was targeted to the issues that Pete
23 was campaigning on. If they said they were interested in
24 getting a new road built outside of where they lived, we
25 tried to press them in the call with respect to issues that

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1 Pete was talking about, such as social security, such as
2 drug testing and some of the other issues. We tried to see
3 where their heads were in that area.

4 And then the computer system is fascinating.
5 Then what we could do is you could punch in Pete's position
6 in those issues. And the next day, actually, the letters
7 went later that night, all the through the night, and that
8 person would get a letter saying:

9 Thanks for talking to one of my people on the
10 telephone last night, Mrs. Elliott. In particular, I am
11 glad that you share my views on the social security issue.
12 And let me tell you a little bit more about those. And if
13 you agree with me on social security, we need your financial
14 help. We need you to vote. Please send money.

15 And we really did assume by this kind of
16 prospecting, if we could really hone in on the issues that
17 moved people and try to match them to the issues that Pete
18 was talking about, what better possibility was there to
19 collect \$25 or \$50.

20 VICE-CHAIRMAN ELLIOTT: After you had that
21 prospecting list and whether they responded or not, was that
22 list used for any other purposes in your campaign?

23 MR. KENTON: Excuse me a moment.

24 VICE-CHAIRMAN ELLIOTT: Yes.

25 (Counsel conferring).

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1 MR. KENTON: The answer is yes. We called them
2 again for money.

3 VICE-CHAIRMAN ELLIOTT: That's what I wanted to
4 know. Okay.

5 MR. KENTON: Several times we called them for
6 money.

7 And I'm not going to suggest that there weren't
8 political benefits to that; I am not going to sit here and
9 try to suggest that. Of course there were political
10 benefits. But we really did believe that if we could get
11 these people to believe on the same issues and really target
12 them, as Pete did, that they were the most likely people to
13 contribute to the duPont campaign, other than his relative
14 of which there were many.

15 VICE-CHAIRMAN ELLIOTT: I have one other
16 question. And I don't think I'm going to be able to ask the
17 question well.

18 I assume that this was planned as a nationwide
19 campaign in anticipation of this being used virtually in
20 every State making Mr. duPont the candidate of his party,
21 and the incumbent in the White House.

22 MR. KENTON: I missed an argument. You are
23 exactly right.

24 VICE-CHAIRMAN ELLIOTT: Explain to me how that
25 affected what happened to you in this process.

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1 MR. KENTON: All right. I did omit one of my
 2 arguments, and let me make that point. One of the points
 3 the Staff makes is that this was targeted to one or two
 4 States. The only reason it was targeted to one or two
 5 States is because that is all the longer we were alive.

6 If we had -- if the election in New Hampshire had
 7 happened three days earlier, I am profoundly convinced to
 8 this day that things would be far different than they are
 9 today and we would, I think, if we could figure out a way to
 10 have gotten Jack Kemp out of the race and if/if/if, which
 11 was the fundamental strategy of the campaign to begin with,
 12 this would have been a national operation running out of the
 13 headquarters.

14 We would have used it for more fund-raising in
 15 Alabama, Georgia, Florida and South Carolina. We would have
 16 used the fund bank for volunteers. As a matter of fact, we
 17 set this whole program up, the computers that drove this
 18 program were set up so that they could be used on a national
 19 basis.

20 I remember one time the campaign manager, Mr.
 21 Hubbard, came to my office and he said -- we were putting
 22 the computers in, and we had a choice of going through small
 23 computer, middle-sized computer, large computer system --
 24 and he says:

25 "You know, I think we'll have to put them in -- I

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1 think we ought to plan this campaign in planning to win."

2 And he said, "I'm going to spend an extra..." I

3 think it was a couple of hundred thousand dollars in

4 computers, so that if New Hampshire had turned out

5 differently and the Vice-President had stumbled badly (then

6 Vice-President, now President), then we would have been

7 ready to go South.

8 The fact that it was only a two-State effort had

9 a lot more to do with the voters in New Hampshire's views

10 than ours.

11 Is that answer responsive to your question?

12 VICE-CHAIRMAN ELLIOTT: Yes, it is.

13 Thank you very much.

14 MR. KENTON: It was a national program that just

15 stalled permanently.

16 VICE-CHAIRMAN ELLIOTT: Thank you very much I

17 appreciate your coming to us.

18 CHAIRMAN MCDONALD: Thank you, Vice-Chairman

19 Elliott.

20 Commissioner Thomas.

21 COMMISSIONER THOMAS: Again Mr. Kenton thank you.

22 It is helpful to hear first hand the exasperating moments

23 that people go through in the campaigns. I had a couple of

24 questions. I wanted to focus first on the argument about

25 the national overhead argument, national overhead expense

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1 argument.

2 Tell me why you think that these overhead
3 expenses that the Audit Division has indicated, that the
4 Commission heretofore has indicated it should be allocable,
5 or should not be in fact so allocated.

6 I am interested in your arguments in terms of
7 whether these are expenses that would have been incurred
8 anyway, whether there was any sort of incremental add on
9 costs that can be associated with these or not.

10 Why you feel that they are sort of intertwined
11 with that national overhead costs and shouldn't be separated
12 out.

13 MR. KENTON: First of all, I hate to make now
14 legalistic arguments here, but my first reason is because I
15 don't see any support in the regs, and perhaps Mr. Noble
16 might disagree, for the fact that anything can be singled
17 out.

18 I'm not saying that would be an unreasonable
19 position, but I don't think the regs say that. The regs
20 just say overhead costs, period. It doesn't say "except for
21 those overhead costs directed toward a specific State."

22 If it had said that, then we would have been on
23 notice. So that it is the first point I want to make.

24 But, the more second and more substantive point
25 is that this fund bank and this telemarketing computer

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1 program were doing lots of different things. The Iowa
 2 program was only running two hours a night, two or three
 3 hours a night.

4 The computers were set up to do direct mail
 5 without regard to the telemarketing into Iowa and into other
 6 places, direct mail to other contributors.

7 This was a centralized computer system that was
 8 doing lots of other things. The telephones were doing lots
 9 of other things. And if the campaign had continued, it
 10 would have been doing far more general campaign management
 11 types of things.

12 We were polling from these telephones, doing
 13 nation-wide polling on issues. We were just doing lots of
 14 things with the computers and the printers and the
 15 telephones and the wiring and all of those things, of which
 16 Iowa was only a part and we were using volunteers, a lot of
 17 volunteers.

18 And so it seems to me that the whole purpose of
 19 this national overhead exemption, if you will, is to say,
 20 okay, if it is running out of the headquarters, you're using
 21 our people, you're using it for lots of different things,
 22 even though any auditor could go into any of these programs
 23 and try to whack them up in slices of the pie and say what
 24 percentage was used for this and what percentage was used
 25 for that.

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1 I assume the purpose for the reg -- I'm going
 2 back to my notice provision -- we assumed that that was the
 3 purpose of the reg, and I think that we did it in good
 4 faith, was to say:

5 Okay, it's all in the national headquarters and
 6 we're using it for lots of different things. It is too
 7 complicated to go in and allocate it to all of these States.
 8 And, therefore, we grant what I read as practically a
 9 blanket exemption.

10 Now if you are saying that maybe a blanket
 11 exemption goes too far, we would like to consider that, I
 12 don't think that is an unreasonable position. Although I
 13 think once you start trying to allocate costs at the
 14 national headquarters and try to allocate them by States, I
 15 think you are into a morass. I can give you examples of
 16 other campaigns, maybe other things we were doing, that you
 17 would never figure out.

18 And I presume the purpose of the regulation is
 19 that it is just too complicated. It is not that big of a
 20 deal.

21 And so we will just grant a blanket exception.

22 That's the best argument I can make, and I guess
 23 the best argument that I can make in my own mind is that's
 24 what we believed. And I think with good reason.

25 And I am a little concerned here, as I say, about

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1 the ex post facto nature of this.

2 COMMISSIONER THOMAS: I was really scratching a
3 little bit at the factual setting here, whether you could
4 also add the argument that there was no add-on. There was
5 no incremental add-on costs for, say, your rent, for your
6 computer charges and for these other costs which we have so
7 far identified as costs that you should nonetheless have
8 allocated a portion of as being for Iowa.

9 MR. KENTON: Well, I guess it would be easy to
10 say there was no add-on cost -- I don't think I can, in
11 candor, say that there were no add-on costs. And I think
12 the Audit Staff is trying to figure out what the add-on
13 costs were.

14 But, generally speaking, we would have had a
15 phone bank and we would have had a computer system and we
16 would have had laser printers doing all of the traditional
17 things that modern campaigns do, whether we had been phoning
18 into Iowa or not.

19 And if the campaign had gone on, we would have
20 been using them for far more things than we used them for to
21 begin with.

22 So, if you had known that the campaign was only
23 going to go to two States in the beginning and it is,
24 therefore, easy to say that this is a big program for Iowa,
25 you had all of these computers up there, they were all

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1 focused into Iowa. But if this campaign had gone on for six
 2 months or eight months and the Governor had been the
 3 nominee, this Iowa thing, if you tried to figure out what
 4 percentage of the phone operation and headquarters operation
 5 was allocable to Iowa, you couldn't have found it; it would
 6 have been like looking for a needle in a haystack.

7 So we were a little bit caught into the marginal
 8 or the extra incremental costs, if you will, because of when
 9 the campaign stopped.

10 COMMISSIONER THOMAS: I also wanted to sort of
 11 make the point that you have noted that the advisory opinion
 12 we issued creates an advantage for people who put out
 13 television ads and put a tag line on the end asking for
 14 money.

15 We have said that those kinds of things should be
 16 allocated 50/50. In the advisory opinion, I am just
 17 wondering, it sort of raises for me the question of whether
 18 we are -- to be consistent, what we should be doing at the
 19 agency is dealing with all of the various kinds of fund-
 20 raising letters and programs that all of the campaigns
 21 engage in.

22 I assume that you had a fairly large direct mail
 23 fund-raising program that could -- or perhaps should
 24 likewise be treated as an allocable kind of activity.

25 MR. KENTON: Pick it.

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1 COMMISSIONER THOMAS: That would be a great
 2 disadvantage to treat all of those expenses which heretofore
 3 have been treated as fund-raising 100 percent as 50/50
 4 allocable.

5 MR. KENTON: Right.

6 COMMISSIONER THOMAS: But it would perhaps add an
 7 element of consistency.

8 MR. KENTON: As I think I tried to say earlier, I
 9 do not disagree with that fundamental theory. What we have
 10 here is you have the television which is 50/50, the direct
 11 mail which is 100 percent non-allocable, zero allocable.
 12 And this situation is mixed in between.

13 And it doesn't seem to me -- certainly, there'
 14 not much logic to all of that, particularly like the Gore
 15 decision, and particularly on the ex post facto basis, if
 16 you will.

17 I am just troubled by it.

18 COMMISSIONER THOMAS: I have no other points at
 19 this time.

20 Thank you again.

21 CHAIRMAN MCDONALD: Thank you, Mr. Thomas.
 22 Commissioner Josefiak.

23 COMMISSIONER JOSEFIK: Thank you, Mr. Chairman.

24 Mr. Kenton, I probably should do a little
 25 defending of the Gore Opinion before getting into some

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my --

MR. KENTON: I think it is wonderful.

COMMISSIONER JOSEFIK: I'm trying to give you --
you were very helpful to us in trying to give us a feel for
how you operate.

CHAIRMAN MCDONALD: Save some.

(Laughter.)

COMMISSIONER JOSEFIK: I would like to give you
some impressions of how we operate under this law. For
example, when we get a request like the Gore request, and I
think there really is a fundamental difference between the
concepts that you are bringing to us today and the Gore
opinion, because what we are dealing with was an
advertisement that had, whether you agree or disagree, and
the majority agreed, a fund-raising solicitation with the
ad, a specific, self-contained advertisement.

And you were right in the past and the Commission
continues to treat fund-raising letters as 100 percent
allocable to this fund-raising exemption, and fund-raising.

And the question that the Commission faced in
that advisory opinion was:

You have an advertisement. There is no question
that the advertisement was there for political reasons, to
get support for the candidate.

The question that we had:

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Did a tag line that asks for money somehow trigger a fund-raising exemption?

And if it did, what kind of percentage should it be?

And we sat and argued, privately and publicly, as to the percentages and came to the conclusion based on our precedent in other kinds of situations that if you were doing two things in an ad, you should be able to take 50/50.

Was that totally right? Was that totally wrong? We had to make a judgment based on a request. And we did that. And we bend over backwards in those situations under the history of our exemptions, and also under the limitations of the State by State limits that we discussed earlier.

So we made a decision. Whether that will be there for the next Presidential Election? God only knows. Hopefully, the regulations will clarify that, as you say. We had situations from the '84 elections where we felt that we plugged up some of these holes, and we gave some information to potential candidates regarding telephones, I believe, because that was a big issue in '84, which telephone calls had to be attributed to the State and which to the national overhead costs.

I thought we handled that. So we thought we plugged up that problem, and then you raise another problem.

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1 So I think Commissioner Elliott said that we are
2 always sort of back-peddling here. We're always trying to
3 look at the last election and trying to adjust our
4 regulations accordingly.

5 But we've always in the fund-raising exemption
6 area, we're always dealing with one specific piece of
7 material, whether it is a letter, whether it is an
8 advertisement.

9 Here you are asking us to go beyond that concept
10 and look at backup material.

11 The question I have for you is:

12 Maybe you can explain telemarketing a little
13 better for me as far as why we should make this exception
14 this kind of case.

15 Or are you suggesting that every piece of
16 political material should be capable of the fund-raising
17 exemption as long as the campaign comes to us and says,
18 well, we used backup from that material to go out and
19 solicit monies after the fact. Whether it is 24 hours,
20 whether that is 48 hours. Whether it is three weeks or six
21 months, should there be a cut-off?

22 And the follow-up question I have on that:

23 Based on your experience in the telemarketing
24 situation in Iowa, when you sent the letter asking for money
25 based on the phone calls in Iowa, was it just during the

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1 Iowa caucuses? Or did you go after the fact and ask for
2 money, in other words, to help pay some other bills?

3 In other words, was it strictly political from
4 the Iowa sense, or were you asking for money after the Iowa
5 caucuses were over and after the selection had been made?

6 MR. KENTON: Let me try to address those
7 questions if I might, Commissioner, in order.

8 First of all, you point out that with respect to
9 the direct mail, you said -- or the Gore exemption -- that
10 you were dealing with one piece of advertisement.

11 I don't think that is exactly so. With respect
12 to direct mail in particular it is not just the direct mail
13 piece that you exempt, but the purchase of the vendor list
14 is exempt.

15 That is not just the piece of advertising -- you
16 could easily go in -- the audit team could easily go into a
17 direct mail operation and say, okay, the letter is exempt,
18 but the purchase of the vendor list is not exempt. That is
19 a different transaction.

20 So it is not just the advertisement in the direct
21 mail that is exempt. It is the purchase of the vendor list,
22 and that is a totally separate transaction. It could easily
23 be allocated. It could be separated out by the audit team.

24 And, yet, under the language in the reg, in
25 connection with or associated with fund-raising, the

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1 purchase of the vendor list is a fund-raising cost.

2 So I don't think that your comment with respect
3 to the unified ad really holds with respect to direct mail.

4 COMMISSIONER JOSEFIK: It is more in line with
5 the Gore Advisory Opinion. And whether it was subject to
6 the 50 percent rule.

7 The other question is the 100 percent allocation.
8 And, certainly, we would, as your statement suggests, we
9 would count in there postage, et cetera.

10 But I think that you can trace that back to a
11 final combination into one piece. What you're asking us to
12 do, I think, and I want your comments on this, is to say:

13 Okay, if I put out a strictly political direct
14 mail piece, or if I buy a list strictly for a piece of
15 political mail that is not fund-raising at all, that,
16 somehow, after the fact, I can say that all of those costs
17 attributed were for something else. It was not fund-
18 raising, because I'm using it after the fact for fund-
19 raising, should be allocated to fund-raising.

20 And that is where I am trying to -- I'm trying to
21 get your position on that.

22 Are you saying that telemarketing is an exception
23 to the general rule?

24 Or, are you saying that anything that is
25 associated with political material that then is used in

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1 fund-raising should be allowed the allocation for the fund-
2 raising exemption?

3 MR. KENTON: The answer is that if -- it seems to
4 me that -- first of all, I think it's an area ripe for
5 regulation.

6 But, if I were going to try to write a regulation
7 and I accepted the premise of both the Gore decision and the
8 direct mail exemption, if you will, you would probably want
9 to say that if it is reasonably promptly after the phone
10 call, if the phone call and the mail letter that goes out
11 are directly related to each other, if you're trying to
12 write the reg, you would probably want to get into these
13 kinds of areas, that it asked for money.

14 And going back to your third question, that it
15 was used maybe on a continual basis to ask for money, we
16 went back to these Iowa people until the day after New
17 Hampshire. The people who had indicated they had
18 contributed to Pete, whether it was in Iowa, were solicited
19 continually by mail and by fund-raising - by
20 telephone/telemarketing.

21 And so it was used on a continuing basis for
22 fund-raising. And people, as you maybe know, in a lot of
23 these campaigns, people contribute four or five or six or
24 seven, eight times. It is not at all unusual up to the
25 limit, sometimes over the limit, if you don't catch it.

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1 (Laughter.)

2 CHAIRMAN MCDONALD: Do you have a list of those?

3 MR. KENTON: I want to talk about that in a
4 minute. We are being held accountable in another area for
5 some 50 slow repayments of those things. Out of 42,000.
6 They want to fine us for that, too. If you can believe that
7 52, I think is the number, out of 42,000 that we didn't get
8 back within 60 days.

9 But the point is that if you had made Mr.
10 Josefiak -- excuse me.

11 COMMISSIONER JOSEFIK: Josefiak. Commissioner
12 Tom is fine.

13 COMMISSIONER MC DONALD: That's why I like
14 McDonald. When you got down to Mr. Commissioner, I knew you
15 were in trouble.

16 (Laughter.)

17 MR. KENTON: You have what you might think is an
18 enormous exemption for direct mail, direct mail into a State
19 asking for money is about 90 percent political, about 10
20 percent fund-raising. Everybody knows that.

21 And I just don't think that this is any
22 different. Is that an enormous loophole into the statute?
23 Is that a slippery slope?

24 It doesn't seem to me it is because it is,
25 because as a practical matter, the big dollars into Iowa :

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1 into the States are the television dollars.

2 If you were to quote, "open this up," unquote,

3 something like this for something that might be reasonably

4 prompt after that, if used on a continual basis, that is a

5 small quote "loophole", end quote if you will, compared to

6 the Gore decision, because the big bucks are in television.

7 The big bucks are not in this. This is an

8 expensive program. This is not a program -- this really --

9 if I said 90/10 on direct mail, political versus fund-

10 raising, this is more like 50/50 because this is an

11 expensive program to run for just political reasons.

12 You would be far better for political reasons to

13 put your money in television. But television doesn't raise

14 money as easily, so this is really an expensive operation

15 that really is targeted to fund-raising more than a direct

16 mail piece, which is dirt cheap compared to this or

17 television, which is even cheaper than direct mail as a way

18 of communicating.

19 So this is probably, of the three types of

20 things, this kind of a program is probably the most fund-

21 raising balanced vis-a-vis political of the three.

22 So it seems to me that what you have got is

23 you've got the toughest rule right now, or the toughest

24 potential rule, on the program that probably has the most

25 fund-raising component to it compared to the political

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1 component of the three vehicles.

2 COMMISSIONER JOSEFIK: Thank you.

3 MR. KENTON: And I appreciate the difficulty that
4 the Commission has. This is just one of 100 anomalous
5 situations in the statutes, in these regs, that the
6 Commission and its Audit Staff try valiantly to deal with,
7 and situations that are anomalous in these regs and these
8 statutes are legion.

9 COMMISSIONER JOSEFIK: Well, this has been very
10 helpful. Commissioner Thomas and I are involved with our
11 own regulations committee, so I think your testimony here is
12 very helpful. You are right.

13 Please, any help you can give, divine or
14 otherwise, will be appreciated.

15 CHAIRMAN MCDONALD: I'm glad you cleared that up.
16 At least now you know who to blame.

17 COMMISSIONER JOSEFIK: But I am curious because
18 there are some of us who feel that even though there are
19 State by State limits, that the fund-raising exemption at
20 least should be eliminated. And instead raise the limits so
21 that you wouldn't have to go through this nonsense and make
22 all of these crazy decisions.

23 MR. KENTON: Good words.

24 COMMISSIONER JOSEFIK: I am curious from your
25 perspective being representing a candidate that was trying

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1 to get in the process without the power of the incumbency or
2 without the big name backing.

3 MR. KENTON: Or the jet.

4 COMMISSIONER JOSEFIK: Or the jet. Well, I
5 think the Democratic opponent would have more of a problem
6 than the Republicans with that even as you got further
7 along. We did even have a request I believe at one point to
8 see if perhaps Mr. Dukakis could get the equivalent thereof
9 and perhaps that should be in the reg, the two nominees get
10 government conveyance, at the least.

11 But that's not the way it is. But, I am curious
12 from your perspective, disregarding the horror show of
13 dealing with State by State limits, since we have got you
14 here --

15 MR. KENTON: Good word.

16 COMMISSIONER JOSEFIK: Do you think it is an
17 advantage with someone like Mr. duPont to have a limit, or
18 is it a disadvantage?

19 In other words, would you find it more difficult
20 to get your message across if you knew that, for example,
21 that George Bush could spend \$20 million in the State of
22 Iowa and the State of New Hampshire?

23 Or the fact that you may be able to spend \$20
24 million in the State of New Hampshire to use that as
25 something that could challenge the power of an incumbent.

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1 I am curious from your perspective because we
 2 have always been asking Congress to eliminate State by State
 3 limits because of the administrative nightmare.

4 But Congress has been reluctant to do that. And
 5 I think part of the problem has been, other than the fact
 6 that they have never had an amendment before them that was
 7 really active, that I think there is a concern that if you
 8 eliminate the limits in the States of Iowa and New Hampshire
 9 in particular, you're going to have a blood bath and perhaps
 10 people who were trying to get in the process under a public
 11 financing system, trying to stay within the rules and the
 12 limits, would have even a more difficult time of getting
 13 their message across if someone like the incumbent, Vice-
 14 President in this particular case, would have that access
 15 for other reasons; namely, having the federal office-holder
 16 benefits to rely on.

17 MR. KENTON: Boy, you are really into it now.
 18 Those are well-taken comments.

19 The problem once again, if you really want to go
 20 to the core of the problem, the problem really is this
 21 process where Iowa and New Hampshire come first. That is
 22 the real problem.

23 Once you have so much at stake in those two
 24 States, the rest of it just kind of dominoes. So, if you
 25 were to ask me to go to the core of the whole problem, it

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1 would probably be to the Iowa and New Hampshire precedents.
2 Precedents, if you will, of the other States.

3 That is the real problem. And there has been a
4 lot of talk about how to deal with that. The outside
5 candidates certainly don't want a national primary on one
6 day, but there have been a lot of other, I think, thoughtful
7 ways to address this that have been discussed and argued and
8 debated, and a lot has been written about that.

9 And I think that almost any system is better than
10 the one we have. But I guess you always think that the
11 grass is greener.

12 But the answer is, as a practical matter, if you
13 were to ask me, given the situation as it is, if I would
14 rather deal with the nightmare of the allocations or let
15 George Bush spend \$10 million in Iowa, I'd rather have the
16 allocations.

17 COMMISSIONER JOSEFIK: Well, I think, the bottom
18 line is, and where you have been very helpful, is perhaps
19 assuming that we are going to have the State by State
20 limits, that maybe the best way to approach it is a more
21 simplistic view of the regulation in dealing with this, and
22 try to set down some objective standards in certain areas
23 and people will just have to live by them whether they are
24 good, bad or indifferent.

25 And what we try to do -- it is really a case

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1 case basis when somebody like you comes in and raises an
 2 issue that we try to address, or Mr. Gore comes in with an
 3 issue, we try to address it based on what the law and
 4 regulations say, and how far you can go under that law and
 5 regulation.

6 And knowing full well that under the Public
 7 Financing scheme, there is a contract between the candidate
 8 that receives the public money and us that are certifying
 9 the public money. We say one thing and we agree to do
 10 certain things, and the candidate, by signing that
 11 agreement, says:

12 By that agreement, we agree to abide by certain
 13 spending limits. And that is our responsibility. And it is
 14 not an easy task. And I know it is not easy from your
 15 perspective to come up with these allocation formulas.

16 I have been on the other side. I know what a
 17 nightmare it is. It is a very sensitive area.

18 MR. KENTON: Let me say that, generally speaking,
 19 if you were to ask for my advice, which is probably worth
 20 about what you're getting ready to pay for it, that --

21 CHAIRMAN MCDONALD: You must be different than
 22 any other lawyer.

23 COMMISSIONER JOSEFIK: He is not from
 24 Washington.

25 CHAIRMAN MCDONALD: If he is here an hour, it

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1 " will all change.

2 (Laughter.)

3 MR. KENTON: The arbitrary allocation numbers are
4 far easier to deal with rather than to have the audit stuff
5 come in after the fact and try to go in and find out how
6 much was allocated to this and how much was allocated to
7 that and try to figure out.

8 They have a nightmare of a problem. Things like
9 the 10 percent, finance exemption, or the 20 percent, other
10 types of things.

11 Those things are arbitrary. But at least
12 understandable, generally speaking. So, if I were to
13 suggest that you go any direction, it would be to make
14 reasonable arbitrary decisions, if you will. In other
15 words, go in and set up numbers, set up some formulae that
16 are easily understood, and not have the audit staff and the
17 campaign staff with this nightmare of a problem of trying to
18 figure out the accounting on all of this.

19 Just say how much do you expect that you can do?
20 Pick a number. Tell us what the number is. And everybody
21 can go home.

22 COMMISSIONER JOSEFIAK: I thank you. As one
23 member of Congress told me way back when, he said to me:

24 "Write a regulation. You may be wrong, but at
25 least it will be a regulation that people can abide by."

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Thank you very much. You have been helpful.

MR. KENTON: I appreciate your interest.

CHAIRMAN MCDONALD: Thank you, Mr. Josefiak.

Okay, now Doug Patton, on behalf of the House of Representatives.

MR. PATTON: About four questions, Mr. Kenton. I am sort of curious. We are talking about fund-raising in Iowa, which happens to be my home State. So I am sort of curious to -- I do have Republican friends and Republican relatives as well out there, even though I am on the other side of the aisle.

CHAIRMAN MCDONALD: That's what's happened to us.

MR. PATTON: I am curious. Based upon what you said, do you have the figures on actually how much money you raised out of Iowa and what percent of that did that comprise overall money that you raised. Percentage-wise.

MR. KENTON: The answer is that we raised -- I don't have the exact number --

MR. PATTON: Ball park, if you can.

MR. KENTON: Staff maybe has that number. \$75,000? I mean, you know, not a lot of money, but not a little, I would say, per person. I would say this. That per population we had more contributors from Iowa than any other State in the nation, except for Delaware, as a percentage of the population. Now those are decimal point

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1 numbers. Are you with me on that?

2 As a percentage of the total population in Iowa,
3 more people have contributed to the duPont campaign than any
4 other State in the nation, except for Delaware.

5 MR. PATTON: I guess that proves that they plowed
6 under all of the fields, corn fields. They made law fields
7 out of them, Field of Dreams.

8 MR. KENTON: I think the average contribution was
9 fairly low though compared to Delaware.

10 MR. PATTON: I think Commissioner Josefiak, I'm
11 not sure if he asked this question -- so, I may be re-asking
12 it -- was this fund-raising plan part of an overall plan to
13 raise money?

14 MR. KENTON: Oh, very much so. If we had been
15 successful in the succeeding States, we had this computer
16 capability to call in, target the people, find out what they
17 believed in and mail, mail, mail back to them, phone, phone,
18 phone, back to them, get them to contribute two times, three
19 times, four times.

20 MR. PATTON: Did the plan realize your budget
21 expectation? Did you have a line item as to what you
22 thought you would raise out of this kind of a program? Not
23 only for Iowa but, say, if you went further out in the
24 distance.

25 MR. KENTON: Oh, yes. Plans we did have, in

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1 writing. We had a 250-page campaign plan with probably a
2 50-page finance plan that detailed it out in a great deal of
3 detail, about how much we would get from Delaware
4 contributors, how much from relatives, how much from direct
5 mail, how much from telemarketing, how much from PAC --
6 zero. Oh, yes. And there were paragraphs written about
7 each of the plans.

8 MR. PATTON: You mentioned this I think in your
9 opening statement. In your opinion, did you rely on the
10 regulations as to no cost associated with -- you said a
11 statement in your opening remarks that -- at least I had the
12 feeling that you relied on the regulations as written for
13 your actions.

14 MR. KENTON: Well, yes.

15 MR. PATTON: Or the lack of exception.

16 MR. KENTON: I am cautious about helping, about
17 taking that bait too quickly because I don't want to sit
18 here and suggest to you that I am an expert on all of the
19 rules and regulations of the things. But I do remember
20 conversations when we got into the issues.

21 They were brought up by our lawyer and he said
22 that -- we asked him whether these things would be allocable
23 to Iowa, and he said, "I think it is a close call."

24 He said, "The regulations say in connection with
25 or associated with, and I think you've got a pretty darned

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1 good argument."

2 And so I do remember that discussion, but I can't
3 tell you that I recall sitting down myself and reading the
4 regulation, but it was discussed in general terms with our
5 counsel.

6 MR. PATTON: Final question.

7 Based upon your calculations, if the Commission
8 made a determination that this is a 50 percent following,
9 what you are saying, following the guidelines of the Gore
10 Opinion, would this put you under the expenditure
11 limitation?

12 MR. KENTON: If you went to the direct mail
13 incident, it was all 50 percent, too?

14 No, no, nobody would be under. I mean, Alexander
15 Haig wouldn't be under if you went to all of the direct mail
16 and said it was 50/50 --

17 MR. PATTON: No, no, I'm just talking about the
18 fund-raising program, per se.

19 MR. KENTON: I'm talking about the direct mail.
20 Are you talking about the telemarketing ---

21 MR. PATTON: The telemarketing segment.

22 MR. KENTON: If the whole thing were made -- now
23 what you have done is -- assuming they are equal costs -- we
24 admitted were -- we didn't allocate. Excuse me. Two we
25 allocated to Iowa. There were four left.

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1 The staff gave us one of the four, so that is
2 three out of six. So I guess the answer is it would be
3 about the same. They said three out of six. And we are
4 saying six out of six. If you took six out of six and made
5 them 50 percent, I think you would be back to the same
6 place. My math may be. Maybe there's a problem with my
7 math.

8 Maybe --

9 CHAIRMAN MCDONALD: I think you're going to have
10 to have a discussion with folks immediately behind you. I
11 have no idea what the answer is.

12 (Counsel conferring.)

13 MR. KENTON: If you provide the 50 percent for
14 the three in question, we would be under. Yes. If you
15 apply the 50 percent for the three in question, we would be
16 under.

17 But, if you went back and tried to gobble up
18 everything, if you put back on the table all of the ones
19 that are off the table, we would be over.

20 MR. PATTON: Does that take into consideration
21 the 20-day exemption then?

22 MR. KENTON: The former comptroller of the
23 campaign, down here at his own expense today, advises me
24 that 50 percent of the whole thing we would be under.

25 MR. PATTON: Thank you.

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Thank you, Mr. Chairman. Thank you, Mr. Kenton.

CHAIRMAN MCDONALD: Thank you.

Thank you, Mr. Patton.

Dave Gartner for the U.S. Senate.

MR. GARTNER: Thank you for coming. I agree that it is important to air matters such as this when people have strong feelings about them.

First of all, let me just say that I think the Commission's staff, and I am referring to the Office of General Counsel and the Audit Staff, has done a good job in coming forward to the Commission with its recommendations.

Having said that, however, I will hasten to add that, in my judgment, they have come forward with recommendations based on a very strict interpretation of the statute and of the regulations there under.

I think it is my judgment that the Commission is faced with a surely simply stated issue, and that is whether or not it wishes to give an even broader interpretation, I guess, to the rules and the statute than it gave under the Gore AO.

The Commission, as the Chairman noted and others have noted, has said repeatedly that it is not satisfied with the State by State limits. And as we know, the Gore interpretation was a broad interpretation of both the statute and the regulations.

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1 I think they are both written in such a way that
 2 they probably could be interpreted to allow or not take
 3 place the expenditures under the Iowa limits.

4 I think that the question really before the
 5 Commission is whether or not it wishes to place that broad
 6 interpretation on it.

7 I want to thank you, as the other Commissioners
 8 have, for coming here and making a very good case for your
 9 candidate. I think you did a good job and I think your
 10 argument was very well-presented.

11 Thank you, Mr. Chairman.

12 CHAIRMAN MCDONALD: Thank you, Mr. Gartner.

13 Let me ask the witness -- would you like a five
 14 minute break? You don't want to take a short break?

15 MR. KENTON: If you would like to take a break,
 16 Mr. Chairman.

17 CHAIRMAN MCDONALD: I'm in a position where I can
 18 always take a break.

19 (Laughter.)

20 CHAIRMAN MCDONALD: Whether you are here or gone.
 21 It's entirely up to you.

22 MR. KENTON: I would prefer to continue until the
 23 bitter end.

24 (Laughter.)

25 CHAIRMAN MCDONALD: You have been here before,

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1 haven't you?

2 MR. KENTON: No, sir, I haven't.

3 CHAIRMAN MCDONALD: Larry Noble.

4 MR. NOBLE: Thank you, Mr. Chairman.

5 Thank you, Mr. Kenton.

6 And also for your kind words. They always make
7 me nervous, but thank you.

8 CHAIRMAN MCDONALD: They always surprise the rest
9 of us.

10 MR. NOBLE: That's why they make me nervous.

11 (Laughter.)

12 MR. NOBLE: You referred to the plan before. The
13 campaign had a written plan about fund-raising.

14 Was this specific program mentioned in the
15 written plan?

16 MR. KENTON: The written plan, as I recollect,
17 talked about a telemarketing direct mail program in general
18 terms, as I recollect, Mr. Noble. It didn't talk about how
19 many phones, and it was not that specific. But it did talk
20 about the general direct mail telephone type of plan. And
21 there was a number in the budget that I recollect as to how
22 much this was going to raise. I don't remember what the
23 number was.

24 The number of \$200,000 sticks in my brain, or
25 maybe \$500,000. Maybe that includes some other things.

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1 This is out of the \$7 million budget.

2 MR. NOBLE: Going back to the Gore Opinion, and I
3 think Mr. Gartner -- I agree with Mr. Gartner. This is
4 really a question of whether we would expand on the Gore
5 Opinion.

6 One of the problems is to try and find after the
7 Gore Opinion some bright line or some way that we can figure
8 out where we would stop on this.

9 I may disagree with you a little about the Gore
10 opinion. It at least deals with a finite matter. What it
11 finally came out with is one public advertising.

12 Here what you would be dealing with is a number
13 of things that go to the public. And a number of them which
14 did not mention specifically fund-raising. And then
15 bringing them all into one fund-raising umbrella.

16 Can you give me an idea of what factors you would
17 look at? One of them, you mentioned, was timing. It should
18 be right before -- 24 hours, 48 hours, a reasonable amount
19 of time.

20 I think there would be an argument there that
21 while we were building up for months to create this list of
22 people we would then later hit for money, do you have any
23 suggestions on where we can draw a line at that point?

24 MR. KENTON: As I say, this is all a slippery
25 slope type of thing. In coming back to the limitation

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1 issues of Ms. Aikens, you could draw the line, once again
 2 coming back to Commissioner Tom's comments, I don't care
 3 where you draw the line. Draw the line and tell us. Forty-
 4 eight hours is probably too quick. But six months is
 5 probably too long.

6 I think that it ought to be reasonably promptly
 7 after the phone call, even if it went out -- if I were to
 8 draw on the regulation, just based on my experience, seven
 9 days, maybe, it might be a reasonable rule if you were
 10 looking at it in the future.

11 I think another type of test, if you would, is
 12 that it be targeted, it be specifically targeted to
 13 individuals. And that as the telemarketing programs are,
 14 you are saying an extension of the Gore decision.

15 I think that this really comes just kind of just
 16 under the Gore decision. If you're talking, as I say, about
 17 loopholes and the ability to pour dollars through loopholes,
 18 the Gore decision is a far bigger loophole than, if you
 19 will, to grant an exception, grant an exception such as this
 20 because of the ability to pour millions of dollars into
 21 television.

22 And this is a very time-consuming, hardware-
 23 driven, computer-driven type of an operation which is not as
 24 easy to pour dollars into, although it can be expensive.
 25 But, certainly, not compared to television.

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1 If it were targeted to individuals, that it
2 specifically identified issues, if those issues were then
3 used within seven days, for example, to follow up and make a
4 fund-raising appeal based upon the information solicited or
5 elicited from the telephone call, that I just don't see how
6 that is different than purchasing a vendor list in a direct
7 mail effort.

8 MR. NOBLE: But doesn't that define a whole
9 campaign? A campaign for purposes to get voters and getting
10 money? Not necessarily in that order.

11 MR. KENTON: Fifty/fifty.

12 Going back to the Gore rule, I am not suggesting
13 to sit here and tell you that this did not have political
14 benefits, although given the vote in Iowa, apparently, not
15 much.

16 But, as I said to one of the other Commissioners,
17 if you look at the Gore situation with television, and you
18 look at the direct mail situation, this has more fund-
19 raising per buck than any other ones do. If you really want
20 to get it down to the nitty-gritty, this is more of a fund-
21 raising program and was used for fund-raising more and has
22 more fund-raising per buck -- to repeat myself -- than the
23 other ones do. More fund-raising components, less political
24 component than any of the other ones do.

25 I mean, the Gore thing, it is about 99 percent

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1 advertising and about 1 percent fund-raising. I mean, you
2 send in money. Whose going to sit down and write a check?
3 You don't know where to send it looking at the thing.

4 But that isn't going to raise a lot of money, so
5 given the Gore decision and given the 100 percent direct
6 mail exemption along with purchasing the vendor list, it
7 seems to me that this certainly falls somewhere in between.

8 MR. NOBLE: I think again, I had some problems
9 with the Gore decision. The biggest problem is that
10 slippery slope. I'm just trying to figure out where we'd
11 begin drawing those lines. Maybe the end result of it would
12 be that 50% of everything is fund-raising in a campaign.

13 MR. KENTON: That would be real easy to
14 understand.

15 MR. NOBLE: But, personally, I think that would
16 cause serious problems with the State by State limits as a
17 method of trying to get rid of the State by State limits.

18 MR. KENTON: I don't think these are easy issues.

19 MR. NOBLE: No they're not.

20 MR. KENTON: But, as I say, it is no different
21 than having 150 people live over in Vermont, you know, and
22 work in New Hampshire.

23 MR. NOBLE: I don't think that was the intent of
24 the State by State limit either.

25 MR. KENTON: There are just a lot of anomalous

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1 situations.

2 MR. NOBLE: Thank you.

3 CHAIRMAN MCDONALD: Bob Costa.

4 MR. COSTA: Yes, just a couple of quick
5 questions. In relation to the telemarketing program that
6 you mentioned earlier, you raised some \$75,000 as a result
7 of the follow-up letters that you had sent out.

8 MR. KENTON: I think I asked -- I think I asked
9 somebody. I sought some guidance on what was raised totally
10 in Iowa.

11 And I think that that was about \$75,000.

12 MR. COSTA: Do you know offhand how much was
13 raised on the telemarketing program itself? Based on
14 follow-up solicitations for contributions.

15 MR. KENTON: I would hesitate to guess.

16 MR. COSTA: Do you have any idea?

17 MR. KENTON: But there was a point I made to
18 somebody else before. We had more contributors in Iowa as a
19 percentage of the population than in any State in America
20 except for Delaware.

21 MR. COSTA: Do you know roughly how many follow-
22 up letters were sent out based on the telemarketing program?

23 MR. KENTON: Probably, a dozen, and a lot of them
24 after the Iowa, probably half of those after the Iowa
25 caucuses were raising money from people who had indicated

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1 interest in Pete duPont, to get them to contribute for the
2 New Hampshire effort.

3 MR. COSTA: Do you know the total pieces mailed?

4 MR. KENTON: Total pieces mailed in the whole
5 campaign?

6 MR. COSTA: Telemarketing program directed at
7 Iowa.

8 MR. KENTON: Total pieces mailed. I would say
9 that if we made -- excuse me for a second.

10 MR. COSTA: Just a ball park guess.

11 MR. KENTON: I can get the number of how many
12 calls we made in the universe. I could then maybe make some
13 calculations.

14 Excuse me for a second.

15 (Counsel conferring.)

16 MR. KENTON: Very rough. I would think that we
17 started with a universe of about 60,000 people who we
18 thought were most likely to contribute. That was based upon
19 geography, income, those kinds -- voter registration
20 clearly.

21 We then called all of those people. We did not
22 send fund-raising letters or any letters to people who were
23 staunchly for another candidate. That weeded out about 15
24 percent maybe, or 20 percent who just said they weren't ever
25 going to change their mind. They were going to vote for

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1 George or Bob or Pat Robertson was more typical, no matter
2 what happened.

3 And then we mailed those people probably three or
4 four times before the Iowa caucuses and probably three or
5 four times after the Iowa caucuses, just to give you a ball
6 park figure.

7 MR. COSTA: One hundred thousand?

8 MR. KENTON: Particularly after the Iowa
9 caucuses, we narrowed it down. People who had given, you
10 know, once out of -- anybody who gave before was continually
11 mailed; if they showed that they were with Pete on three or
12 four issues that he was talking about, they might continue
13 to get mail after that, Iowa caucuses before New Hampshire,
14 because they thought that he really agreed with them.

15 And the more they got to know, the more that
16 person might be inclined to contribute.

17 So there was a narrowing and a broadening
18 depending on how many letters we wanted to send out in the
19 screening. Sort of a rank order type of thing.

20 But I want to emphasize it did go on and we
21 continued to mail to these people after the Iowa caucuses
22 for fund-raising purposes.

23 MR. COSTA: So, probably more than 100,000 pieces
24 is a fair guesstimate?

25 MR. KENTON: Ball park.

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1 MR. COSTA: Okay.

2 MR. KENTON: But a great many of those after the
3 Iowa caucuses I would point out in which there was no
4 political benefit mailing into Iowa. I will never go on
5 that bike ride.

6 CHAIRMAN MCDONALD: You have proven beyond a
7 shadow what we have all maintained in Congress for years, is
8 that if you were good friends of the Governor's before or
9 Vice-President's or Senator's or anyone else, and you
10 undertake this task and you are still good friends after it
11 is over, you are truly a good friend.

12 The process is pretty demanding and I don't think
13 any of us doubt that.

14 I have a few questions to try to get to the
15 specifics of this case for just a minute, and then I might
16 say to you, as I think Commissioner Aikens indicated to you
17 earlier on, that not only is it helpful that you come in but
18 her comment was that she would urge you to urge the members
19 of Congress to look at this very closely, as we have done
20 for a number of years.

21 I think the reason that I would urge you to pass
22 this information along to anyone I see in the campaign
23 process, I wish all of the participants would get together
24 and try to visit with the Congress about this.

25 And do it at a time when the climate is not so

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1 difficult. 1991, 1992, it will be impossible, but there is
 2 never a better time, in my opinion, than now, to be honest
 3 about it, and we have talked to members of Congress and are
 4 trying to talk to them in this light because we realize as a
 5 practical matter, once you reach a certain stage, there is
 6 no turning back.

7 And so I think Commissioner Aikens' suggestion is
 8 a very good one, and I would only add to it that I would
 9 hope that you would pick up others along the way on both
 10 sides of the aisle.

11 Who, by the way, I think, without exception,
 12 share this frustration with the process.

13 MR. KENTON: I think the Audit Staff, Mr. Costa's
 14 staff and others are in an impossible situation, as the
 15 Commission is.

16 And, you know, I have talked to most of those
 17 people. All of them are still my friends. And if you asked
 18 them to the person what is the biggest kind of hidden
 19 problem, once you have been through this, that you didn't
 20 really focus on -- was it a negative campaign? Was there
 21 difficulty in raising money? -- I mean to the person, they
 22 will tell you: This process is the most difficult and
 23 unforeseen maybe is the word -- maybe not by the Vice-
 24 President. He had been through it before.

25 But, for everyone else, I mean you could be

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1 sitting having a cup of coffee any place and you sit around
2 and talk about FEC stories.

3 (Laughter.)

4 We weren't talking about some of the other
5 problems.

6 CHAIRMAN MCDONALD: You sit around and talk about
7 us.

8 MR. KENTON: No one is critical. You're trying
9 to do -- you're doing a very good job in a difficult
10 situation. And we spent \$600,000 on this process.

11 And what do we get back out of it -- \$2 million?
12 Not a bad return, but that is still a lot of money.

13 CHAIRMAN MCDONALD: I think in lots of respects
14 you would have a lot better opportunity of having an impact
15 on Congress than we would. And I think that my two
16 colleagues from the Congress might share that point of view
17 because we are in a posture of asking for it from an
18 administrative standpoint as opposed from a practitioner
19 standpoint, which, again, I think clearly you have an
20 advantage that we don't have.

21 And I do hope that you will follow Commissioner
22 Aikens' concerns and take her advice in that area because I
23 think it would be genuinely very helpful.

24 MR. KENTON: If I had the opportunity to testify
25 in front of a group that was not about to decide my fate, I

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1 . could say a lot of things..

2 I could be real candid in front of Congress, Mr.
3 Chairman. I would be happy to do that.

4 CHAIRMAN MCDONALD: Well, maybe you will have
5 that chance in a different context.

6 Let me just go over a couple of things that I'm
7 interested in discussing for a minute. And I want to say
8 about the Audit Staff, and I appreciate you being very
9 candid, I think they are in a very, very difficult position
10 with the example that you gave, and I apologize because I
11 don't think that I wrote it down -- how many did you say?
12 Fifty-two? You gave me a number earlier.

13 MR. KENTON: I have a couple of points I want t
14 make at the end, but that is not on this matter, Mr.
15 McDonald. We're being held accountable.

16 CHAIRMAN MCDONALD: I understand.

17 MR. KENTON: We're being held accountable. Once
18 you mail to people six, seven, eight, twenty times, as the
19 duPont family got mail, you write \$100 check, \$150 check,
20 and you're over.

21 CHAIRMAN MCDONALD: The question was returning it
22 and not returning it.

23 MR. KENTON: Within 60 days. This is now once
24 again with a volunteer CPA firm. And half-time people and
25 volunteers working in the operation. We took in 42,000

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1 contributions and we are now -- in enforcement action, I
2 think is what it's called, facing a potential fine for being
3 late on 52 of those in the middle of the crunch between Iowa
4 and New Hampshire.

5 Now, the audit staff has got to enforce the law.
6 I'm not being critical.

7 CHAIRMAN MCDONALD: That was going to be my
8 point. First of all, I think those are staggering
9 statistics and things that would again help your case.

10 MR. KENTON: I'm surprised they found them.

11 CHAIRMAN MCDONALD: They are pretty good. I
12 think those are very compelling numbers. But I did want to
13 make clear, because you had brought it up and I knew it
14 wasn't in the context of today's activities, but again that
15 is the posture you are in. And, again, it goes back to the
16 bright line concept that Larry Noble asked about earlier.

17 Is it 52, or is it 520 or is it 6, or is it
18 1,000?

19 Those are the kinds of issues. And I think
20 Commissioner Josefiak did the best at outlining what we are
21 faced with and what the procedure is, which I think is
22 fairly important to understand as well.

23 And the advisory opinion, and it was a very
24 heated discussion, I am curious about it a little bit. I
25 want to go back to something Commissioner McGarry said.

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1 Those of us that took the theory of the 50 percent rule, and
 2 he hit the nail on the head as far as I'm concerned, was
 3 that we knew that we were forever going to be involved in
 4 these subjective judgments.

5 And we had a conversation in this very room
 6 yesterday over not this kind of a problem but a problem
 7 where, again, time and its impact are always up for very
 8 subjective views.

9 That is one of the things that we try to do, is
 10 take the guesswork out of the process.

11 I don't know whether a tag commercial is geared
 12 toward votes and/or money. My guess was and is that it
 13 answers both an effective commercial -- that is what their
 14 purpose was.

15 And I think we could and we did argue for
 16 sometime, as Mr. Josefiak pointed out, about the merits of
 17 the percentage; be it 25 percent, 30 percent, I don't know
 18 the answer to that.

19 But I am little bit puzzled in relationship to
 20 this case specifically, saying that the Gore opinion is much
 21 more of a loophole.

22 And I guess that I am puzzled because of the
 23 rationale you have employed. In the Gore advisory opinion,
 24 if memory serves me right, they asked for a contribution
 25 right then. No question about it. It was at the end, and

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1 doubt if many people would keep the TV turned up if the
2 first thing said was: Gee, we want money. And, oh, by the
3 way, we are for this.

4 I would assume that there was a logical approach
5 to the commercial. Whether it benefitted them or not, I
6 don't really know. I think the answer overall would be no,
7 I guess, in the final analysis. But, clearly, that is a
8 pretty logical deduction.

9 Even you have indicated you made your pitch and
10 then maybe you were a day or two removed, but that is part
11 and parcel of the process. But I think Commissioner
12 Josefiak was right on point when he said there is a
13 different set of circumstances, and that is one step
14 removed.

15 And when Dave Gartner told us that the Commission
16 will have to decide if it wants to go that extra step, I
17 tend to agree more with his analysis than yours only because
18 I think that there is another step being added here.

19 Now I'm not saying it is wrong, I don't know
20 about that. But we will just have to analyze today's
21 proceedings and see where we all come out.

22 But, for example, if you made calls on the day in
23 question and then the next time out, you did a follow-up, or
24 I should say you talked to people, then you made a follow-
25 up, the second round was money, I gather, what about those

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1 people that didn't send you money?

2 Did you go ahead and pursue those for a certainty
3 so that they would participate in the voting process?

4 You didn't drop them if they didn't give you
5 money. They may not have been as --

6 MR. KENTON: Desirable.

7 CHAIRMAN McDONALD: Precious -- I wasn't going to
8 say desirable. All Iowans are desirable. They get lots of
9 attention out there. It is critical to win in Iowa because
10 you never win the Presidency once you win in Iowa.

11 I've tried to figure this out for years, and I am
12 from a small town myself. And I don't get it. Everyone who
13 wins in Iowa seems to get beat. But that's all right.

14 You made a call. You did a follow-up in which
15 the pitch I guess was you agree with Pete, please send
16 money.

17 I agreed with Pete, but I didn't send money. Did
18 I hear from you again?

19 MR. KENTON: The first thing you did is you got
20 another letter back that says: Come on. You know, you
21 really do agree with him. Please send money.

22 And so that was the first thing that happened,
23 especially if you agreed with him on three out of four, you
24 were asked for money repeatedly.

25 But, as you kind of fell off in your interest,

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1 you maybe --

2 CHAIRMAN MCDONALD: Those may have been new
3 Republicans that you were getting.

4 MR. KENTON: One day, we will fix social
5 security. But, anyway, the answer is I've tried to be very
6 candid. I'm not suggesting that this didn't have a
7 political overtone.

8 CHAIRMAN MCDONALD: Sure, I understand.

9 MR. KENTON: Sure we used those people. We
10 called them on Election Day and tried to get them to go vote
11 for Pete. But, if you compare that, Commissioner McDonald,
12 to the direct mail situation, and the reason I don't think
13 it is an extra step, I think that you already took that step
14 perhaps without wittingly knowing it in the direct mail when
15 you permitted costs in connection with or associated with
16 fund-raising to be charged to the National Fund-Raising
17 Exemption, the cost of buying vendor lists.

18 That is a different step, buying the list. You
19 could easily, if you wanted to, you probably never thought
20 about it before, but you could easily say:

21 No, the cost of buying the list -- because you
22 can use the list, and they do use that list for lots of
23 other things -- could be easily separated out from the
24 direct mail piece. But it isn't.

25 And what we are doing is we just have another way

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1 of getting the target list.

2 CHAIRMAN MCDONALD: Let me pursue that a minute.

3 Because you have used that example on numerous occasions.

4 If I had a list and, in fact, I am a little bit puzzled by

5 the argument in view of what you have just said about your

6 own fund-raising method, and you write a second time and you

7 say, Oh, come on, if I have the list and I buy the list for

8 fund-raising activities, would you take the opposite point

9 of view, that we shouldn't call that fund-raising activity

10 when, in fact, it is clearly what it is designed to do?

11 You're saying that you shouldn't have the list as
12 a fund-raising vehicle?

13 I'm not following your logic, to be honest about
14 it.

15 MR. KENTON: No, I'm saying you should. And I am
16 saying that if that is a cost which is reasonably associated
17 with fund-raising, which it is -- in my judgment, it would
18 be -- if you asked for my judgment, I think that is the
19 right rule.

20 CHAIRMAN MCDONALD: Sure.

21 MR. KENTON: And if you permit that to be a non-
22 allocable expense, fund-raising expense, and that list, I
23 can assure you, the only thing you really said that wasn't
24 quite factually accurate, Mr. McDonald, is that when you buy
25 that list, they use it for a lot of other things, too. They

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1 don't. Just use it --

2 CHAIRMAN MCDONALD: I didn't dispute that. That
3 isn't what I said, but that's all right.

4 MR. KENTON: I'm sorry. The point is that it is
5 not truly for fund-raising, but I think that is the right
6 rule.

7 And I guess what I am saying here is that, if
8 that is the right rule, the spending of \$20,000 to buy that
9 list, that the spending of this kind of money to get this
10 list is not that different. And the reason --

11 CHAIRMAN MCDONALD: Even though the initial
12 contact is not solicit money.

13 MR. KENTON: That is correct because the initial
14 contact of the vendor doesn't solicit --

15 CHAIRMAN MCDONALD: I think that is critical. I
16 think that is critical when we are talking about this
17 process. The initial contact with the vendor, which is not
18 the voting populist, the initial contact with the vendor is
19 to get that initial contact for money, supposedly.

20 I don't argue that there are other -- I don't
21 know the answer to that. But, Larry Noble asked a question
22 earlier that I think is kind of the underlying question.

23 It seems like in this scenario, and I'm not
24 saying it is wrong at all, I'm just trying to think it
25 through and what is really before us, it seems like all of

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1 this is part and parcel of campaigning.

2 I mean, it appears to me not in relationship to
3 you but in relationship to the overall discussion that there
4 is almost is not anything that campaigns under. Some
5 approaches simply wouldn't tie into this entire umbrella.

6 Would you think that is an accurate statement?

7 Semi-accurate?

8 MR. KENTON: Campaigns if you bifurcate them
9 campaigns, or you can cut the pie different ways. They do
10 only two things. They try to get votes and they try to get
11 money. And there is virtually no distinction.

12 CHAIRMAN MCDONALD: What about Commissioner
13 Thomas' approach to a 50 percent rule going back to the
14 point made by Commissioner Thomas just across the board,
15 period?

16 MR. KENTON: I think for the comment that I made
17 about Commissioner Tom's comments is that a bold rule like
18 that from an operations point of view is much preferred.
19 Whether 50 percent is the right rule, but as long as it
20 impacts -- okay, in this case, I would be in favor of it.

21 (Laughter.)

22 I would be in favor of it unless it negatively
23 impacted us.

24 CHAIRMAN MCDONALD: This is probably one of the
25 most candid presentations we have ever had.

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1 MR. KENTON: But, sure. I think 50 percent rule.
 2 If you open this thing up on Gore, which you really did open
 3 it up, and I'm not saying incorrectly, it is hard to see how
 4 this doesn't fit under the same rule of 50 percent across
 5 the board. Yes, that is about right.

6 CHAIRMAN MCDONALD: But you would acknowledge
 7 that at least in terms of -- going back to Commissioner
 8 Josefiak's point -- at least in terms of what the Commission
 9 has traditionally tried to do. You're not suggesting though
 10 that the initial contact was money-raising, at least in the
 11 three letters that we are talking about.

12 It was a follow-up process. And that is really
 13 the dispute, if you want to call it that, the difference of
 14 opinion that is really before us.

15 MR. KENTON: That is correct. And also don't
 16 forget the difference of opinion because I think -- also,
 17 there is a difference of opinion.

18 CHAIRMAN MCDONALD: Isn't that a fundamental
 19 difference between that and the Gore decision?

20 MR. KENTON: Exactly. That is the fundamental
 21 difference. The Staff has taken the position because these
 22 are separate events and not integrated, that it doesn't
 23 count.

24 And I don't say that that is an unreasonable
 25 position if you apply it across the board and in other

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1 places. It just seems to me we ought to be uniform.

2 CHAIRMAN MCDONALD: I understand. Let me ask my
3 colleagues:

4 Does anyone else have any other questions?

5 (Counsel conferring.)

6 CHAIRMAN MCDONALD: Commissioner Thomas.

7 COMMISSIONER THOMAS: Just one quick question.

8 MR. KENTON: Excuse me for one moment, please.

9 (Counsel conferring.)

10 MR. KENTON: If I might just make sure that I
11 understand -- that you understand what I just said.

12 When you talked about the phone call being
13 separate from the follow-up and I said that it wasn't
14 related to fund-raising, what I meant was that the message
15 didn't say fund-raising. It was directly related to fund-
16 raising because we followed up in 24 hours.

17 I didn't want to leave the impression that they
18 were just --

19 CHAIRMAN MCDONALD: I understood that. I know I
20 did understand it. We are genuinely not looking to pick at
21 nuances so that we can figure out a difference.

22 The real question, and I think that is what
23 Commissioner Josefiak was talking about, is how these things
24 evolved to begin with.

25 And it has been since day one, no one knows

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1 better than Commissioner Aikens that it has been an evolving
 2 process, and always will be. But how that process
 3 culminated in relationship to the Gore matter is something
 4 that I just wanted to be sure everybody took into account,
 5 particularly vis-a-vis this because it is like any other
 6 aspect of the law.

7 I am not a lawyer. Lawyers always kind of take
 8 advantage of me, b t --

9 MR. KENTON: I can tell.

10 CHAIRMAN MCDONALD: There are differences and
 11 there have to be differences because if there is not, well,
 12 I don't suppose we would be sitting and you wouldn't be
 13 employed. And now that I find out you give advice for free,
 14 I will be getting with you later on other matters.

15 Commissioner Thomas.

16 Let me point out one other thing, an example you
 17 made, because I think it is important. I think it was Larry
 18 Noble who said, "Well, what would the bright line be?" And
 19 we were talking about the follow-up to that initial call,
 20 and you thought maybe seven days would be acceptable, which,
 21 by the way, is probably as good as any other certainly.

22 But I think it demonstrates the problems that you
 23 have in this process.

24 I want to assure you that we take every election
 25 process and try to double back, as the Vice-Chairman pointed

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1 out, were always coming up, and I think that is just the
 2 nature of regulation. I don't think it will ever change. I
 3 don't think it makes any difference whether it is this
 4 agency or any place else.

5 But we are always trying to determine those kinds
 6 of things. And I can assure you we have some very spirited
 7 discussions because seven days is reasonable and it is
 8 particularly reasonable. And I really appreciate your
 9 candor.

10 It is particularly reasonable if it applies to
 11 you. And it is the dispute. It is 14 days if it applies to
 12 me.

13 And I didn't get mine out for whatever reason
 14 We did bad in the polls. We didn't get the follow-up money
 15 to make the -- to pursue the solicitation, et cetera, et
 16 cetera. And it may be 30 days for somebody else.

17 And all I am suggesting to you is I think what
 18 you know in this process is that we are always trying to
 19 come to grips with those things. And the point that
 20 Commissioner Josefiak made early on is one that I really do
 21 think is very good.

22 The more we clear it up for the general public
 23 and practitioners the better off we are. Is a position I
 24 have had since day one, I think you do, as Commissioner
 25 McGarry said, you take yourself out of the process, right or

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1 wrong, of people perceiving that you have become arbitrary.
 2 And that was the purpose, I might say, at least in our point
 3 of view in relation to the Gore matter.

4 MR. KENTON: I think you're right on the money,
 5 Mr. Chairman. My point is, you say it is seven or 14 days.
 6 As long as I am under, it is fine. But, if you knew that it
 7 was seven, or if you knew it was 14 ahead of time, then you
 8 could --

9 CHAIRMAN MCDONALD: Absolutely.

10 MR. KENTON: You could act accordingly. You knew
 11 the rule. It was a clear rule. It is arbitrary,
 12 nonetheless. But, as I said earlier in response to
 13 Commissioner Josefiak, arbitrary clear rules are far better
 14 than to go through the process I have been through for the
 15 last few months on arguing about \$23,000 plus a fine.

16 CHAIRMAN MCDONALD: I want to thank you for
 17 coming today. It has been very helpful. It is important
 18 that we have these kinds of forums.

19 We urge you to take this issue forward to the
 20 Congress. And let me point out that you could not do worse
 21 than we have done. So, if you get no action at all, you
 22 will be even with us. If you get some action, we will
 23 forever be in your debt.

24 And if you would have some closing remarks you
 25 would like to make, we welcome them.

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MR. KENTON: Very briefly, I did want to point out one other thing. And that is that there's another subpoena that we are facing at this moment for cancelled checks for all of these payments to vendors, plus all of our records again, because the calculations in here may not be quite accurate.

I stipulate to the calculations. I would ask the Commission if it would not want to consider we don't have the money to photocopy all of those cancelled checks. There is no indication -- they've got our ledger records and our worksheets. There's been no indication that our cancelled checks are different than the ledger records. We are not that kind of people.

There has been no indication that we are. Without asking you, sir, to make a decision today, I would ask if there is some way that somebody can't reconsider that subpoena that is outstanding.

I will stipulate to any number you want me to stipulate to. And -- for the audit stuff. Don't make me go back and photocopy all of those checks. They are boxed up. They are gone away.

It will cost thousands and thousands and tens of thousands of dollars. And I'm not arguing the numbers. They are reasonable numbers.

And so I would like to make that request.

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1 And, finally, for members of the Commission, what
2 I have tried to imply here is to say that I think this, as I
3 said to Ms. Aikens earlier, this is a close call. We
4 understand it.

5 And I think that you can give us the benefit of
6 the doubt, if you will, without locking yourself into
7 something. If you're going to make a rule on regulation in
8 the future, and particularly I feel that about a fine,
9 whatever repayment decision you come to, it is my
10 understanding there is an automatic fine that follows. And
11 I just think that would be really -- I beg you to really
12 consider that carefully.

13 But, overall, as I say, I think that whether it
14 is in this 42,000 contributions -- 51 checks back that we're
15 late, it seems to me if there were another rule,
16 Commissioner Josefiak, it ought to be that if you are 99
17 percent compliant with everything, you ought to get a pass.

18 And somebody ought to have the authority to do
19 that.

20 CHAIRMAN MCDONALD: Particularly if you're in the
21 99 percent.

22 MR. KENTON: Particularly if you're in the 99%.
23 That is a good rule, 99 percent, you ought to get a pass.

24 CHAIRMAN MCDONALD: I understand. I understand.
25 We get some news at home.

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We thank you very much. We appreciate it.
 MR. KENTON: Thank you for your attention.
 CHAIRMAN McDONALD: The meeting is adjourned.
 (Whereupon, at 11:48 a.m., the meeting was
 adjourned.)

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August 11, 1989

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VIA TELECOPY/FEDERAL EXPRESS

Kim L. Bright-Coleman, Esquire
Special Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Suite 637
Washington, D.C. 20463

RE: Pete du Pont for President, Inc.

Dear Kim:

This letter is to comply with the outstanding subpoena issued by the Federal Election Commission to Pete du Pont for President, Inc. as such subpoena has been modified and amended pursuant to our recent conversation and my letter of August 1, 1989. We respond to the two outstanding requests as follows:

A description of the allocation of postage costs for the telemarketing program for Iowa and an explanation as to the use of outside vendors for the telemarketing program is attached herewith as Exhibit A.

I hope this is responsive to the most recent subpoena, and I look forward to the ruling of the Federal Election Commission with respect to the outstanding issues. To insure readability of our response, I am Federal Expressing an extra copy for arrival in your offices Monday morning.

ATTACHMENT 7.7

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89 AUG 15 PM 12:55

Kim L. Bright-Coleman, Esq.

-2-

August 11, 1989

Once again, I wish to thank you and the members of your staff for your continuing courteous, professional and helpful assistance in this matter.

Very truly yours,

Glenn C. Kenton

Glenn C. Kenton

GCK/lg

Enclosures

DICTATED BUT NOT READ DUE TO MR.
KENTON'S ABSENCE FROM THE OFFICE

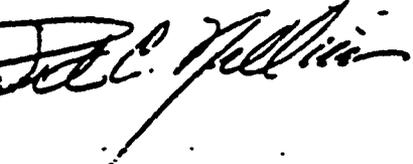
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Attachment III, page 2

EXHIBIT A

DATE: August 10, 1989

TO: Kim Bright-Coleman, Esquire
Special Assistant General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

FROM: Peter C. Nellius, Controller
Pete du Pont for President Inc. 

RE: Response to amended subpoena

The following is in response to your request for subpoenaed information as amended by your telephone conversation with Glenn Kanton on August 1 and recounted in his letter to you of that same date:

1. Description of the allocation of postage costs for the telemarketing program for Iowa.

Postal expenses relating to the telemarketing program were incurred on the campaign's postage meter (vendor RHR). The supervisor of the telemarketing program reported total counts of letters sent on a monthly basis. These counts were multiplied by the appropriate postage rate to determine the amount to be allocated against the Iowa limitation. Attached are examples of the workpapers used by our accounting staff to prepare the telemarketing allocation. While the workpapers for some months were ruined by water damage, our methodology was consistent for each period and we believe you may already have copies of these workpapers in your files.

2. An explanation as to the use of outside vendors for the telemarketing program.

Outside vendors were not directly used to prepare the mailings for the telemarketing program. These were designed and printed in house by campaign staff. However, there were indirect costs with regard to the software changes necessary to print the packages. These software changes were made by Systems Services, Inc. (noted as SSI in the audit team's workpapers) and these costs were fully identified during the audit.

The other direct mail efforts for the campaign were handled primarily by two firms, Hansen/Hendrix Inc. and the Richard Norman Company. These vendors handled the bulk of our direct mail effort but were unrelated to the telemarketing program. There was one instance in which a direct mail piece of a political nature was done in Iowa. It was not done as a telemarketing effort however. This mailing was actually done from Iowa, mailed from an Iowa location, and all costs associated with this mailing were allocated against the Iowa limit as a part of the Iowa office budget, not the telemarketing program budget.

I hope that you will find this addresses your questions regarding our telemarketing operations in full. If I have been incomplete in satisfying your requirements in any way, please contact me immediately.

Attachment VII, page 3

ad 11/4/87

Pli de Post fu Panch
10/87
Coffers/Posty EVER AUCORIN 1 of 2

IOWA Allocation

AUCORIN FOR PANCH BANK
PANCH ACTIVITIES

10/1/87 - 10/31/87

3 full shifts of 25 operators
4 1/2 hrs/shift.

weekend	1 shift @ \$6/hr	$146 \times 4 \times 25$	945
weeknight	2 shift @ \$5/hr	$2 \times (5 \times 4 \times 25)$	1525

Travel Survey	2520
ER FICA @ .0715	180.18

16,445 @ .22¢ Postage 3,551.90

Survey	changed directly 15..
Telephone	795.85

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Attachment III page 4

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P.P. in Payment
 Office Dis. even Payment by

Total Allocation			
Allow for Phone Bank Political Activities		11/1/87 - 10/30/87	
Coffee/Receptions		4 shifts	
5th Dist. Political Evad		2 shifts	
		Total 6 shifts	
6 full shifts of 35 operators @ 4 1/2 hrs shift			
Weekend 2 shifts @ 4 1/2		2 (6 x 4 1/2 x 35)	1590
Weekend 4 shifts @ 4 1/2		4 (6 x 4 1/2 x 35)	3180
		Total Salary	5770
		ER FICA @ 5.7%	328
		Total Payroll	5442
		Reserve	5,212 x .185 = 604
			13,214 x .122 = 1612
			1916
			157

* 135 @ 17 1/2 hrs
 phone charge 1/2 charged off

Working in Peru
 12/57
 Total Allocation in [unclear]

Total Allocation			
Allocation for Peru	12/1/57 - 12/31/57		
Perkins Allocation			
Rolling/Coffee/Almonds	400 quarters		
Total Tobacco Per 5	592 quarters		
$490 / 592 = 519$			
Total Per 5	12/1/57	450000	
Perkins	42000		
		237000	
Perkins	1950 @ 12/57	23100	
Supply (Perkins)			
		23100	

89070164641

D/F:

[Handwritten notes and scribbles, mostly illegible]



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Glenn C. Kenton, Esq.
Richards, Layton & Finger
One Rodney Square
Wilmington, Delaware 19899

Dear Mr. Kenton:

The Commission has considered the responses filed on behalf of Pete du Pont for President, Inc. to the Commission's initial repayment determination contained in the Report of the Audit Division on Pete du Pont for President, Inc. issued on March 9, 1989. On December , 1989, the Commission made a final determination that Governor Pierre S. du Pont and Pete du Pont for President, Inc. must repay \$25,775.49 to the United States Treasury.

Enclosed is a Statement of Reasons in support of the Commission's final determination as required by 11 C.F.R. § 9038.2(c)(4). Judicial review of the Commission's determination is available pursuant to 26 U.S.C. § 9041.

Please note that, under 11 C.F.R. § 9038.2(d)(2), repayment must be made within thirty (30) days from the date of service of this notice. The payment should be sent to the Commission, but made payable to the United States Treasury.

Sincerely,

Danny L. McDonald
Chairman

Enclosure
Statement of Reasons



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Frank A. Ursomarso, Treasurer
Pete du Pont for President, Inc.
P.O. Box 1988
Rockland, Delaware 19732

Dear Mr. Ursomarso:

The Commission has considered the responses filed on behalf of Pete du Pont for President, Inc. to the Commission's initial repayment determination contained in the Report of the Audit Division on Pete du Pont for President, Inc. issued on March 9, 1989. On December , 1989, the Commission made a final determination that Governor Pierre S. du Pont and Pete du Pont for President, Inc. must repay \$25,775.49 to the United States Treasury.

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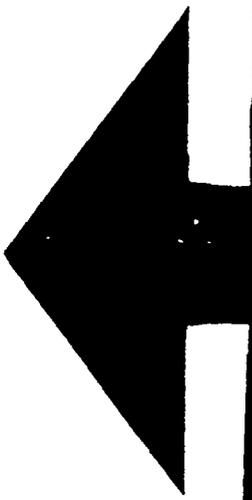
Sincerely,

Danny L. McDonald
Chairman

Enclosure
Statement of Reasons

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FEC
DOCUMENT
SEPARATOR

