



FEDERAL ELECTION COMMISSION

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WASHINGTON, D.C. 20543

April 11, 1994

MEMORANDUM

TO: RON HARRIS, CHIEF
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Attached please find a copy of the final audit report and related documents on 1992 Democratic National Convention Committee, Inc. which was approved by the Commission on March 10, 1994.

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

Attachment as stated

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

REPORT OF THE AUDIT DIVISION
ON

**1992 Democratic National Convention
Committee, Inc.**

Approved March 10, 1994



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

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REPORT OF THE AUDIT DIVISION
ON

**1992 Democratic National Convention
Committee, Inc.**

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999 E STREET, N.W.
WASHINGTON, D.C.

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FINAL AUDIT REPORT
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

EXECUTIVE SUMMARY

The 1992 Democratic National Convention Committee, Inc. (the Committee) registered with the Federal Election Commission on June 14, 1991. The Committee was created for the purpose of conducting the 1992 Presidential nominating convention of the Democratic Party. The Committee received \$11,048,000 in federal funds for this purpose.

The Audit was conducted pursuant to 26 U.S.C. §9008(g).

The findings of the audit were presented to the Committee at an exit conference at the conclusion of the Audit fieldwork and after a follow-up visit to Committee headquarters. The Committee received an interim audit report that was approved by the Commission on July 27, 1993. Subsequently, the Committee was provided opportunities to respond to the findings contained in the interim audit report. Comments and information received from the Committee have been included in the final audit report.

The final audit report requires the Committee to repay \$38,163 to the U.S. Treasury.

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

Failure to Itemize Debts and Obligations - 2 U.S.C. §434(b)(8) and 11 CFR 104.11(a). Committees are required to list selected debts on each disclosure report. No debts were listed on the Committee's disclosure reports. The audit identified 138 debts totaling \$660,399 that required disclosure. In response to a recommendation in the interim audit report, the Committee filed schedules disclosing the debts.

Excessive Contributions From Staff - 11 CFR 116.5. Funds for travel and other expenses advanced by individuals and subsequently reimbursed by a committee are contributions by the person paying the expenses unless specifically exempted by the Commission's regulations. The audit found that two Committee staff members made such advances in material amounts. All of

the advances were later reimbursed by the Committee. Because the advances were not exempt from the definition of contribution, they constituted impermissible contributions, totaling \$15,418. In response to the interim audit report the Committee argued that it shared the National Committee's \$20,000 annual limitation on contributions from individuals and that, the contributions were permissible. The audit report rejected this argument because convention committees that receive full federal funding may not accept any contributions.

Improper Use of Funds - 11 CFR 9008.6(b)(1), (2) and (4) and 9008.10(d). This section of the report deals with funds that were not expended on qualified convention expenses. These expenditures fall into four categories. Each is discussed below.

1. Misappropriation of Committee Funds - The Committee discovered that an employee had misappropriated \$5,000. When discovered, the employee was dismissed and steps were taken to recover the funds. Since the \$5,000 was recovered, the audit report does not recommend a repayment to the U.S. Treasury.

2. Candidate Expenses - The Committee is not permitted to use federal funds to pay the expenses of any candidate who participates in the Convention. The audit identified a \$30,000 payment for part of the production costs of a biographical film about President Clinton, which was shown at the Convention immediately preceding the President's acceptance speech. The interim audit report classified this payment as an impermissible payment of candidate expenses. The Committee argued that it could have paid the entire production cost as a convention expense since the film was shown during the convention and the payment was not for the candidate's personal expenses. Further, the Committee argued, that the payment was necessary to avoid a contribution from the owner of the film, Clinton For President, Inc. The Audit Division rejected these arguments because (1) the showing of the film benefited President Clinton, (2) the timing of the film alone does not determine whether it is a convention expense, and (3) the prohibition against paying candidate expenses is not limited to personal expenses. On the other hand, the Commission acknowledged that, in part, the Convention legitimately serves as a vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.

3. Parking Violations - The Committee paid New York City parking violations totaling \$5,676. These are not expenses that may be paid with federal funds. In response to the interim audit report, the Committee acknowledged its obligation to make a \$5,676 repayment to the U.S. Treasury.

4. Post Convention Purchases - As a result of follow up work done after the interim audit report was issued, a number of expenditures were identified that were not considered permissible convention expenses. Included were \$20,431 in gifts for senior staff and party leaders reported as office supplies and printing. Also, the Committee paid \$10,000 in consulting expenses for a study of the role of African Americans in the 1992 Democratic Convention to be presented to the Democratic Party for its archives. With respect to the gifts the Committee argues that it is standard practice. Nothing beyond a copy of the report was presented for the consulting payments. After discussion of this matter, the Commission allowed gifts valued at \$150 or less as commemorative items of nominal value. These total \$2,626. The final audit report contains an initial determination that amounts totaling \$27,805, are repayable to the U.S. Treasury.

Unspent Funds - 11 CFR 9008.10 e . If any portion of the federal grant remains unspent after all expenses are paid, the unspent portion must be returned to the U.S. Treasury. The Committee has \$3,872 in unspent funds.

Stale Dated Committee Checks - 16 U.S.C. §9008(h) and 11 CFR 9007.6. The sum of any checks issued by the Committee that are not cashed by the payees must be paid to the U.S. Treasury. The Committee has two such checks totaling \$810.

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REPORT OF THE AUDIT DIVISION
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the 1992 Democratic National Convention Committee, Inc. (the Committee), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

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

B. Audit Coverage

The audit covered the period July 2, 1991, the date the Committee opened a bank account, through September 30, 1992, the final coverage date of the most recent report filed at the time of the audit. In addition, financial activity that occurred beginning in 1989, and was paid by the Democratic National Committee and subsequently reimbursed by the Committee, was included in the audit as well as certain financial activity through February 8, 1994 to determine any amounts due to the United States Treasury. During the period, the Committee reported an opening cash balance of \$-0-, total receipts of \$11,233,088, total disbursements of \$10,732,803, and a closing cash balance on September 30, 1992 of \$500,284.

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C. Campaign Organization

The Committee registered with the Federal Election Commission on June 14, 1991, as the national convention committee of the Democratic Party. The Treasurers for the period audited were Robert A. Farmer from June 14, 1991 to September 11, 1992, and the Honorable Robert T. Matsui from September 11, 1992 to the present.

During the period audited, the Committee was headquartered in Washington, D.C., but for a portion of the period an office was also maintained in New York City. The current office is in Washington, D.C.

To handle its financial activity, the Committee had a general account from which most disbursements were made, a payroll account, and three deposit accounts used to hold federal funds. The Committee made approximately 5,000 disbursements.

The Committee was paid \$11,048,000 in federal funds. This represents the full entitlement established at 26 USC 9008(b).

D. Audit Scope and Procedures

The audit included a review of the following general categories:

1. The Committee's compliance with statutory limitations with respect to the receipt of contributions and loans (see Finding II.B.);
2. The Committee's compliance with the statutory requirements regarding the receipt of contributions from prohibited sources, such as those from corporations and labor organizations;
3. The itemization and proper disclosure of receipts, as well as the completeness and accuracy of the information disclosed;
4. The itemization and proper disclosure of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. Proper disclosure of the Committee's debts and obligations (see Finding II.A.);
6. The accuracy of total reported receipts, disbursements, and cash balances as compared to Committee bank records;
7. Adequate recordkeeping for Committee transactions;

8. The Committee's financial position with respect to any unexpended funds (see Finding III.B.7);
9. The Committee's compliance with requirements concerning expenditures for convention expense (see Finding III.A.1);
10. The Committee's compliance with spending limitations (See Finding III.B.1); and,
11. Other audit procedures that were deemed necessary in the situation.

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

As part of the Commission's standard audit process, an inventory of the Committee's records was conducted prior to the beginning of fieldwork to determine if the records were materially complete and in an auditable state. The Committee's records were materially complete and, by agreement with the Committee, audit fieldwork commenced immediately.

II. Findings and Recommendations - Non-Repayment Matters

A. Reporting Requirements - Failure to Itemize Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code states, in relevant part, that the amount and nature of outstanding debts and obligations owed by or to such political committee shall be reported.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. Section 104.11(b) states, in relevant part, a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

The Committee reported no debts or obligations on their FEC disclosure reports. A review of disbursements revealed 138 items over \$500, totaling \$660,399, that should have been reported as debts.

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The majority of these items should have appeared on the Post Convention report covering the period from July 1, 1991 to August 31, 1992. The Committee explained that many of these expenses were outstanding beyond the close of the reporting period because the bills had been sent to a temporary office set up in New York during the convention. These bills were then forwarded to the Washington office along with other mail and therefore processing was delayed. The Committee explained that the remaining obligations which should have appeared on Schedules D in the July and October 1992 Quarterly reports were the result of delayed billings or were held pending authorization from the New York Host Committee. At the exit conference, the Committee was given a schedule of debts and the period in which they should have been reported.

In the Interim Audit Report the Audit staff recommended that the Committee file amended Schedules D (Debts and Obligations) for each period in which debt should have been reported. In response to the Interim Audit Report the Committee filed Schedules D for each relevant reporting period. These schedules contained all debts that were noted during the audit as missing from the Committee's disclosure reports.

B. Excessive Contributions From Staff

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

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

Section 9008.b of Title 26 of the United States Code states that "the Commission shall have the same authority to require repayments from the national committee of a major or minor party as it has with respect to repayments from any eligible candidate under section 9007 b."

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Section 9007 b of Title 26 of the United States Code lists the basis for repayment determinations for candidates for President of the United States who have accepted federal funding for their general election campaigns. Subsection 3 states that "if the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006 c to defray qualified campaign expenses ..., it shall notify such candidates of the amount of contributions so accepted, and such candidates shall pay the Secretary of the Treasury an amount equal to such amount."

The Committee's payments of expense reimbursements were reviewed to determine if contributions had been made. The review disclosed that persons were reimbursed for both their own travel and subsistence expenses as well as expenses for non-travel items and the travel and subsistence of other persons. Two persons, including the Committee's chief executive officer were determined to have made contributions totaling \$15,418 (see Attachment 1.) At the time of the audit, no expense reimbursement requests were outstanding. At the exit conference, the Committee was advised of this finding. The Committee made no comment.

In the Interim Audit Report the Audit staff recommended that the Committee either demonstrate that no contributions occurred with respect to these expense reimbursements, or offer any other information that is believed to be relevant to the issue.

In response the Committee offered two arguments as to why these contributions are permissible. First, the Committee argues that the contributions resulting from the staff advances were within the contribution limitations of the Act. The Committee reasons that "an individual may contribute up to \$20,000 per calendar year to the 1992 Democratic National Convention Committee. The Committee is 'established and maintained by' the Democratic National Committee ('DNC'), within the meaning of 2 U.S.C. §441a(a)(1)(B), and is indisputably a political committee 'established, financed, maintained, or controlled by' the DNC within the meaning of 11 C.F.R. §110.3(b)(1)." The Committee also notes the Commission's Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions. In that Notice the Commission asks for public comment on the subject of a contribution limitation for convention committees for the purpose of staff advances in future election cycles. The Committee concludes that it shares the DNC's \$20,000 contribution limitation and since the staff advances noted in the interim audit report were less than \$20,000 per person the advances were permissible.

As noted above 26 U.S.C. §9008.6 refers the reader to section 9007(b) for repayment authorities with respect to convention committees. That section, at subsection (3) states that any contribution received may result in a repayment determination. That language clearly establishes that convention committees who accept their full entitlement are not permitted to accept contributions in any amount. The Committee received their full entitlement and thus was not permitted to receive any contributions.

Second, the Committee argues that it did not accept or retain any contribution that would require repayment. The Committee argues that since the reimbursements were made, and no amounts are outstanding from any of the travel reimbursements that generated the contributions, no repayment is necessary. It is noted that the Interim Audit Report made no recommendation that a repayment be made. Rather, what was requested was information to show that the contributions resulting from the staff advances noted were permissible. No such information has been provided.

III. Findings and Recommendations - Repayment Matters

A. Improper Use of Funds

Section 9008.6(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that no part of any payment made under 11 CFR §9008.8 shall be used to defray the expenses of any candidate, delegate or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention.

Section 9008.6(b)(2) of Title 11 of the Code of Federal Regulations states that, "public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the state in which such expense is incurred or paid, or any regulation prescribed under federal or State laws."

Section 9008.6(a)(4) of Title 11 of the Code of Federal Regulations states in, relevant part, that convention expenses include all expenses incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention related activities.

Section 412(b)(1) states, in relevant part, if the Commission determines that any amount of any payment to the convention committee under 11 CFR 9008.6 b was used for any purposes other than the purposes authorized at 11 CFR 9008.6, it shall notify the national committee of the amount improperly used and such national committee shall pay to the Secretary an amount equal to the amount specified.

1. Misappropriation of Committee Funds

During the reconciliation of the Committee's bank records to the disclosure reports, an unexplained and undocumented \$5,000 adjustment was noted on the Committee's September 1992 cash reconciliation. The Audit staff inquired about the item and Committee officials explained that the amount represented a recovery of funds misappropriated by an employee. The employee was part of the Committee's accounting staff who, when the supervisor was traveling, had access to the Committee's blank check supply. The employee forged a signature on four checks and negotiated them. When the Committee discovered the problem, the checks were presented to the bank. The bank was able to collect the funds from the individual and credit the Committee's account. The individual was immediately terminated when the discovery was made. The Committee feels that because of the circumstances and the satisfactory resolution of the matter, their responsibility in the incident is negligible.

Since the improperly used funds have been recovered by the Committee, in the Interim Audit Report the Audit staff recommended no further action be taken in this matter. The Committee's response contained no further information.

2. Candidate Expenses

On July 16, 1992, prior to President Clinton's speech accepting the Democratic nomination for President, a film on President Clinton's life was shown at the Convention and was available for broadcast by several television networks as part of the television coverage of the proceedings.

The film was produced through Great American Media, Inc. The Committee made four payments to the firm. The Interim Audit Report explained that two of the four payments were apparently for production of the biographical film. The invoice for production costs related to the film was submitted by Great American Media, Inc. and addressed to the Democratic National Committee. It was paid in two installments, \$30,000 on July 7, 1992 and \$35,000 on September 9, 1992. One invoice refers to the production as the "Bill Clinton Story". The other two payments are for \$5,490 and \$18,880 described as the cost of producing the live vignettes out of Seattle, WA and Charleston, SC for Tuesday

of the Convention, and Great American Media, Inc. work, travel, and payment of talent relating to Monday's delegate stories and video wall, respectively. Both of these invoices are addressed to "Alexis Herman, DNC" Democratic National Convention Committee. Alexis Herman was the Committee's chief executive officer. These do not appear to be related to the production of the biographical film.

During the Audit of the Clinton for President Committee (CFP), it was learned that CFP also made payments to Great American Media, Inc. for the production of this film. On July 22, 1992, CFP paid \$35,000 associated with the same invoice described above. It therefore appeared that this amount was paid by both Committees. On September 4, 1992, CFP paid \$122,237 in response to an invoice that showed a total production cost for the film of \$188,237 with an outstanding balance due of \$122,237. The difference is \$65,000, the amount billed to the Committee. Also on September 4, 1992, CFP paid \$1,591 on an invoice for additional production charges for the convention film not included on the earlier invoices, and finally on August 25, 1992, CFP paid an administrative charge of 2% on the \$122,237 invoice as provided in the contract with Great American Media, Inc. This amount was \$2,445.

The Interim Audit Report concluded that the total cost of producing the Convention film appeared to have been \$191,273 with the Committee paying \$65,000 and CFP paying \$161,273. These individual amounts included the \$35,000 apparently paid by both committees.

The Interim Audit Report also noted that the Committee had received a \$22,250 refund check dated September 25, 1992 from Great American Media, Inc. The refund was recorded as a credit to the Committee's video production general ledger account, but available documentation did not provide a detailed explanation of the reason for the refund.

Given the above, at the time of the Interim Audit Report it appeared that the Committee had expended \$65,000, potentially less a \$22,250 refund, for the production of a film which constituted an expense of a candidate attending the convention and was therefore a non-qualified convention expense.

The recommendation in the Interim Audit Report requested the Committee to:

- a. Provide documentation from Great American Media, Inc. to demonstrate the reason for the \$22,250 refund received; and

demonstrate why the partial payment for the production of a biographical film about President Clinton should not be considered an expense of a candidate attending the convention and as such, a non-qualified convention expense.

The Committee was advised that, absent these demonstrations the Audit staff would recommend that the Commission make an initial determination that \$65,000 is repayable to the U.S. Treasury.

With respect to the apparent duplicate payment, the Committee explains that the September 9, 1992 payment of \$35,000 was made in error. When the error was discovered there was also an unpaid invoice in the amount of \$12,750 that was unrelated to the biographical film. The erroneous payment was applied to the outstanding invoice and the difference, \$22,250, was refunded by Great American Media. A copy of the \$12,750 invoice was provided with the response. Therefore, the Committee paid only \$30,000 of the cost of the film.

By way of background, the Committee states that the film was originally to be produced solely for use at the Convention and the production costs were to be paid entirely by the Committee. The Committee goes on to state that during the convention week, CFP decided that it wished to own the rights to the film and to control any after convention use^{1/}. The media firm was notified and all rights to the film were transferred to CFP and CFP was billed for all remaining production. No supporting documentation, such as contracts, to support this explanation were included with the response.

The Committee puts forth two arguments concerning its payment of the \$30,000 in production costs.

First, the Committee argues that it could have lawfully paid the entire production cost of the film as a convention expense; and, second, the Committee paid a reasonable portion of the cost of producing the film to avoid accepting an unlawful or repayable contribution from CFP resulting from an otherwise uncompensated use of a CFP asset.

^{1/} The Audit Staff has learned that a revised version of the biographical film was aired by the Democratic National Committee during the week of August 16-20, 1992 as a 2 USC 441a(d) coordinated expense and by the Clinton Gore '92 committee during the week of October 9-12, 1992.

With respect to the first point the Committee argues that since the film was shown during, and as part of the Convention proceedings, the cost of producing the film is an expense for the purpose of conducting the Convention and therefore a permissible use of the public grant. The Committee also argues that production costs of the film do not constitute expenses of a candidate within the meaning of 26 USC §9008(c).

The argument that showing the film during the Convention establishes the production costs as a permissible use of Federal funds was not convincing to the Audit Division. In the view of the Audit Division, to follow such an argument would lead to the conclusion that any expense for any goods or services used during the Convention proceedings is a permissible convention expense regardless of the purpose of that expense. As noted above, Section 9008.6(a)(4) of the Code of Federal Regulations defines a convention expense as those incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention. The section then goes on to present a non-exhaustive list of the type of expenses that are included. Although the list presented in the regulation is not meant to be all encompassing, it could be argued that none of the expenses listed suggested that any expense may be candidate specific. Nonetheless, the Commission decided that a portion of the production cost of a biographic film about the party's nominee presented to the Convention, after the nomination has occurred, and made available for broadcast to television networks as part of their Convention coverage, would fall within the 9008.6(a)(4) standard of a proper Convention expense "for the purpose of conducting a presidential nominating convention."

The argument that "expenses of any candidate" as used in 26 USC §9008(c) includes only expenses such as housing, travel, and subsistence was likewise not convincing to the Audit Division. The Committee reasons that given 11 CFR §9008.7(e) states that expenses paid by a candidate for the purpose of attending or participating in the Convention do not count against the National Committee's expenditure limitation, therefore, the only types of convention related expenses that the National Committee may not pay for a candidate with the Federal grant are expenses for housing, travel, and subsistence. Though the Audit Division agreed that such expenses are likely to be the most common examples, the language at 26 USC §9008(c) suggests no such limitation. That section states that "No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention." Neither the plain language of the statute, nor the legislative or regulatory history of this provision, nor the corresponding regulation, suggests the narrow interpretation argued by the Committee.

The Committee's second argument, that the \$30,000 payment to the media firm for production costs of the film was compensation to CFP for the Committee's use of the film at the convention, and was necessary to avoid a contribution to the Committee from CFP^{2/}, depends on the first argument being accepted.

However, even if the first argument is accepted, in the view of the Audit Division, it does not follow that the payment was necessary to avoid a contribution from CFP to the Committee. The Audit analysis suggested that if after the convention has made its nomination, and prior to the candidate's acceptance speech, the Committee agrees to show convention attendees a biographical film produced by its nominee at a time when it would be available for broadcast by a number of television networks, doing so is an accommodation to the party's candidate rather than a contribution from the candidate. The Audit Division believes that under any other circumstances a candidate would expect to purchase air time to broadcast a film to a large audience rather than expect to be paid for the use of the film. On the other hand the Commission acknowledged that, in part, the convention legitimately serves as the vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.

The Audit staff recommended that the \$30,000 payment be considered a payment for expenses of a candidate participating in the Convention and repayable to the U.S. Treasury pursuant to 11 C.F.R. §9008.10(d). On March 10, 1994, the Commission considered this matter. It was determined that this payment would be viewed as a permissible Convention expense. In making this decision the Commission considered instances where candidate films were produced and shown at previous conventions, and the candidate specific nature of a convention when, as was the case in 1992, the nominee is known in advance of the Convention.

3. Parking Violations

During the review of disbursements made by the Committee, the Audit staff noted payments to the New York City Violations Bureau. An inspection of the Committee's vendor files revealed check requests, copies of Committee checks, and New York City parking tickets reflecting \$5,676 in payment of violations of New York City parking regulations.

2/ The Committee's response does not comment on the failure of both the Committee and CFP to report any in-kind transactions related to this \$30,000 payment. If at the time of the transaction, the payment to the media firm was considered to be in-kind compensation to CFP for the use of the film, reporting of the in-kind nature of the transaction would have been required by both Committees.

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In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the payments do not represent an improper use of public funds. Absent such a showing, the Committee was informed that it would be recommended that the Commission make an initial determination that \$5,676 is repayable to the United States Treasury pursuant to 11 CFR §9008.10(d).

In its response to the Interim Audit Report, the Committee agreed "that payments for parking tickets do not represent an allowable use of the public grant and, accordingly, will repay to the United States Treasury the sum of \$5,676 within 90 days of the date of the Commission's July 29, 1993 letter in accordance with 11 C.F.R. § 9008.10(g)." No such payment has been received.

Recommendation #1

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$5,676 pursuant to 11 CFR §9008.10(d).

4. Post Convention Purchases

In the Interim Audit Report it was concluded that the Committee had unspent funds totaling \$133,118. It was also explained that no allowance was made for the printing of the convention proceedings because the Committee had not provided any support for the estimate of those costs. The figures included in the Interim Audit Report were the result of the review of actual expenses and accounts payable through December 7, 1992 and estimated winding down costs of \$96,217. In its response to the Interim Audit Report the Committee submitted a revised calculation of its financial position including actual receipts and disbursements through September 3, 1993. The unspent funds shown by the Committee total \$1,289³/. In order to verify the Committee's calculation the Audit Staff visited the Committee's offices and reviewed the documentation for the disbursements made after the December 7, 1992 cutoff date. Discussed below are items that the Audit Staff recommends not be considered permissible uses of public funds.

a. Gifts

Payments to two vendors totaling \$20,431 were noted for gifts for various senior convention officials. One vendor was a Washington, D.C. jewelry store which was paid for items such as clocks, silver paperweights, silver boxes, and

³/ The Committee revised this calculation in follow up correspondence. See Finding III.B. and C.

silver serving trays along with engraving and shipping. The total bill was \$17,431 paid with four checks. The first was dated December 4, 1992 and was reviewed during the original fieldwork. That check was documented by a cash receipt which was not imprinted with the vendor's name and described the purpose as "Deposit On Printing Order Approx 14000". The Committee's year end disclosure report described the expense as "Office Supplies". An additional payment was made on December 17, 1992, and was also reported as "Office Supplies". Two payments were made on February 4, 1993, and reported as "Printing". When questioned about these items the Committee's representative said that it would be necessary to contact someone involved at the time. In a follow up conversation it was stated that such gifts were a standard convention procedure. In follow up correspondence the Committee reiterates its position and notes that in 1988 commemorative gavels were given to senior staff. The Committee also states that the expenditures were not questioned in the past.

The second vendor was an Architect who was paid \$3,000 on December 10, 1992, for an architectural model of the convention podium. The payment was described on the Committee's year end disclosure report as a payment for "Printing". The Committee has informed the audit staff that this model was also given as a gift.

Recommendation #2

The Audit staff recommended that the purchase of these gifts be considered an improper use of federal funds and repayable to the U.S. Treasury. The Commission considered this recommendation on March 10, 1994 and determined that some commemorative items of nominal value are to be expected as a normal expense for a presidential nominating convention, and that those gifts valued at \$150 or less would be permitted. These gifts account for \$2,626 of the \$20,431 questioned. Therefore, the Commission made an initial determination that \$17,805 in gift purchases represents an improper use of federal funds and is repayable to the U.S. Treasury pursuant to 11 CFR §9008.10(d).

b. Research Project

The Audit Staff reviewed a contract with an individual for consulting services for the months of November and December of 1992. The contract called for four payments of \$2,500 each but did not specify the services to be performed. This individual had not received previous payments from the Committee. When the review of post December 7, 1992, payments discussed above was conducted, the four payments were included. Three were made on December 15, 1992, and the fourth was made on January 4, 1993. The Committee was requested to provide a description of the services that were provided under this contract. In response it was explained that this individual was engaged to conduct a historical study for the DNC archives. According to a Committee representative, the report produced is entitled "The Role of

African-American Staff in the Convention and the DNC⁴. In the opinion of the Audit Staff this expense is properly paid by the National Committee but is not an expense for the purpose of conducting a presidential nominating convention or convention related activity and, therefore, may not be defrayed with public funds.

Recommendation #3

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$10,000 pursuant to 11 CFR §9008.10 d .

B. Statement of Financial Position

Section 9008(h) of Title 26 of the United States Code states, in part, that the Commission shall have the same authority to require repayments from the national committee of a major party as it has with respect to repayments from any eligible candidate under Section 9007(b).

In addition, 11 CFR §9008.10 (b) states that if the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR §9008.7(a), it shall notify such national committee of the amount of such excessive expenditures, and such national committee shall pay the Secretary an amount equal to the amount specified.

Section 9008.10(e)(1) of Title 11 of the Code of Federal Regulations states that if any portion of the payment under 11 CFR §9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

Finally, 11 CFR §§9008.10(g)(1) and (2) state, in part, that if the Commission determines that repayment is required, it shall give written notification of the amounts required to be paid and the reasons therefor; and the national committee shall repay to the Secretary, with 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee, the Commission may grant a 90 day extension of the repayment period.

As discussed above, the Interim Audit Report contained a calculation of unspent funds that showed a remaining balance of \$133,118. This calculation was based on a review of actual

4/ Subsequently a copy of the report was provided. The exact title is, African American Leadership of the National Democratic Party 1989-1992 Historical-Philosophical-Reflections.

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expenditures through December 31, 1992, accounts payable, accounts receivable, and estimated winding down costs. Excluded was an estimate of \$96,743 for printing the official proceedings of the Convention. This estimated amount was not considered due to the lack of any supporting documentation. In its response to the Interim Audit Report the Committee presented a revised calculation of the unspent portion of the public grant based on actual expenditures through September 3, 1993. The Committee concluded that unexpended funds were \$1,149 and that there were \$16,683 in stale dated Committee checks. This resulted in a total repayment of \$17,832.

Also, during the follow-up work noted above, actual expenditures for the preparation of the official proceedings were reviewed. These total approximately \$80,000 and are included as part of the winding down costs shown in the analysis presented below.

635-7019

Calculation of Financial Position and Spending Subject To The
Expenditure Limitation For The
1992 Democratic National Convention Committee, Inc.
as of December 31, 1992
Determined at September 3, 1993

ASSETS

Cash on Hand	\$	-0-	
Cash in Bank			
Operating at 12 31 92	\$154,989		
Payroll at 12 31 92	<u>5,486</u>		
Total Cash		\$160,475	
Add:			
Accounts Receivable and Capital Assets <u>a/</u>		<u>84,928</u>	
Total Assets			\$245,403

LIABILITIES

Disbursements for Convention Expenses and Winding Down Costs Through September 3, 1993 <u>b/</u>	234,290		
Accounts Payable	<u>7,241</u>		
Total Liabilities		<u>241,531</u>	
Remaining Federal Funds			<u>\$ 3,872</u>
Add: Expenses Constituting Improper Uses of Federal Funds (Findings III.A.) Included Above Not Applicable To The Spending Limitation			<u>33,482</u>
Spending Limitation Remaining			<u>\$ 37,353</u>

Notes To The Calculation of Financial Position and Spending Subject
To The Expenditure Limitation For The
1992 Democratic National Convention Committee, Inc.

a The Interim Audit Report contained estimates of \$49,099 for Accounts Receivable and \$27,342 for Capital Assets, for a total of \$76,441. Between December 8, 1992 and February 8, 1994 actual receipts from Accounts Receivable and the sale of assets were \$84,928.

b As of December 7, 1992, the Committee had recorded Accounts Payable of \$14,435 and estimated winding costs of down costs were \$81,782 excluding the cost of printing of the official proceedings. Between December 8, 1992 and February 8, 1994 the Committee's actual disbursements totaled \$234,290 including the cost of the proceedings and the majority of the impermissible expenses discussed above.

05 06 19 11 2 6

The financial position presented above shows that the Committee has unspent funds in the amount of \$3,872. Also, the amounts determined to be impermissible uses of the public grant noted as repayable to the U.S. Treasury in Finding III.A. above are not applicable to the spending limitation. Therefore, the amount remaining in the Committee's spending limitation is \$37,363.

Finally, as a result of the audit of the New York Host '92 Committee, there was, at the time of the Interim Audit Report, the possibility that \$135,500 in disbursements made by the Host Committee would be considered attributable to the Committee's spending limitation. These disbursements were made with funds that had been commingled with other moneys which did not meet the requirements of 11 CFR §9008.7(d)(3)(ii). The Interim Audit Report advised the Committee of the potential affect of these expenditures on its compliance with spending limitations and potential repayments. As a result of the New York Host '92 Committee's response to the Interim Audit Report resulting from that audit, it was determined that although the funds had been commingled as described, sufficient permissible funds were in the account when the expenditures in question were made. Therefore, it was determined that none of the expenditures will be attributed to the Committee's spending limitation.

Recommendation #4

The Audit staff recommends that the Commission make an initial determination that 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$3,872 in unspent funds pursuant to 11 C.F.R. §9008.10(e)(1).

C. Stale-Dated Committee Checks

Section 9008(h) of Title 26 of the United States Code states that the Commission shall have the same authority to require repayments from the national committee of a political party as it has with respect to repayments from any eligible candidate under section 9007(b).

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

As part of the Committee's response to the Interim Audit Report, a stale-dated outstanding check amount of \$16,683 is noted as repayable. This amount was verified to the audit workpapers. For a portion of these checks letters to the payees are included that inform the payee that unless action was taken by the payee within 14 days, the Committee would adjust its accounting records to show that no obligation existed.

In follow-up correspondence the Committee shows all of the checks to have been either voided or reissued. For the voided checks documentation has been submitted to support the Committee's action. A summary of the outstanding check amounts is shown below:

- ° 9 checks totaling \$6,019 were voided and replaced, and the replacement checks have cleared the Committee's account.
- ° 14 checks totaling \$9,670 were voided and a copy of the letter noted above was provided.
- ° 1 check for \$185 was found voided in Committee files. A copy was supplied.
- ° 2 checks totaling \$810 were reissued and are still outstanding.

Recommendation #5

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$810 representing the value of uncashed Committee checks.

IV. Repayment Summary

A. Improper Use Of Funds

1. Parking Violations III.A.3.	5,676
2. Post Convention Expenses III.A.4.	
Gifts (III.A.4.a)	17,805
Research Project III.A.4.b	10,000

B. Unspent Funds (III.B.) 3,872

C. Stale Dated Committee Checks (III.C.) 810

Amount Due to The U.S. Treasury \$38,163

Run Date: 07/01/1991
 Page: 10
 M/F: 10
 W/S: 10
 Amt: 10
 Retain: 10

W/S	W/S Cont	W/S Cont	W/S Cont	W/S	Exp	W/S	W/S Cont												
10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91	10/10/91
16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00
2011.75	2125.35	2141.35	2157.35	2173.35	2189.35	2205.35	2221.35	2237.35	2253.35	2269.35	2285.35	2301.35	2317.35	2333.35	2349.35	2365.35	2381.35	2397.35	2413.35
5	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6	6
02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92	02/20/92
161	161	161	161	161	161	161	161	161	161	161	161	161	161	161	161	161	161	161	161
16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00
1011.75	1125.35	1141.35	1157.35	1173.35	1189.35	1205.35	1221.35	1237.35	1253.35	1269.35	1285.35	1301.35	1317.35	1333.35	1349.35	1365.35	1381.35	1397.35	1413.35
16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00	16.00
1011.75	1125.35	1141.35	1157.35	1173.35	1189.35	1205.35	1221.35	1237.35	1253.35	1269.35	1285.35	1301.35	1317.35	1333.35	1349.35	1365.35	1381.35	1397.35	1413.35

W/S Name	W/S Cont No	W/S Cont Int Date	W/S Cont Int Die	W/S Cont Int Amt	W/S Amt	Exp Date	W/S Date	W/S Day	W/S Amt	W/S Cont Amt	W/S Cont Amt	W/S Run Amt	W/S Advance Amount	W/S Amt
Anne Bergold	6 01/09/92	01/09/92		7 50	144 25	5	08/06/92	150	1 50	8 50	8 50	8 50	14 09	
	6 01/09/92	01/09/92		8 50	152 75	5	08/06/92	150	8 50	8 50	8 50	16 14	5 74	
	6 01/10/92	01/10/92		9 25	162 00	5	08/06/92	149	9 25	9 25	9 25	17 49	6 24	
	6 01/10/92	01/10/92		5 00	167 00	5	08/06/92	119	5 00	8 11 00	8 11 00	18 99	16 99	
	6 01/10/92	01/10/92		9 50	176 50	5	08/06/92	128	9 50	8 21 50	8 21 50	19 75	16 75	
	6 01/11/92	01/11/92		1 75	180 25	5	08/06/92	128	1 75	8 19 75	8 19 75	20 00	17 25	
	6 01/11/92	01/11/92		5 75	186 00	5	08/06/92	127	5 75	8 14 00	8 14 00	20 75	17 75	
	6 01/11/92	01/11/92		99 25	86 75	1	08/06/92	121	0 00	9 13 25	9 13 25	21 25	18 25	
	6 01/11/92	01/11/92		10 99	125 24	4	08/06/92	119	10 99	8 14 26	8 14 26	21 75	18 75	
	6 01/09/92	01/09/92		1 50	128 24	5	08/06/92	119	1 50	8 16 76	8 16 76	22 25	19 25	
	6 01/09/92	01/09/92		46 01	175 25	6	08/06/92	119	46 01	8 24 75	8 24 75	22 75	19 75	
	6 01/15/92	01/15/92		4 50	179 75	5	08/06/92	113	4 50	8 20 25	8 20 25	23 00	19 00	
	6 01/11/92	01/11/92		26 00	205 75	5	08/06/92	101	26 00	7 94 25	7 94 25	23 25	19 25	
	6 01/11/92	01/11/92		11 00	216 75	5	08/06/92	101	11 00	7 83 25	7 83 25	23 75	19 75	
	6 01/11/92	01/11/92		120 00	306 75	6	08/06/92	100	120 00	6 13 25	6 13 25	24 00	20 00	
	6 01/11/92	01/11/92		11 00	397 75	5	08/06/92	100	11 00	6 02 25	6 02 25	24 25	20 25	
	6 01/11/92	01/11/92		27 00	517 75	5	08/06/92	100	27 00	4 92 25	4 92 25	24 75	20 75	
	6 01/11/92	01/11/92		195 45	544 75	5	08/06/92	100	195 45	2 59 80	2 59 80	25 00	21 00	
	6 01/11/92	01/11/92		18 00	740 20	6	08/06/92	100	18 00	2 41 80	2 41 80	25 80	21 80	
	6 01/11/92	01/11/92		16 00	758 20	5	08/06/92	87	16 00	2 25 80	2 25 80	26 00	22 00	
	6 01/11/92	01/11/92		5 50	774 20	5	08/06/92	86	5 50	2 10 30	2 10 30	26 30	22 30	
	6 01/11/92	01/11/92		4 00	784 70	5	08/06/92	85	4 00	2 15 30	2 15 30	26 60	22 60	
	6 01/11/92	01/11/92		18 72	810 79	6	08/06/92	80	18 72	1 41 21	1 41 21	27 00	23 00	
	6 01/11/92	01/11/92		19 99	897 50	4	08/06/92	72	19 99	1 22 49	1 22 49	27 49	23 49	
	6 01/11/92	01/11/92		7 00	904 50	5	08/06/92	71	7 00	1 07 50	1 07 50	28 00	24 00	
	6 01/11/92	01/11/92		88 59	993 09	6	08/06/92	70	88 59	6 91	6 91	28 59	24 59	
	6 01/11/92	01/11/92		21 00	1014 09	4	08/06/92	66	21 00	1 4 09	1 4 09	29 00	25 00	
	6 01/11/92	01/11/92		22 05	1016 14	4	08/06/92	66	22 05	1 16 14	1 16 14	29 14	25 14	
	6 01/11/92	01/11/92		21 35	1057 49	4	08/06/92	66	21 35	5 7 49	5 7 49	29 49	25 49	
	6 01/11/92	01/11/92		4 50	1066 74	5	08/06/92	66	4 50	6 2 24	6 2 24	30 00	26 00	
	6 01/11/92	01/11/92		5 25	1071 99	5	08/06/92	65	5 25	7 1 99	7 1 99	30 25	26 25	
	6 01/11/92	01/11/92		5 00	1076 99	5	08/06/92	65	5 00	7 6 99	7 6 99	30 99	26 99	
	6 01/11/92	01/11/92		4 00	1080 99	5	08/06/92	64	4 00	8 0 99	8 0 99	31 00	27 00	
	6 01/11/92	01/11/92		5 50	1085 49	5	08/06/92	62	5 50	8 9 49	8 9 49	31 49	27 49	
	6 01/11/92	01/11/92		11 00	1106 49	5	08/06/92	62	11 00	10 6 49	10 6 49	32 00	28 00	
	6 01/11/92	01/11/92		7 00	1113 49	5	08/06/92	59	7 00	11 1 49	11 1 49	32 49	28 49	
	6 01/11/92	01/11/92		9 00	1122 49	5	08/06/92	59	9 00	12 2 49	12 2 49	33 00	29 00	
	6 01/11/92	01/11/92		5 00	1127 49	5	08/06/92	57	5 00	12 7 49	12 7 49	33 49	29 49	
	6 01/11/92	01/11/92		4 51	1134 02	4	08/06/92	56	4 51	13 0 2	13 0 2	34 00	30 00	
	6 01/11/92	01/11/92		10 00	1144 02	5	08/06/92	56	10 00	14 0 2	14 0 2	34 50	30 50	
	6 01/11/92	01/11/92		5 00	1149 02	5	08/06/92	55	5 00	14 0 2	14 0 2	35 00	31 00	
	6 01/11/92	01/11/92		5 00	1154 02	5	08/06/92	51	5 00	15 4 02	15 4 02	35 02	31 02	
	6 01/11/92	01/11/92		9 00	1163 02	5	08/06/92	50	9 00	16 1 02	16 1 02	35 50	31 50	
	6 01/11/92	01/11/92		9 50	1172 52	5	08/06/92	49	9 50	17 2 52	17 2 52	36 00	32 00	
	6 01/11/92	01/11/92		8 50	1181 02	5	08/06/92	48	8 50	18 1 02	18 1 02	36 50	32 50	
	6 01/11/92	01/11/92		9 00	1190 02	5	08/06/92	48	9 00	19 0 02	19 0 02	37 00	33 00	
	6 01/11/92	01/11/92		9 00	1208 02	5	08/06/92	48	9 00	20 8 02	20 8 02	37 02	33 02	
	6 01/11/92	01/11/92		8 00	1216 02	4	08/06/92	46	8 00	21 6 02	21 6 02	37 50	33 50	
	6 01/11/92	01/11/92		7 50	1231 15	4	08/06/92	45	7 50	22 1 15	22 1 15	38 00	34 00	
	6 01/11/92	01/11/92		8 50	1247 15	5	08/06/92	44	8 50	23 1 15	23 1 15	38 50	34 50	

Auditee: _____

Explanation of Symbols and
Methodology Used in Generating
Report of Apparent Excessive Contributions
Resulting from Staff Advances as
Defined under 11 C.F.R. 116.5

Field Definitions

- a) W/S Name
Worksheet Name) name of individual generally
per Committee's data tape
supplied to Audit staff.

- b) W/S Vch No.
(Worksheet Voucher Number) sequential number assigned
by the Audit staff to the
expenses associated with
each voucher/reimbursement
request and, if possible, to
the related reimbursement(s);
if the reimbursement could not
be directly associated with the
payment of specific expenses,
then the reimbursement is
numbered '999'.

- c) W/S Cont
Inc Date
Worksheet Contribution
Incurrence Date) generally the date on which the
expense was incurred per receipt
or invoice.

- d) W/S Cont
Calc Dte
(Worksheet Contribution
Calculation Date) same as W/S Cont Inc Date
except when a personal
credit card is used for
the cardholder's travel
and subsistence and the
a credit card statement
is available. In this
case, the statement closing
date is used as the
calculation date. (11 CFR
116.5 b)(2))

- e) W/S Contr
Inc Amt
Worksheet Contribution
Incurrence Amount) the amount of each expense
(positive numbers) associated
with a voucher/reimbursement
request, or the amount of each
reimbursement and of each debt
settlement (negative numbers)

Field Definitions

- f W/S
O/S Amt
Worksheet Outstanding
Amount
- a running balance of expenses
and direct contributions net
of reimbursements and debt
settlements to date.
- g W/S
Exp
Cde
Worksheet
Expense Code
- 1 thru 3
are negative
amounts
- 4 thru 7
are positive
amounts
- 1 - reimbursements
2 - debt settlements
3 - miscellaneous
4 - advances made by an
individual for other
than his/her own travel
and subsistence, (e.g.,
others' subsistence,
office supplies, other
campaign expenses).
5 - advances made by an
individual for his/
her own travel and
subsistence paid by other
than personal credit card.
6 - advances made by an
individual for his/her
own travel and subsis-
tence paid with his/her
own personal credit card.
7 - direct contributions
- h) W/S Date
Reimb
(Worksheet Date
of Reimbursement)
- date on which each expense was
reimbursed, assuming a
chronological order of
payment (i.e., expenses
incurred first were
reimbursed first, irrespective
of the specific expenses
associated with a given
reimbursement by a committee .

Field Definitions

- (j) W/S Days O/S
(Worksheet Days Outstanding - Calculation Date vs. Date of Reimbursement)

the number of days between the calculation date and the date the expense was reimbursed (i.e., W/S Date Reimb. - W/S Cont Calc Dte .

- (g) W/S Contr Amts
(Worksheet Contribution Amounts)

determined by the expense code--for each expense code there is a different number of days within which the expense must be reimbursed before it becomes a contribution (explained below under 'Data and Methodology Used')--and the W/S Days O/S.

- (k) W/S Run Contr Bal
(Worksheet Running Contribution Balance)

a running balance that starts w/ -1000 where appropriate, (\$1000 contribution limitation is built in) and adds 'W/S Contr Amts' successively; as reimbursements are encountered, all contributions paid on that 'W/S Date Reimb' are subtracted.

- (l) W/S Excess Amount
(Worksheet Excessive Contribution Amount)

the amount of excessive contributions (i.e., the W/S Run Contr Bal is positive) as of each incurrence date;

- (m) W/S Exc Bal Aft Reimb
(Worksheet Excessive Contribution Balance After Reimbursement)

the amount of excessive contributions (i.e., the W/S Run Contr Bal is positive) remaining after each reimbursement is applied.

Data and Methodology Used

The direct contributions, expense vouchers reimbursement requests, and reimbursements were reviewed for the period beginning with the Committee's inception date through _____ . Generally, this data was gathered from the Committee's data tape and the Committee's vendor or check files.

Direct contributions appear net of any contribution refund(s) and are recorded for worksheet purposes as of the date of the refund. Otherwise, the deposit date from the Committee's data tape or other source is used. Debt settlements are dated as of the date that the Commission notifies the Committee that the debt settlement plan is acceptable.

Advances made by an individual for other than his/her own travel and subsistence (expense code 4) become contributions if not reimbursed on or before the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual in cash not paid by the individual's personal credit card (expense code 5) become contributions if not reimbursed within 30 days from the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual with his/her own personal credit card (expense code 6) become contributions if not reimbursed within 60 days from the credit card statement date, however, if the credit card statement is not available, 60 days from the date of incurrence is used.

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March 10, 1994

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John G. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman *KBC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Peter G. Blumberg *PGB*
Attorney

SUBJECT: Proposed Final Audit Report for the 1992 Democratic
National Convention Committee, Inc.
(LRA #448/AR-93-38)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report for the Democratic National Convention Committee, Inc. ("the Committee") forwarded to this Office on November 2, 1993. The following memorandum contains our comments on the proposed audit report.¹ Should you have any questions, please contact Peter Blumberg, the attorney assigned to this matter.

Generally, we concur with the Audit staff's findings and recommendations in the proposed report. With regard to

¹ Since the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend that the Commission's discussion of this document be conducted in open session. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

excessive contributions through staff advances. It is noted that currently no contribution limit has been fixed by the Commission, and the issue of whether a committee could accept private contributions at all when it opted to receive its fair share of entitlement of federal funds under the U.S.C.A. § 3056 is unsettled. The Committee received its entire entitlement of federal funds. Thus, at the time the advances were outstanding, the Committee may have had access to funds in excess of its entitlement. Since the Committee has fully reimbursed the individuals in this case, we believe that the advances should have no entitlement or repayment implications.

We request that the auditors clarify two matters which were discussed in the Interim Audit Report, and appear to be withdrawn now. The Interim Audit Report questioned the \$86,743 in costs the Committee estimated it had incurred to print the official proceedings of the Democratic National Convention, "the Convention". This amount was questioned because it was more than double the printing costs incurred in 1988. The Final Audit Report does not specifically address the resolution of this expense. The report should include an explanation of how the printing cost issue was resolved. Further, the Interim Audit Report notified the Committee that it may owe another \$259,000 in repayments based on transactions made by the New York '92 Host Committee, Inc. ("the Host Committee"). The Final Audit Report concludes that the Committee has no obligation based on responses filed by the Host Committee. It is suggested that the proposed report explain in greater detail how the Host Committee response extinguished the Committee's potential additional obligations.

II. IMPROPER USE OF FUNDS

The proposed Final Audit Report categorizes four separate expenditures as apparent improper uses of funds pursuant to 11 C.F.R. § 9008.6(a)(4). The auditors identify an expenditure for production costs of a film shown at the Convention, "The Man from Hope," as an impermissible use of funds. The Committee

2/ The Notice of Proposed Rulemaking on Convention Regulations ("NPRM") seeks comment on contribution limits for contributions resulting from reimbursed staff advances, suggesting that because "the convention committee is established by the national committee, and therefore affiliated with the national committee it would share the national committee's \$10,000 contribution limit." The NPRM also notes that the limit would be \$2,000 absent a deficiency in the Presidential Election Campaign Fund or if the convention committee elects not to accept its full entitlement Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43047 (proposed August 12, 1993). The comment period closed on September 17, 1993. The hearing on the proposed rulemaking was held on October 27, 1993.

World Great American Media, Inc. \$30,000 for a portion of the production costs of the film. The total production cost was \$100,000. Candidate for President "Gore" paid the balance of the cost. The Committee contends that the expense was a permissible one because the costs were incurred for the purpose of producing a presidential nominating convention, as part of the Convention proceedings. The Committee also argues that these expenditures should not be considered a prohibited use of funds under 11 C.F.R. § 9008.6(b) because that regulation only prohibits convention committee expenditures for candidate expenses incurred by the candidate in attending the convention, such as housing, travel, and subsistence. Thus, the Committee reasons, if the candidate expense is for an item that does not involve the candidate's attendance, then it could be a permissible expense. Further, the Committee argues that its payment to CFP was in consideration of CFP's permission to show the film during the Convention proceedings. The Committee explained that it had to compensate CFP to avoid receiving an unlawful or repayable contribution from CFP.

The Audit staff argues that the showing of the film at the Convention does not transform it into a convention expense. The auditors also argue that the FECA and regulations prohibit all expenditures made for the candidate. With respect to the Committee's argument that it was obligated to compensate CFP for the benefit of showing the film, the Audit Division argues that this reimbursement is impermissible because it is an "expense of the candidate," and in any event, CFP received free television air time as consideration for the permission to use the film. The proposed Final Audit Report recommends that the Committee repay \$30,000 to the U.S. Treasury.

This Office agrees with the proposed report's recommendation. Convention committees are prohibited from using funds to defray the expenses of any candidate's participation in conventions. 26 U.S.C. § 9008(c); 11 C.F.R. § 9008.6(b)(1). The legislative history of convention financing does not indicate if any candidate related expenses would be a permissible use of convention funds. The convention regulations do not specify all permissible uses for expenditures, but they provide examples, such as the rental of the hall, security, telephones, salaries of employees, etc. 11 C.F.R. § 9008.6(a)(4)(i)-(viii). These examples suggest that the underlying purpose of federal convention funding is the smooth functioning and operation of the convention itself and not the promotion of a certain candidate through candidate-specific expenditures. The use of funds to subsidize the costs of a biographical film of the candidate, or to pay compensation to the owner of the film for the right to use it, does not involve the operations of the Convention. Rather, this use is candidate-specific and, therefore, it is not permissible.

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Since the focus is on the operation of the convention, we believe that the prohibition against the expenses related to the candidate's "participation" in the convention includes more than the expenses for the candidate's attendance. Thus, the Committee is prohibited from paying for any of the candidate's convention expenses, and not just expenses for hotels and meals. Further, the Committee's compensation argument circumvents the intention of 11 C.F.R. §§ 9009.6 a and 9009.6 b 1. These sections could be rendered superfluous under the Committee's proposed interpretation. For example, the Committee could argue that it should pay for the candidate's hotel and meals while attending the Convention since the Committee receives the benefit of the candidate's nomination speech as part of the Convention proceedings on the final night of the convention.

The Final Audit Report also identifies three other expenditures in the amount of \$30,431 that are viewed as impermissible. These expenditures involve post-convention payments for gifts and a research project.⁴ The Committee argues that expenditures for gifts are a long-standing tradition at national party conventions, and that the expenses for similar gifts had never been questioned in past convention audits. Specifically, the Committee cites to an expense for engraved gavels from the 1988 Democratic National Convention. The Committee also stated that the research project was convention-related and, thus, a permissible use of funds.⁵

This Office concurs with the Audit Division that the Committee must repay \$30,431 to the Treasury to cover the impermissible funds. However, we recommend that the auditors clarify whether they deem the expenditures as impermissible because of the fact that the actual subject matter of the expenditures were not convention-related, or because they were paid several months after the Convention, which may transform otherwise permissible expenditures into non-convention expenses.

^{3/} For instance, a candidate can participate in a convention by producing a biographical film of herself to be shown at the convention, but not actually attend the convention.

⁴ The gifts include engraved silver clocks, paperweights, boxes and serving trays, and an architect's model of the convention platform. We note that the Committee, initially, described these expenses as "printing" and "office supply" costs to the auditors.

⁵ The Committee states that the researcher studied the role of African Americans at the Convention. However, there is no indication that the research had anything to do with conducting the Convention or that it was performed during the Convention. Indeed, the final research report was turned in months after the Convention and the topic is the role of African Americans in the National Democratic Committee, indicating that the expenditure was party-related, not convention-related.

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April 5, 1994

The Honorable Robert T. Matsui
Treasurer
1992 Democratic National Convention
Committee, Inc.
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Congressman Matsui:

Attached, please find the Final Audit Report on the 1992 Democratic National Convention Committee, Inc. The Commission approved this report on March 10, 1994. As noted on page 3 of the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §9008.10(g)(1) and (2), the Commission has made an initial determination that the Committee is to repay to the Secretary of the Treasury \$38,163 within 90 days after service of this report (July 8, 1994.) Should the Committee or the national committee dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9008.11(a) provide either committee with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (May 9, 1994), 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 either committee within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Committee or the national committee so elects. If either committee decides to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690. If the committees do not dispute this initial determination within the 30 day period provided, it will be considered final.

The Commission-approved Final Audit Report will be placed on the public record on April 11, 1994. Should you have any questions regarding the public release of this report, please contact Mr. Ron Harris of the Commission's Press Office at (202) 219-4155.

CHRONOLOGY

1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Pre-audit Inventory Commenced	11 09/92
Audit Fieldwork	11 16 92-01 14 93
Interim Audit Report to the Committee	07 29/93
Response Received to the Interim Audit Report ^{1/}	12 09/93
Final Audit Report Approved	03 10/94

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^{1/} Additional response time was granted after the revote and reissuance of the Interim Audit Report following the Courts decision in FEC v. NRA political Victory Fund, et al., No. 91-5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993).

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
1992 Democratic National
Convention Committee, Inc. -
Final Repayment Determination

STATEMENT OF REASONS

On the Commission made a final determination that the Democratic National Convention Committee, Inc. ("the Committee") must repay \$37,337.79 to the United States Treasury. The repayment amount included \$3,847.29 in unspent funds, \$9.50 in stale dated Committee checks, and \$33,481 for the improper use of public funds. The Committee submitted the repayment on May 5, 1994. This Statement sets forth the legal and factual bases for the Commission's repayment determination. 11 C.F.R. § 9008.11(c).

I. BACKGROUND

The Democratic National Convention Committee was created for the purpose of conducting the 1992 Presidential nominating convention of the Democratic Party. The Committee received \$11,048,000 in federal funds for this purpose under 26 U.S.C. § 9008. Pursuant to 26 U.S.C. § 9008 (g), the Commission conducted an audit and examination of the Committee's receipts, disbursements, and expenses. The Commission approved the Interim Audit Report on July 27, 1993. Attachment 1. The Committee responded to the Interim Audit Report on September 3, 1993.

Attachment 2. The Commission approved the Final Audit Report on March 10, 1994. Attachment 3. The Final Audit Report contained the Commission's initial repayment determination in the amount of \$38,163, which represented \$3,872 in unspent funds, \$810 in stale dated checks, and \$33,481 for the improper use of public funds. The Committee submitted to the Commission two checks totaling \$37,337.79 on May 5, 1994. Attachment 4, pp. 2-3. The two checks were accompanied by a letter from the Committee explaining why the amount of the checks was less than the amount the Commission determined to be repayable to the United States Treasury.^{1/} Attachment 4, pp. 1-3.

II. REPAYMENT DETERMINATION

The amount of the Committee's repayment has been adjusted to account for two changes in the Committee's financial position that occurred after the Final Audit Report was issued: 1) the unspent funds portion has been reduced by \$25.00 to account for an annual fee paid by the Committee; and 2) the stale-dated checks portion has been reduced because an \$800 Committee check was cashed.

The Commission's regulations require any portion of the payment under 11 C.F.R. § 9008.3 that remains unspent after all convention expenses have been paid to be repaid to the United States Treasury. 11 C.F.R. § 9008.10(e)(1). The Final Audit Report found the Committee had unspent funds in the amount of

^{1/} In the analyses in the audit reports and the Commission's repayment determinations, all monetary values are rounded to the nearest dollar. In the Committee's response to the Final Audit Report, monetary figures for unspent funds and stale dated checks are not rounded to the nearest dollar.

\$3,872, and the Commission made an initial determination that the Committee repay this amount to the United States Treasury.

Attachment 3, p. 24. In response to the Final Audit Report, the Committee explained that the amount of the repayment for unspent funds should be adjusted to account for its payment of an annual corporate fee after the issuance of the Final Audit Report.

Attachment 4, p. 1.

The Commission concludes that the payment of an annual corporate fee is an administrative expense associated with conducting the convention, and therefore it is a permissible use of public funds. See 11 C.F.R. § 9008.6(a)(4)(x). The Committee paid \$25.00 to the District of Columbia on April 12, 1994 for the Committee's annual corporate fee. Accordingly, the amount of the Committee's unspent funds has been reduced from \$3,872.29 to \$3,847.29. See 11 C.F.R. § 9008.10(e)(1).

If a committee has checks outstanding to creditors or contributors that have not been cashed, it is required to inform the Commission of its efforts to locate the payees and to encourage them to cash the outstanding checks. 11 C.F.R. § 9007.6. The committee is also required to submit a check for the total amount of such outstanding checks, payable to the United States Treasury. Id. The Final Audit Report noted that the Committee had two outstanding checks totaling \$810 and contained an initial determination that the Committee repay this amount to the United States Treasury. In response to the Final Audit Report, the Committee submitted documentation to demonstrate that one check for \$800 had been cashed after the issuance of the Final

Audit Report and asserted that the finding for stale-dated checks should be reduced accordingly. Attachment 4, pp. 1, 5.

The Commission has reviewed the documentation submitted by the Committee and concludes that the \$800 check was cashed by the payee. Therefore, the Commission has reduced the repayment for stale-dated checks by \$800, and it has made a final determination that the Committee must pay \$9.50 to the United States Treasury for the check which remains outstanding.

III. FINAL REPAYMENT DETERMINATION

Therefore, the Commission has made a final determination pursuant to 11 C.F.R. § 9008.11(c) that for the foregoing reasons the 1992 Democratic National Convention Committee must repay \$37,337.79 to the United States Treasury. The Committee submitted the repayment on May 5, 1994.

Attachments

1. Interim Audit Report, approved July 27, 1993.
2. Committee's response to Interim Audit Report (September 3, 1993).
3. Final Audit Report, approved March 10, 1994 (w/attachments).
4. Committee's response to Final Audit Report (May 5, 1994) (w/attachments).
5. Memorandum from Audit Division to the Commissioners, Repayment Received from the 1992 Democratic National Convention Committee, Inc. (May 12, 1992) (w/o attachment).



INTERIM REPORT OF THE AUDIT DIVISION
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the 1992 Democratic National Convention Committee, Inc. (the Committee), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

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

B. Audit Coverage

The audit covered the period July 2, 1991, the date the Committee opened a bank account, through September 30, 1992, the final coverage date of the most recent report filed at the time of the audit. In addition, financial activity that occurred beginning in 1989, and was paid by the Democratic National Committee and subsequently reimbursed by the Committee, was included in the audit as well as certain financial activity through December 7, 1992 to determine any amounts due to the United States Treasury. During the period, the Committee reported an opening cash balance of \$-0-, total receipts of \$11,233,088, total disbursements of \$10,732,803, and a closing cash balance on September 30, 1992 of \$500,284.

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C. Campaign Organization

The Committee registered with the Federal Election Commission on June 14, 1991, as the National Convention Committee of the Democratic Party. The Treasurers for the period audited were Robert A. Farmer from June 14, 1991 to September 11, 1992, and the Honorable Robert H. Matsui from September 11, 1992 to the present.

During the period audited, the Committee was headquartered in Washington, D.C., but for a portion of the period an office was also maintained in New York City. The current office is also in Washington, D.C.

To handle its financial activity, the Committee had a general account from which most disbursements were made, a payroll account, and three deposit accounts used to hold federal funds. The Committee made approximately 5,000 disbursements.

The Committee was paid \$11,048,000 in federal funds. This represents the full entitlement established at 26 USC 9008(b).

D. Audit Scope and Procedures

The audit included a review of the following general categories:

1. The Committee's compliance with statutory limitations with respect to the receipt of contributions and loans (see Finding II.B.);
2. The Committee's compliance with the statutory requirements regarding the receipt of contributions from prohibited sources, such as those from corporations and labor organizations;
3. The itemization and proper disclosure of receipts, as well as the completeness and accuracy of the information disclosed;
4. The itemization and proper disclosure of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. Proper disclosure of Committee's debts and obligations (see Finding II.A.);
6. The accuracy of total reported receipts, disbursements, and cash balances as compared to Committee bank records;
7. Adequate recordkeeping for Committee transactions;

The majority of these items should have appeared on the Post Convention report covering the period from July 1, 1992 to August 31, 1992. The Committee explained that many of these expenses were outstanding beyond the close of the reporting period because the bills had been sent to a temporary office set up in New York during the convention. These bills were then forwarded to the Washington office along with other mail and therefore processing was delayed. The Committee explained that the remaining obligations which should have appeared on Schedules D in the July and October 1992 Quarterly reports were the result of delayed billings or were held pending authorization from the New York Host Committee. At the exit conference, the Committee was given a schedule of debts and the period in which they should have been reported.

Recommendation #1

The Audit staff recommends that the Committee file amended Schedules D Debts and Obligations for each period in which debt should have been reported.

B. Excessive Contributions from Staff and Other Individuals

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.118.

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

The Committee's payments of expense reimbursements were reviewed to determine if contributions had been made. The review disclosed that persons were reimbursed for both their own travel and subsistence expenses as well as expenses for non-travel items and the travel and subsistence of other persons. Two persons, including the Committee's chief executive officer were determined to have made contributions totaling \$15,418.25. See Attachment 1. At the time of the audit, no expense reimbursement requests were

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outstanding. At the exit conference, the Committee was advised of this finding. The Committee made no comment.

Recommendation #2

The Audit staff recommends that within 30 calendar days of service of the report, the Committee either demonstrate that no contribution occurred with respect to these expense reimbursements, or offer any other information that is believed to be relevant to the issue.

III. Findings and Recommendations

A. Improper Use of Funds

Section 9008.6(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that no part of any payment made under 11 CFR 9008.8 shall be used to defray the expenses of any candidate, delegate or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention.

Section 9008.6(b)(2) of Title 11 of the Code of Federal Regulations states that, "public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the state in which such expense is incurred or paid, or any regulation prescribed under federal or State laws."

Section 9008.10(d) states, in relevant part, if the Commission determines that any amount of any payment to the convention committee under 11 CFR 9008.8(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.6, it shall notify the national committee of the amount improperly used and such national committee shall pay to the Secretary an amount equal to the amount specified.

1. Misappropriation of Committee Funds

During the reconciliation of the Committee's bank records to the disclosure reports, an unexplained and undocumented \$5,000 adjustment was noted on the Committee's September 1992 cash reconciliation. The Audit staff inquired about the item and Committee officials explained that the amount represented a recovery of funds misappropriated by an employee. The employee was part of the Committee's accounting staff who, when the supervisor was traveling, had access to the Committee's blank check supply. The employee forged a signature on four checks and negotiated them. When the Committee discovered the problem, the checks were presented to the bank. The bank was able to collect the funds from the individual and credit the Committee's account. The individual was

immediately terminated when the discovery was made. The Committee feels that because of the circumstances and the satisfactory resolution of the matter, their responsibility in the incident is negligible.

Recommendation #3

Since the improperly used funds have been recovered by the Committee, the Audit staff recommends no further action be taken in this matter.

2. Candidate Expenses

On July 16, 1992, prior to President Clinton's speech accepting the Democratic nomination for President, a film on President Clinton's life was shown at the Convention and broadcast as part of the television coverage of the proceedings.

The film was produced through Great American Media, Inc.. The Committee made four payments to the firm. Two of the four payments are apparently for production of the biographical film. The invoice for production costs related to the film was submitted by Great American Media, Inc. and addressed to the Democratic National Committee (see Attachment #2). It was paid in two installments, \$30,000 on July 7, 1992 and \$35,000 on September 9, 1992. One invoice refers to the production as the "Bill Clinton Story". The other two payments are for \$5,490 described as the cost of producing the live vignettes out of Seattle, WA and Charleston, SC for Tuesday of the Convention, and \$18,880 described as GAM's work, travel and payment of talent relating to Monday's delegate stories and video wall. Both of these invoices are addressed to the "Alexis Herman, DNCC" (Democratic National Convention Committee). Alexis Herman was the Committee's chief executive officer. These do not appear to be related to the production of the biographical film.

During the Audit of the Clinton for President Committee (CFP), it was learned that CFP also made payments to Great American Media, Inc. for the production of this film. On July 22, 1992, CFP paid \$35,000 associated with the same invoice described above. It therefore appears that this amount was paid by both Committees. On September 4, 1992, CFP paid \$122,237.32 in response to an invoice that showed a total production cost for the film of \$188,237.32 with an outstanding balance due of \$122,237.32. The difference is \$65,000, the amount billed to the Committee. Also on September 4, 1992, CFP paid \$1,591.36 on an invoice for additional production charges for the convention film not included on the earlier invoices, and finally on August 25, 1992, CFP paid an administrative charge of 2% on the \$122,237.32 invoice as provided in the contract with Great American Media, Inc. This amount was \$2,444.75.

It therefore appears that the total cost of producing the convention film was \$191,273.43 with the Committee

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paying \$65,000 and CFP paying \$126,273.40 including the \$35,000 apparently paid by both committees.

Lastly, the Committee received a \$22,250.00 refund check dated September 15, 1992 from Great American Media, Inc. The refund is recorded as a credit to the Committee's video production general ledger account, but available documentation does not provide a detailed explanation of the reason for the refund.

Given the above, it appears that the Committee expended \$65,000, potentially less a \$22,250 refund, for the production of a film which constitutes an expense of a candidate attending the convention and is therefore a non-qualified Convention expense.

Recommendation #4

The Audit staff recommends that within 30 days of receipt of this report the Committee:

- a. Provide documentation from Great American Media, Inc. to demonstrate the reason for the \$22,250 refund received; and
- b. demonstrate why the partial payment for the production of a biographical film about President Clinton should not be considered an expense of a candidate attending the convention and as such, a non-qualified convention expense.

Absent these demonstrations the Audit staff will recommend that the Commission make an initial determination that \$65,000 is repayable to the U.S. Treasury.

3. Parking Violations

During the review of disbursements made by the Committee, the Audit staff noted payments to the New York City Violations Bureau. An inspection of the Committee's vendor files revealed check requests, copies of Committee checks, and New York City parking tickets reflecting \$5,675.53 in payment of violations of New York City parking regulations.

Recommendation #5

The Audit staff recommends that within 30 calendar days of service of this report, the Committee demonstrate that the payments do not represent an improper use of public funds. Absent such a showing, it will be recommended that the Commission make an initial determination that \$5,675.53 is repayable to the United States Treasury pursuant to 11 CFR 9008.10(d).

B. Unspent Portion of Fund Payment

Section 9008.7 of Title 11 of the United States Code states, in part, that the Commission shall have the same authority to require repayments from the national committee of a major party as it has with respect to repayments from any eligible candidate under Section 9007.7.

In addition, 11 C.F.R. §§9008.10 e(1) and 2 state that if any portion of the payment under 11 C.F.R. §9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury; the national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the sixth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

Section 9008.7(d)(3) of title 11 of the Code of Federal Regulations provides, in part, that local retail businesses, excluding banks, as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying convention expenses. Such funds are to be maintained in a separate account.

Section 9008.7(d)(4) states that funds used by the host committee in accordance with section 9008.7(d)(2) and (3) shall not be considered expenditures and shall not count against the expenditure limitation under 11 CFR 9008.7(a).

Section 9008.4(c) states, in part, that the entitlements established by 11 CFR 9008.3 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9007.7(a) and the amount of private contributions received by the national committee of a political party. In calculating these adjustments expenditures by host committees in accordance with 11 CFR 9008.7(d) will not be considered private contributions or expenditures counting against the limitation.

Finally, 11 C.F.R. §§9008.10 g(1) and (2) state, in part, that if the Commission determines that repayment is required, it shall give written notification of the amounts required to be paid and the reasons therefor; and the national committee shall repay to the Secretary, with 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee, the Commission may grant a 90 day extension of the repayment period.

Our review of the Committee's financial position at the close of business December 31, 1991, revealed that the unspent portion of the fund payment totaled \$133,118. During the review of the Committee's calculation of the unspent portion of the entitlement, it was noted that the Winding Down Costs included \$96,743 in undocumented costs for printing the official proceedings of the convention.^{1/} Supporting documentation has been requested but not yet received. The Audit staff has not included the amount in Winding Down Costs. The financial position of the Committee is shown below:

^{1/} The 1992 printing costs of \$96,743 are \$49,624 more than the \$47,119 allowed in 1988.

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As part of the Committee's response to the Interim Audit Report, a stale-dated outstanding check amount of \$16,683 is noted as repayable. This amount was verified to the audit workpapers. For a portion of these checks letters to the payees are included that inform the payee that unless action was taken by the payee within 14 days, the Committee would adjust its accounting records to show that no obligation existed.

In follow-up correspondence the Committee shows all of the checks to have been either voided or reissued. For the voided checks documentation has been submitted to support the Committee's action. A summary of the outstanding check amounts is shown below:

- ° 9 checks totaling \$6,019 were voided and replaced, and the replacement checks have cleared the Committee's account.
- ° 14 checks totaling \$9,670 were voided and a copy of the letter noted above was provided.
- ° 1 check for \$185 was found voided in Committee files. A copy was supplied.
- ° 2 checks totaling \$810 were reissued and are still outstanding.

Recommendation #5

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$810 representing the value of uncashed Committee checks.

IV. Repayment Summary

A. Improper Use Of Funds

1. Parking Violations III.A.3.)	5,676
2. Post Convention Expenses III.A.4.)	
Gifts (III.A.4.a)	17,805
Research Project III.A.4.b)	10,000

B. Unspent Funds (III.B.) 3,872

C. Stale Dated Committee Checks (III.C.) 810

Amount Due to The U.S. Treasury \$38,163

The financial position presented above shows that the Committee has unspent funds in the amount of \$3,872. Also, the amounts determined to be impermissible uses of the public grant noted as repayable to the U.S. Treasury in Finding III.A. above are not applicable to the spending limitation. Therefore, the amount remaining in the Committee's spending limitation is \$37,353.

Finally, as a result of the audit of the New York Host '92 Committee, there was, at the time of the Interim Audit Report, the possibility that \$135,500 in disbursements made by the Host Committee would be considered attributable to the Committee's spending limitation. These disbursements were made with funds that had been commingled with other moneys which did not meet the requirements of 11 CFR §9008.7(d)(3)(i). The Interim Audit Report advised the Committee of the potential affect of these expenditures on its compliance with spending limitations and potential repayments. As a result of the New York Host '92 Committee's response to the Interim Audit Report resulting from that audit, it was determined that although the funds had been commingled as described, sufficient permissible funds were in the account when the expenditures in question were made. Therefore, it was determined that none of the expenditures will be attributed to the Committee's spending limitation.

Recommendation #4

The Audit staff recommends that the Commission make an initial determination that 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$3,872 in unspent funds pursuant to 11 C.F.R. §9008.10(e)(1).

C. Stale-Dated Committee Checks

Section 9008(h) of Title 26 of the United States Code states that the Commission shall have the same authority to require repayments from the national committee of a political party as it has with respect to repayments from any eligible candidate under section 9007(b).

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

Calculation of Financial Position and Spending Subject To The
Expenditure Limitation For The
1992 Democratic National Convention Committee, Inc.
as of December 7, 1992
Determined at September 3, 1993

ASSETS

Cash on Hand	\$	-0-	
Cash in Bank			
Operating at 12/7/92	\$154,989		
Payroll at 12/7/92	<u>5,486</u>		
Total Cash		\$160,475	
Add:			
Accounts Receivable and Capital Assets a/		<u>84,928</u>	
Total Assets			\$245,403

LIABILITIES

Disbursements for Convention Expenses and Winding Down Costs Through September 3, 1993 b/		234,290	
Accounts Payable		<u>7,241</u>	
Total Liabilities			<u>241,531</u>
Remaining Federal Funds			\$ <u>3,872</u>
Add: Expenses Constituting Improper Uses of Federal Funds (Findings III.A.) Included Above Not Applicable To The Spending Limitation			<u>33,481</u>
Spending Limitation Remaining			\$ <u>37,353</u>

expenditures through December 7, 1992, accounts payable, accounts receivable, and estimated winding down costs. Excluded was an estimate of \$96,743 for printing the official proceedings of the Convention. This estimated amount was not considered due to the lack of any supporting documentation. In its response to the Interim Audit Report the Committee presented a revised calculation of the unspent portion of the public grant based on actual expenditures through September 3, 1993. The Committee concluded that unexpended funds were \$1,149 and that there were \$16,683 in stale dated Committee checks. This resulted in a total repayment of \$17,832.

Also, during the follow-up work noted above, actual expenditures for the preparation of the official proceedings were reviewed. These total approximately \$80,000 and are included as part of the winding down costs shown in the analysis presented below.

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African-American Staff in the Convention and the DNC^{4/}. In the opinion of the Audit Staff this expense is properly paid by the National Committee but is not an expense for the purpose of conducting a presidential nominating convention or convention related activity and, therefore, may not be defrayed with public funds.

Recommendation #3

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$10,000 pursuant to 11 CFR §9008.10(d).

B. Statement of Financial Position

Section 9008(h) of Title 26 of the United States Code states, in part, that the Commission shall have the same authority to require repayments from the national committee of a major party as it has with respect to repayments from any eligible candidate under Section 9007(b).

In addition, 11 CFR §9008.10 (b) states that if the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR §9008.3 (a), it shall notify such national committee of the amount of such excessive expenditures, and such national committee shall pay the Secretary an amount equal to the amount specified.

Section 9008.10(e)(1) of Title 11 of the Code of Federal Regulations states that if any portion of the payment under 11 CFR §9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

Finally, 11 CFR §§9008.10(g)(1) and (2) state, in part, that if the Commission determines that repayment is required, it shall give written notification of the amounts required to be paid and the reasons therefor; and the national committee shall repay to the Secretary, with 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee, the Commission may grant a 90 day extension of the repayment period.

As discussed above, the Interim Audit Report contained a calculation of unspent funds that showed a remaining balance of \$133,118. This calculation was based on a review of actual

4/ Subsequently a copy of the report was provided. The exact title is, African American Leadership of the National Democratic Party 1989-1992 Historical-Philosophical-Reflections.

silver serving trays along with engraving and shipping. The total bill was \$17,431 paid with four checks. The first was dated December 4, 1992 and was reviewed during the original fieldwork. That check was documented by a cash receipt which was not imprinted with the vendor's name and described the purpose as "Deposit On Printing Order Approx 14000". The Committee's year end disclosure report described the expense as "Office Supplies". An additional payment was made on December 17, 1992, and was also reported as "Office Supplies". Two payments were made on February 4, 1993, and reported as "Printing". When questioned about these items the Committee's representative said that it would be necessary to contact someone involved at the time. In a follow up conversation it was stated that such gifts were a standard convention procedure. In follow up correspondence the Committee reiterates its position and notes that in 1988 commemorative gavels were given to senior staff. The Committee also states that the expenditures were not questioned in the past.

The second vendor was an Architect who was paid \$3,000 on December 10, 1992, for an architectural model of the convention podium. The payment was described on the Committee's year end disclosure report as a payment for "Printing". The Committee has informed the audit staff that this model was also given as a gift.

Recommendation #2

The Audit staff recommended that the purchase of these gifts be considered an improper use of federal funds and repayable to the U.S. Treasury. The Commission considered this recommendation on March 10, 1994 and determined that some commemorative items of nominal value are to be expected as a normal expense for a presidential nominating convention, and that those gifts valued at \$150 or less would be permitted. These gifts account for \$2,626 of the \$20,431 questioned. Therefore, the Commission made an initial determination that \$17,805 in gift purchases represents an improper use of federal funds and is repayable to the U.S. Treasury pursuant to 11 CFR §9008.10(d).

b. Research Project

The Audit Staff reviewed a contract with an individual for consulting services for the months of November and December of 1992. The contract called for four payments of \$2,500 each but did not specify the services to be performed. This individual had not received previous payments from the Committee. When the review of post December 7, 1992, payments discussed above was conducted, the four payments were included. Three were made on December 15, 1992, and the fourth was made on January 4, 1993. The Committee was requested to provide a description of the services that were provided under this contract. In response it was explained that this individual was engaged to conduct a historical study for the DNC archives. According to a Committee representative, the report produced is entitled "The Role of

In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the payments do not represent an improper use of public funds. Absent such a showing, the Committee was informed that it would be recommended that the Commission make an initial determination that \$5,676 is repayable to the United States Treasury pursuant to 11 CFR §9008.10(d).

In its response to the Interim Audit Report, the Committee agreed "that payments for parking tickets do not represent an allowable use of the public grant and, accordingly, will repay to the United States Treasury the sum of \$5,675 within 90 days of the date of the Commission's July 29, 1993 letter in accordance with 11 C.F.R. § 9008.10(g)." No such payment has been received.

Recommendation #1

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$5,676 pursuant to 11 CFR §9008.10(d).

4. Post Convention Purchases

In the Interim Audit Report it was concluded that the Committee had unspent funds totaling \$133,118. It was also explained that no allowance was made for the printing of the convention proceedings because the Committee had not provided any support for the estimate of those costs. The figures included in the Interim Audit Report were the result of the review of actual expenses and accounts payable through December 7, 1992 and estimated winding down costs of \$96,217. In its response to the Interim Audit Report the Committee submitted a revised calculation of its financial position including actual receipts and disbursements through September 3, 1993. The unspent funds shown by the Committee total \$1,289³/. In order to verify the Committee's calculation the Audit Staff visited the Committee's offices and reviewed the documentation for the disbursements made after the December 7, 1992 cutoff date. Discussed below are items that the Audit Staff recommends not be considered permissible uses of public funds.

a. Gifts

Payments to two vendors totaling \$20,431 were noted for gifts for various senior convention officials. One vendor was a Washington, D.C. jewelry store which was paid for items such as clocks, silver paperweights, silver boxes, and

³/ The Committee revised this calculation in follow up correspondence. See Finding III.B. and C.

The Committee's second argument, that the \$30,000 payment to the media firm for production costs of the film was compensation to CFP for the Committee's use of the film at the convention, and was necessary to avoid a contribution to the Committee from CFP^{2/}, depends on the first argument being accepted.

However, even if the first argument is accepted, in the view of the Audit Division, it does not follow that the payment was necessary to avoid a contribution from CFP to the Committee. The Audit analysis suggested that if after the convention has made its nomination, and prior to the candidate's acceptance speech, the Committee agrees to show convention attendees a biographical film produced by its nominee at a time when it would be available for broadcast by a number of television networks, doing so is an accommodation to the party's candidate rather than a contribution from the candidate. The Audit Division believes that under any other circumstances a candidate would expect to purchase air time to broadcast a film to a large audience rather than expect to be paid for the use of the film. On the other hand the Commission acknowledged that, in part, the convention legitimately serves as the vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.

The Audit staff recommended that the \$30,000 payment be considered a payment for expenses of a candidate participating in the Convention and repayable to the U.S. Treasury pursuant to 11 C.F.R. §9008.10(d). On March 10, 1994, the Commission considered this matter. It was determined that this payment would be viewed as a permissible Convention expense. In making this decision the Commission considered instances where candidate films were produced and shown at previous conventions, and the candidate specific nature of a convention when, as was the case in 1992, the nominee is known in advance of the Convention.

3. Parking Violations

During the review of disbursements made by the Committee, the Audit staff noted payments to the New York City Violations Bureau. An inspection of the Committee's vendor files revealed check requests, copies of Committee checks, and New York City parking tickets reflecting \$5,676 in payment of violations of New York City parking regulations.

^{2/} The Committee's response does not comment on the failure of both the Committee and CFP to report any in-kind transactions related to this \$30,000 payment. If at the time of the transaction, the payment to the media firm was considered to be in-kind compensation to CFP for the use of the film, reporting of the in-kind nature of the transaction would have been required by both Committees.

With respect to the first point the Committee argues that since the film was shown during, and as part of the Convention proceedings, the cost of producing the film is an expense for the purpose of conducting the Convention and therefore a permissible use of the public grant. The Committee also argues that production costs of the film do not constitute expenses of a candidate within the meaning of 26 USC §9008(c).

The argument that showing the film during the Convention establishes the production costs as a permissible use of Federal funds was not convincing to the Audit Division. In the view of the Audit Division, to follow such an argument would lead to the conclusion that any expense for any goods or services used during the Convention proceedings is a permissible convention expense regardless of the purpose of that expense. As noted above, Section 9008.6(a)(4) of the Code of Federal Regulations defines a convention expense as those incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention. The section then goes on to present a non-exhaustive list of the type of expenses that are included. Although the list presented in the regulation is not meant to be all encompassing, it could be argued that none of the expenses listed suggested that any expense may be candidate specific. Nonetheless, the Commission decided that a portion of the production cost of a biographic film about the party's nominee presented to the Convention, after the nomination has occurred, and made available for broadcast to television networks as part of their Convention coverage, would fall within the 9008.6(a)(4) standard of a proper Convention expense "for the purpose of conducting a presidential nominating convention."

The argument that "expenses of any candidate" as used in 26 USC §9008(c) includes only expenses such as housing, travel, and subsistence was likewise not convincing to the Audit Division. The Committee reasons that given 11 CFR §9008.7(e) states that expenses paid by a candidate for the purpose of attending or participating in the Convention do not count against the National Committee's expenditure limitation, therefore, the only types of convention related expenses that the National Committee may not pay for a candidate with the Federal grant are expenses for housing, travel, and subsistence. Though the Audit Division agreed that such expenses are likely to be the most common examples, the language at 26 USC §9008(c) suggests no such limitation. That section states that "No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention." Neither the plain language of the statute, nor the legislative or regulatory history of this provision, nor the corresponding regulation, suggests the narrow interpretation argued by the Committee.

- b. demonstrate why the partial payment for the production of a biographical film about President Clinton should not be considered an expense of a candidate attending the convention and as such, a non-qualified convention expense.

The Committee was advised that, absent these demonstrations the Audit staff would recommend that the Commission make an initial determination that \$65,000 is repayable to the U.S. Treasury.

With respect to the apparent duplicate payment, the Committee explains that the September 9, 1992 payment of \$35,000 was made in error. When the error was discovered there was also an unpaid invoice in the amount of \$12,750 that was unrelated to the biographical film. The erroneous payment was applied to the outstanding invoice and the difference, \$22,250, was refunded by Great American Media. A copy of the \$12,750 invoice was provided with the response. Therefore, the Committee paid only \$30,000 of the cost of the film.

By way of background, the Committee states that the film was originally to be produced solely for use at the Convention and the production costs were to be paid entirely by the Committee. The Committee goes on to state that during the convention week, CFP decided that it wished to own the rights to the film and to control any after convention use^{1/}. The media firm was notified and all rights to the film were transferred to CFP and CFP was billed for all remaining production. No supporting documentation, such as contracts, to support this explanation were included with the response.

The Committee puts forth two arguments concerning its payment of the \$30,000 in production costs.

First, the Committee argues that it could have lawfully paid the entire production cost of the film as a convention expense; and, second, the Committee paid a reasonable portion of the cost of producing the film to avoid accepting an unlawful or repayable contribution from CFP resulting from an otherwise uncompensated use of a CFP asset.

^{1/} The Audit Staff has learned that a revised version of the biographical film was aired by the Democratic National Committee during the week of August 16-20, 1992 as a 2 USC 441a(d) coordinated expense and by the Clinton/Gore '92 committee during the week of October 9-12, 1992.

of the Convention, and Great American Media, Inc. work, travel and payment of talent relating to Monday's delegate stories and video wall, respectively. Both of these invoices are addressed to "Alexis Herman, DNCC" (Democratic National Convention Committee). Alexis Herman was the Committee's chief executive officer. These do not appear to be related to the production of the biographical film.

During the Audit of the Clinton for President Committee (CFP), it was learned that CFP also made payments to Great American Media, Inc. for the production of this film. On July 22, 1992, CFP paid \$35,000 associated with the same invoice described above. It therefore appeared that this amount was paid by both Committees. On September 4, 1992, CFP paid \$122,237 in response to an invoice that showed a total production cost for the film of \$188,237 with an outstanding balance due of \$122,237. The difference is \$65,000, the amount billed to the Committee. Also on September 4, 1992, CFP paid \$1,591 on an invoice for additional production charges for the convention film not included on the earlier invoices, and finally on August 25, 1992, CFP paid an administrative charge of 2% on the \$122,237 invoice as provided in the contract with Great American Media, Inc. This amount was \$2,445.

The Interim Audit Report concluded that the total cost of producing the Convention film appeared to have been \$191,273 with the Committee paying \$65,000 and CFP paying \$161,273. These individual amounts included the \$35,000 apparently paid by both committees.

The Interim Audit Report also noted that the Committee had received a \$22,250 refund check dated September 25, 1992 from Great American Media, Inc. The refund was recorded as a credit to the Committee's video production general ledger account, but available documentation did not provide a detailed explanation of the reason for the refund.

Given the above, at the time of the Interim Audit Report it appeared that the Committee had expended \$65,000, potentially less a \$22,250 refund, for the production of a film which constituted an expense of a candidate attending the convention and was therefore a non-qualified convention expense.

The recommendation in the Interim Audit Report requested the Committee to:

- a. Provide documentation from Great American Media, Inc. to demonstrate the reason for the \$22,250 refund received; and

Section 9008.10(d) states, in relevant part, if the Commission determines that any amount of any payment to the convention committee under 11 CFR §9008.8(b) was used for any purposes other than the purposes authorized at 11 CFR §9008.6, it shall notify the national committee of the amount improperly used and such national committee shall pay to the Secretary an amount equal to the amount specified.

1. Misappropriation of Committee Funds

During the reconciliation of the Committee's bank records to the disclosure reports, an unexplained and undocumented \$5,000 adjustment was noted on the Committee's September 1992 cash reconciliation. The Audit staff inquired about the item and Committee officials explained that the amount represented a recovery of funds misappropriated by an employee. The employee was part of the Committee's accounting staff who, when the supervisor was traveling, had access to the Committee's blank check supply. The employee forged a signature on four checks and negotiated them. When the Committee discovered the problem, the checks were presented to the bank. The bank was able to collect the funds from the individual and credit the Committee's account. The individual was immediately terminated when the discovery was made. The Committee feels that because of the circumstances and the satisfactory resolution of the matter, their responsibility in the incident is negligible.

Since the improperly used funds have been recovered by the Committee, in the Interim Audit Report the Audit staff recommended no further action be taken in this matter. The Committee's response contained no further information.

2. Candidate Expenses

On July 16, 1992, prior to President Clinton's speech accepting the Democratic nomination for President, a film on President Clinton's life was shown at the Convention and was available for broadcast by several television networks as part of the television coverage of the proceedings.

The film was produced through Great American Media, Inc. The Committee made four payments to the firm. The Interim Audit Report explained that two of the four payments were apparently for production of the biographical film. The invoice for production costs related to the film was submitted by Great American Media, Inc. and addressed to the Democratic National Committee. It was paid in two installments, \$30,000 on July 7, 1992 and \$35,000 on September 9, 1992. One invoice refers to the production as the "Bill Clinton Story". The other two payments are for \$5,490 and \$18,880 described as the cost of producing the live vignettes out of Seattle, WA and Charleston, SC for Tuesday

As noted above, 26 U.S.C. §9008(h) refers the reader to section 9007(b) for repayment authorities with respect to convention committees. That section, at subsection (b)(3), states that any contribution received may result in a repayment determination. That language clearly establishes that convention committees who accept their full entitlement are not permitted to accept contributions in any amount. The Committee received their full entitlement and thus was not permitted to receive any contributions.

Second, the Committee argues that it did not accept or retain any contribution that would require repayment. The Committee argues that since the reimbursements were made, and no amounts are outstanding from any of the travel reimbursements that generated the contributions, no repayment is necessary. It is noted that the Interim Audit Report made no recommendation that a repayment be made. Rather, what was requested was information to show that the contributions resulting from the staff advances noted were permissible. No such information has been provided.

III. Findings and Recommendations - Repayment Matters

A. Improper Use of Funds

Section 9008.6(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that no part of any payment made under 11 CFR §9008.8 shall be used to defray the expenses of any candidate, delegate or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention.

Section 9008.6(b)(2) of Title 11 of the Code of Federal Regulations states that, "public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the state in which such expense is incurred or paid, or any regulation prescribed under federal or State laws."

Section 9008.6(a)(4) of Title 11 of the Code of Federal Regulations states in, relevant part, that convention expenses include all expenses incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention related activities.

Section 9007(b) of Title 26 of the United States Code lists the basis for repayment determinations for candidates for President of the United States who have accepted federal funding for their general election campaigns. Subsection 3 states that "if the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(c)) to defray qualified campaign expenses ..., it shall notify such candidates of the amount of contributions so accepted, and such candidates shall pay the Secretary of the Treasury an amount equal to such amount."

The Committee's payments of expense reimbursements were reviewed to determine if contributions had been made. The review disclosed that persons were reimbursed for both their own travel and subsistence expenses as well as expenses for non-travel items and the travel and subsistence of other persons. Two persons, including the Committee's chief executive officer were determined to have made contributions totaling \$15,418 (see Attachment 1.) At the time of the audit, no expense reimbursement requests were outstanding. At the exit conference, the Committee was advised of this finding. The Committee made no comment.

In the Interim Audit Report the Audit staff recommended that the Committee either demonstrate that no contributions occurred with respect to these expense reimbursements, or offer any other information that is believed to be relevant to the issue.

In response the Committee offered two arguments as to why these contributions are permissible. First, the Committee argues that the contributions resulting from the staff advances were within the contribution limitations of the Act. The Committee reasons that "an individual may contribute up to \$20,000 per calendar year to the 1992 Democratic National Convention Committee. The Committee is 'established and maintained by' the Democratic National Committee ('DNC'), within the meaning of 2 U.S.C. §441a(a)(1)(B), and is indisputably a political committee 'established, financed, maintained, or controlled by' the DNC within the meaning of 11 C.F.R. §110.3(b)(i)." The Committee also notes the Commission's Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions. In that Notice the Commission asks for public comment on the subject of a contribution limitation for convention committees for the purpose of staff advances in future election cycles. The Committee concludes that it shares the DNC's \$20,000 contribution limitation and since the staff advances noted in the interim audit report were less than \$20,000 per person the advances were permissible.

The majority of these items should have appeared on the Post Convention report covering the period from July 1, 1992 to August 31, 1992. The Committee explained that many of these expenses were outstanding beyond the close of the reporting period because the bills had been sent to a temporary office set up in New York during the convention. These bills were then forwarded to the Washington office along with other mail and therefore processing was delayed. The Committee explained that the remaining obligations which should have appeared on Schedules D in the July and October 1992 Quarterly reports were the result of delayed billings or were held pending authorization from the New York Host Committee. At the exit conference, the Committee was given a schedule of debts and the period in which they should have been reported.

In the Interim Audit Report the Audit staff recommended that the Committee file amended Schedules D (Debts and Obligations) for each period in which debt should have been reported. In response to the Interim Audit Report the Committee filed Schedules D for each relevant reporting period. These schedules contained all debts that were noted during the audit as missing from the Committee's disclosure reports.

B. Excessive Contributions From Staff

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

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

Section 9008(h) of Title 26 of the United States Code states that "the Commission shall have the same authority to require repayments from the national committee of a major or minor party as it has with respect to repayments from any eligible candidate under section 9007(b)."

8. The Committee's financial position with respect to any unexpended funds (see Finding III.B.);
9. The Committee's compliance with requirements concerning expenditures for convention expense (see Finding III.A.);
10. The Committee's compliance with spending limitations (See Finding III.B.); and,
11. Other audit procedures that were deemed necessary in the situation.

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

As part of the Commission's standard audit process, an inventory of the Committee's records was conducted prior to the beginning of fieldwork to determine if the records were materially complete and in an auditable state. The Committee's records were materially complete and, by agreement with the Committee, audit fieldwork commenced immediately.

II. Findings and Recommendations - Non-Repayment Matters

A. Reporting Requirements - Failure to Itemize Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code states, in relevant part, that the amount and nature of outstanding debts and obligations owed by or to such political committee shall be reported.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. Section 104.11(b) states, in relevant part, a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

The Committee reported no debts or obligations on their FEC disclosure reports. A review of disbursements revealed 138 items over \$500, totaling \$660,399, that should have been reported as debts.

C. Campaign Organization

The Committee registered with the Federal Election Commission on June 14, 1991, as the national convention committee of the Democratic Party. The Treasurers for the period audited were Robert A. Farmer from June 14, 1991 to September 11, 1992, and the Honorable Robert T. Matsui from September 11, 1992 to the present.

During the period audited, the Committee was headquartered in Washington, D.C., but for a portion of the period an office was also maintained in New York City. The current office is in Washington, D.C.

To handle its financial activity, the Committee had a general account from which most disbursements were made, a payroll account, and three deposit accounts used to hold federal funds. The Committee made approximately 5,000 disbursements.

The Committee was paid \$11,048,000 in federal funds. This represents the full entitlement established at 26 USC 9008(b).

D. Audit Scope and Procedures

The audit included a review of the following general categories:

1. The Committee's compliance with statutory limitations with respect to the receipt of contributions and loans (see Finding II.B.);
2. The Committee's compliance with the statutory requirements regarding the receipt of contributions from prohibited sources, such as those from corporations and labor organizations;
3. The itemization and proper disclosure of receipts, as well as the completeness and accuracy of the information disclosed;
4. The itemization and proper disclosure of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. Proper disclosure of the Committee's debts and obligations (see Finding II.A.);
6. The accuracy of total reported receipts, disbursements, and cash balances as compared to Committee bank records;
7. Adequate recordkeeping for Committee transactions;

05-10-1994



REPORT OF THE AUDIT DIVISION
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the 1992 Democratic National Convention Committee, Inc. (the Committee), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

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

B. Audit Coverage

The audit covered the period July 2, 1991, the date the Committee opened a bank account, through September 30, 1992, the final coverage date of the most recent report filed at the time of the audit. In addition, financial activity that occurred beginning in 1989, and was paid by the Democratic National Committee and subsequently reimbursed by the Committee, was included in the audit as well as certain financial activity through February 8, 1994 to determine any amounts due to the United States Treasury. During the period, the Committee reported an opening cash balance of \$-0-, total receipts of \$11,233,088, total disbursements of \$10,732,803, and a closing cash balance on September 30, 1992 of \$500,284.

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3. Parking Violations - The Committee paid New York City parking violations totaling \$5,676. These are not expenses that may be paid with federal funds. In response to the interim audit report, the Committee acknowledged its obligation to make a \$5,676 repayment to the U.S. Treasury.

4. Post Convention Purchases - As a result of follow up work done after the interim audit report was issued, a number of expenditures were identified that were not considered permissible convention expenses. Included were \$20,431 in gifts for senior staff and party leaders reported as office supplies and printing. Also, the Committee paid \$10,000 in consulting expenses for a study of the role of African Americans in the 1992 Democratic Convention to be presented to the Democratic Party for its archives. With respect to the gifts the Committee argues that it is standard practice. Nothing beyond a copy of the report was presented for the consulting payments. After discussion of this matter, the Commission allowed gifts valued at \$150 or less as commemorative items of nominal value. These total \$2,626. The final audit report contains an initial determination that amounts totaling \$27,805, are repayable to the U.S. Treasury.

Unspent Funds - 11 CFR 9008.10(e). If any portion of the federal grant remains unspent after all expenses are paid, the unspent portion must be returned to the U.S. Treasury. The Committee has \$3,872 in unspent funds.

Stale Dated Committee Checks - 26 U.S.C. §9008(h) and 11 CFR 9007.6. The sum of any checks issued by the Committee that are not cashed by the payees must be paid to the U.S. Treasury. The Committee has two such checks totaling \$810.

the advances were later reimbursed by the Committee. Because the advances were not exempt from the definition of contribution, they constituted impermissible contributions, totaling \$15,418. In response to the interim audit report the Committee argued that it shared the National Committee's \$20,000 annual limitation on contributions from individuals and that, the contributions were permissible. The audit report rejected this argument because convention committees that receive full federal funding may not accept any contributions.

Improper Use of Funds - 11 CFR 9008.6(b)(1), (2) and (4) and 9008.10(d). This section of the report deals with funds that were not expended on qualified convention expenses. These expenditures fall into four categories. Each is discussed below.

1. Misappropriation of Committee Funds - The Committee discovered that an employee had misappropriated \$5,000. When discovered, the employee was dismissed and steps were taken to recover the funds. Since the \$5,000 was recovered, the audit report does not recommend a repayment to the U.S. Treasury.

2. Candidate Expenses - The Committee is not permitted to use federal funds to pay the expenses of any candidate who participates in the Convention. The audit identified a \$30,000 payment for part of the production costs of a biographical film about President Clinton, which was shown at the Convention immediately preceding the President's acceptance speech. The interim audit report classified this payment as an impermissible payment of candidate expenses. The Committee argued that it could have paid the entire production cost as a convention expense since the film was shown during the convention and the payment was not for the candidate's personal expenses. Further, the Committee argued, that the payment was necessary to avoid a contribution from the owner of the film, Clinton For President, Inc. The Audit Division rejected these arguments because (1) the showing of the film benefited President Clinton, (2) the timing of the film alone does not determine whether it is a convention expense, and (3) the prohibition against paying candidate expenses is not limited to personal expenses. On the other hand, the Commission acknowledged that, in part, the Convention legitimately serves as a vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

AK004863

FINAL AUDIT REPORT
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

EXECUTIVE SUMMARY

The 1992 Democratic National Convention Committee, Inc. (the Committee) registered with the Federal Election Commission on June 14, 1991. The Committee was created for the purpose of conducting the 1992 Presidential nominating convention of the Democratic Party. The Committee received \$11,048,000 in federal funds for this purpose.

The Audit was conducted pursuant to 26 U.S.C. §9008(g).

The findings of the audit were presented to the Committee at an exit conference at the conclusion of the Audit fieldwork and after a follow-up visit to Committee headquarters. The Committee received an interim audit report that was approved by the Commission on July 27, 1993. Subsequently, the Committee was provided opportunities to respond to the findings contained in the interim audit report. Comments and information received from the Committee have been included in the final audit report.

The final audit report requires the Committee to repay \$38,163 to the U.S. Treasury.

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

Failure to Itemize Debts and Obligations - 2 U.S.C. §434(b)(8) and 11 CFR 104.11(a). Committees are required to list selected debts on each disclosure report. No debts were listed on the Committee's disclosure reports. The audit identified 138 debts totaling \$660,399 that required disclosure. In response to a recommendation in the interim audit report, the Committee filed schedules disclosing the debts.

Excessive Contributions From Staff - 11 CFR 116.5. Funds for travel and other expenses advanced by individuals and subsequently reimbursed by a committee are contributions by the person paying the expenses unless specifically exempted by the Commission's regulations. The audit found that two Committee staff members made such advances in material amounts. All of

excessive contributions through staff advances (I.B.)), we note that currently no contribution limit has been fixed by the Commission, and the issue of whether a committee could accept private contributions at all when it opted to receive its maximum entitlement of federal funds under 26 U.S.C. § 9008 is unsettled.² The Committee received its entire entitlement of federal funds. Thus, at the time the advances were outstanding, the Committee may have had access to funds in excess of its entitlement. Since the Committee has fully reimbursed the individuals in this case, we believe that the advances should have no entitlement or repayment implications.

We request that the auditors clarify two matters which were discussed in the Interim Audit Report, and appear to be withdrawn now. The Interim Audit Report questioned the \$96,743 in costs the Committee estimated it had incurred to print the official proceedings of the Democratic National Convention ("the Convention"). This amount was questioned because it was more than double the printing costs incurred in 1988. The Final Audit Report does not specifically address the resolution of this expense. The report should include an explanation of how the printing cost issue was resolved. Further, the Interim Audit Report notified the Committee that it may owe another \$259,000 in repayments based on transactions made by the New York '92 Host Committee, Inc. ("the Host Committee"). The Final Audit Report concludes that the Committee has no obligation based on responses filed by the Host Committee. It is suggested that the proposed report explain in greater detail how the Host Committee response extinguished the Committee's potential additional obligations.

II. IMPROPER USE OF FUNDS

The proposed Final Audit Report categorizes four separate expenditures as apparent improper uses of funds pursuant to 11 C.F.R. § 9008.6(a)(4). The auditors identify an expenditure for production costs of a film shown at the Convention, "The Man from Hope," as an impermissible use of funds. The Committee

2/ The Notice of Proposed Rulemaking on Convention Regulations ("NPRM") seeks comment on contribution limits for contributions resulting from reimbursed staff advances, suggesting that because "the convention committee is established by the national committee, and therefore affiliated with the national committee it would share the national committee's \$20,000 contribution limit." The NPRM also notes that the limit would be \$0.00 absent a deficiency in the Presidential Election Campaign Fund or if the convention committee elects not to accept its full entitlement. Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43047 (proposed August 12, 1993). The comment period closed on September 17, 1993. The hearing on the proposed rulemaking was held on October 27, 1993.



FEDERAL ELECTION COMMISSION

January 19, 1994

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina *JS*
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

Kim Bright-Coleman *KBC*
Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Peter G. Blumberg *PGB*
Attorney

SUBJECT: Proposed Final Audit Report for the 1992 Democratic
National Convention Committee, Inc.
(LRA #448/AR-93-38)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report for the Democratic National Convention Committee, Inc. ("the Committee") forwarded to this Office on November 2, 1993. The following memorandum contains our comments on the proposed audit report.^{1/} Should you have any questions, please contact Peter Blumberg, the attorney assigned to this matter.

Generally, we concur with the Audit staff's findings and recommendations in the proposed report. With regard to

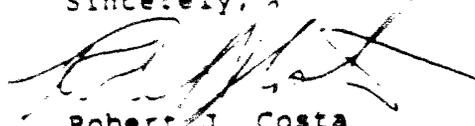
^{1/} Since the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend that the Commission's discussion of this document be conducted in open session. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 USC §§ 431-455.

05-70191-3

Robert T. Matsui, Treasurer
Page 2

Any questions you may have related to matters covered during the audit or in the report should be directed to Joe Stoltz of the Audit Division at (202) 219-3720.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:
Final Audit Report
Legal Analysis

cc: Joseph E. Sandler, Esq.

65-78191-4



April 5, 1994

The Honorable Robert T. Matsui
Treasurer
1992 Democratic National Convention
Committee, Inc.
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Congressman Matsui:

Attached, please find the Final Audit Report on the 1992 Democratic National Convention Committee, Inc. The Commission approved this report on March 10, 1994. As noted on page 3 of the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §9008.10(g)(1) and (2), the Commission has made an initial determination that the Committee is to repay to the Secretary of the Treasury \$38,163 within 90 days after service of this report (July 8, 1994.) Should the Committee or the national committee dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9008.11(a) provide either committee with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (May 9, 1994), 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 either committee within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Committee or the national committee so elects. If either committee decides to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690. If the committees do not dispute this initial determination within the 30 day period provided, it will be considered final.

The Commission-approved Final Audit Report will be placed on the public record on April 11, 1994. Should you have any questions regarding the public release of this report, please contact Mr. Ron Harris of the Commission's Press Office at (202) 219-4155.

Audit analysis of Staff Advances under I.P.R. 116 S Cont Dmtr

W/S Name	W/S No	W/S Cont	W/S Date																
Albion Norman	26	00/26/92	00/26/92	240.00	11/16/92	0.00	240.00	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	26	00/27/92	00/27/92	144.00	11/16/92	0.00	144.00	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	26	00/27/92	09/10/92	144.00	11/16/92	6.10	144.00	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	26	00/28/92	00/28/92	1706.50	11/16/92	0.00	1706.50	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	27	09/01/92	09/01/92	6945.62	11/16/92	6.10	6945.62	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	26	09/14/92	09/14/92	59.54	11/16/92	0.00	59.54	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	25	09/15/92	09/15/92	1371.54	11/16/92	0.00	1371.54	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	26	09/24/92	09/24/92	1210.17	11/16/92	0.00	1210.17	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55
	20	11/16/92	11/16/92	700.10	11/16/92	0.00	700.10	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55	4/158.55

Page 5 of 10

1610750

Auditee: _____

Explanation of Symbols and
Methodology Used in Generating
Report of Apparent Excessive Contributions
Resulting from Staff Advances as
Defined under 11 C.F.R. 116.5

Field Definitions

- 05070121
- a) W/S Name
(Worksheet Name) name of individual generally per Committee's data tape supplied to Audit staff.
- b) W/S Vch No.
(Worksheet Voucher Number) sequential number assigned by the Audit staff to the expenses associated with each voucher/reimbursement request and, if possible, to the related reimbursement(s); if the reimbursement could not be directly associated with the payment of specific expenses, then the reimbursement is numbered '999'.
- c) W/S Cont
Inc Date
(Worksheet Contribution
Incurrence Date) generally the date on which the expense was incurred per receipt or invoice.
- d) W/S Cont
Calc Dte
(Worksheet Contribution
Calculation Date) same as W/S Cont Inc Date except when a personal credit card is used for the cardholder's travel and subsistence and the a credit card statement is available. In this case, the statement/closing date is used as the calculation date. (11 CFR 116.5(b)(2))
- e) W/S Contr
Inc Amt
(Worksheet Contribution
Incurrence Amount) the amount of each expense (positive numbers) associated with a voucher/reimbursement request, or the amount of each reimbursement and of each debt settlement (negative numbers).

Field Definitions

- W/S
Days
O/S
(Worksheet Days Out-
Standing - Calculation
Date vs. Date of
Reimbursement)
- the number of days between
the calculation date and the
date the expense was reimbursed
(i.e., W/S Date Reimb. - W/S
Cont Calc Dte).
- W/S Contr
Amts
(Worksheet Contribution
Amounts)
- determined by the expense
code--for each expense code
there is a different number of
days within which the expense
must be reimbursed before it
becomes a contribution
(explained below under 'Data
and Methodology Used')--and
the W/S Days O/S.
- (k) W/S Run
Contr Bal
(Worksheet Running
Contribution Balance)
- a running balance that
starts w/ -1000 where appropriate.
(\$1000 contribution limit-
ation is built in) and adds
'W/S Contr Amt's' successively;
as reimbursements are
encountered, all contributions
paid on that 'W/S Date Reimb'
are subtracted.
- (l) W/S Excess
Amount
(Worksheet Excessive
Contribution Amount)
- the amount of excessive
contributions (i.e., the W/S
Run Contr Bal is positive) as
of each incurrence date;
- m) W/S Exc Bal
Aft Reimb
(Worksheet Excessive
Contribution Balance
After Reimbursement)
- the amount of excessive
contributions (i.e., the W/S
Run Contr Bal is positive)
remaining after each
reimbursement is applied.

Field Definitions

- f W/S
O/S Amt
Worksheet Outstanding
Amount) a running balance of expenses
and direct contributions net
of reimbursements and debt
settlements to date.
- g W/S
Exp
Cde
(Worksheet
Expense Code) 1 thru 3
are negative
amounts 1 - reimbursements
2 - debt settlements
3 - miscellaneous
- 4 thru 7
are positive
amounts 4 - advances made by an
individual for other
than his/her own travel
and subsistence, (e.g.,
others' subsistence,
office supplies, other
campaign expenses):
- 5 - advances made by an
individual for his/
her own travel and
subsistence paid by other
than personal credit card.
- 6 - advances made by an
individual for his/her
own travel and subsis-
tence paid with his/her
own personal credit card.
- 7 - direct contributions
- (h) W/S Date
Reimb
(Worksheet Date
of Reimbursement) date on which each expense was
reimbursed, assuming a
chronological order of
payment (i.e., expenses
incurred first were
reimbursed first, irrespective
of the specific expenses
associated with a given
reimbursement by a committee

05070191

Data and Methodology Used

The direct contributions, expense vouchers/reimbursement requests, and reimbursements were reviewed for the period beginning with the Committee's inception date through _____ . Generally, this data was gathered from the Committee's data tape and the Committee's vendor or check files.

Direct contributions appear net of any contribution refund(s) and are recorded for worksheet purposes as of the date of the refund. Otherwise, the deposit date from the Committee's data tape or other source is used. Debt settlements are dated as of the date that the Commission notifies the Committee that the debt settlement plan is acceptable.

Advances made by an individual for other than his/her own travel and subsistence (expense code 4) become contributions if not reimbursed on or before the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual in cash not paid by the individual's personal credit card (expense code 5) become contributions if not reimbursed within 30 days from the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual with his/her own personal credit card (expense code 6) become contributions if not reimbursed within 60 days from the credit card statement date, however, if the credit card statement is not available, 60 days from the date of incurrence is used.

Since the focus is on the operation of the convention, we believe that the prohibition against the expenses related to the candidate's "participation" in the convention includes more than the expenses for the candidate's "attendance."^{3/} Thus, the Committee is prohibited from paying for any of the candidate's convention expenses, and not just expenses for hotels and meals. Further, the Committee's compensation argument circumvents the intention of 11 C.F.R. §§ 9008.6(a) and 9008.6(b)(1). These sections could be rendered superfluous under the Committee's proposed interpretation. For example, the Committee could argue that it should pay for the candidate's hotel and meals while attending the Convention since the Committee receives the benefit of the candidate's nomination speech as part of the Convention proceedings on the final night of the convention.

The Final Audit Report also identifies three other expenditures in the amount of \$30,431 that are viewed as impermissible. These expenditures involve post-convention payments for gifts and a research project.^{4/} The Committee argues that expenditures for gifts are a long-standing tradition at national party conventions, and that the expenses for similar gifts had never been questioned in past convention audits. Specifically, the Committee cites to an expense for engraved gavels from the 1988 Democratic National Convention. The Committee also stated that the research project was convention-related and, thus, a permissible use of funds.^{5/}

This Office concurs with the Audit Division that the Committee must repay \$30,431 to the Treasury to cover the impermissible funds. However, we recommend that the auditors clarify whether they deem the expenditures as impermissible because of the fact that the actual subject matter of the expenditures were not convention-related, or because they were paid several months after the Convention, which may transform otherwise permissible expenditures into non-convention expenses.

^{3/} For instance, a candidate can participate in a convention by producing a biographical film of herself to be shown at the convention, but not actually attend the convention.

^{4/} The gifts include engraved silver clocks, paperweights, boxes and serving trays, and an architect's model of the convention platform. We note that the Committee, initially, described these expenses as "printing" and "office supply" costs to the auditors.

^{5/} The Committee states that the researcher studied the role of African Americans at the Convention. However, there is no indication that the research had anything to do with conducting the Convention or that it was performed during the Convention. Indeed, the final research report was turned in months after the Convention and the topic is the role of African Americans in the National Democratic Committee, indicating that the expenditure was party-related, not convention-related.

paid Great American Media, Inc. \$30,000 for a portion of the production costs of the film. The total production cost was \$188,237. Clinton for President ("CFP") paid the balance of the cost. The Committee contends that the expense was a permissible use of funds since the costs were incurred "for the purpose of conducting a presidential nominating convention" insofar as the film was shown as part of the Convention proceedings. 11 C.F.R. § 9008.6 a 4. The Committee also argues that these expenditures should not be considered a prohibited use of funds under 11 C.F.R. § 9008.6 b because that regulation only prohibits convention committee expenditures for candidate expenses incurred by the candidate in attending the convention, such as housing, travel, and subsistence. Thus, the Committee reasons, if the candidate expense is for an item that does not involve the candidate's attendance, then it could be a permissible expense. Further, the Committee argues that its payment to CFP was in consideration of CFP's permission to show the film during the Convention proceedings. The Committee explained that it had to compensate CFP to avoid receiving an unlawful or repayable contribution from CFP.

The Audit staff argues that the showing of the film at the Convention does not transform it into a convention expense. The auditors also argue that the FECA and regulations prohibit all expenditures made for the candidate. With respect to the Committee's argument that it was obligated to compensate CFP for the benefit of showing the film, the Audit Division argues that this reimbursement is impermissible because it is an "expense of the candidate," and in any event, CFP received free television air time as consideration for the permission to use the film. The proposed Final Audit Report recommends that the Committee repay \$30,000 to the U.S. Treasury.

This Office agrees with the proposed report's recommendation. Convention committees are prohibited from using funds to defray the expenses of any candidate's participation in conventions. 26 U.S.C. § 9008(c); 11 C.F.R. § 9008.6(b)(1). The legislative history of convention financing does not indicate if any candidate related expenses would be a permissible use of convention funds. The convention regulations do not specify all permissible uses for expenditures, but they provide examples, such as the rental of the hall, security, telephones, salaries of employees, etc. 11 C.F.R. § 9008.6(a)(4)(i)-(viii). These examples suggest that the underlying purpose of federal convention funding is the smooth functioning and operation of the convention itself and not the promotion of a certain candidate through candidate-specific expenditures. The use of funds to subsidize the costs of a biographical film of the candidate, or to pay compensation to the owner of the film for the right to use it, does not involve the operations of the Convention. Rather, this use is candidate-specific and, therefore, it is not permissible.

0 5 2 0 1 2 1 0

In general, the Commission views expenditures made around the time of the convention as convention expenses. See Final Audit Report on the Arrangements Comm. of the Repub. Nat'l Comm. for the 1988 Repub. Nat'l Convention Commission approved October 18, 1989.⁶ Payments made after the Convention cast doubt on whether an expenditure was convention-related. These expenditures also appear to be impermissible because they are more akin to expenses relating to party business rather than convention business, insofar as they have little to do with "conducting" a convention.⁷ See 11 C.F.R. § 9008.6(a). In other situations, the Audit Division has permitted expenditures for gifts such as inexpensive souvenirs to be distributed to campaign workers. These previously permitted expenditures have always been made during the convention and were inexpensive. The gifts in question here are different from previous convention souvenirs since the amount of money involved is significantly higher, and because the expenditures were made long after the Convention, thus, the auditors appear to be treating this Committee consistent with past practice.

⁶ The recent Notice of Proposed Rulemaking on convention financing also notes this point. Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions 58 Fed. Reg. 43047 (proposed August 12, 1993)

⁷ The fact the expenditures were paid several months after the Convention, adds to the inference that they were party expenses

CHRONOLOGY

1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Pre-audit Inventory Commenced	11/09/92
Audit Fieldwork	11/16/92-01/14/93
Interim Audit Report to the Committee	07/29/93
Response Received to the Interim Audit Report ^{1/}	12/09/93
Final Audit Report Approved	03/10/94

^{1/} Additional response time was granted after the revote and reissuance of the Interim Audit Report following the Courts decision in FEC v. NRA political Victory Fund, et al., No. 91-5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993).

May 5, 1994

Mr. Robert Costa
 Assistant Staff Director
 Audit Division
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

Dear Mr. Costa:

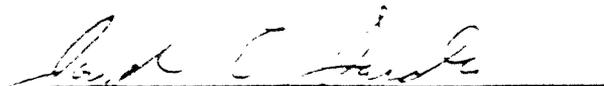
The 1992 Democratic National Convention Committee, Inc. ("DNCC") is in receipt of the Final Audit Report of the Federal Election Commission. Accordingly, enclosed please find two checks in the total amount of \$37,337.79, payable to the United States Treasury. The first check, in the amount of \$3,856.79, represents all unspent funds remaining in the DNCC account. The second check, in the amount of \$33,481.00, is being forwarded pursuant to the Commission's acceptance of the Audit Division's recommendation #1, partial acceptance of recommendation #2, and acceptance of recommendation #3 contained in the Final Audit Report.

Please note that since the issuance of the Final Audit Report, there have been two changes to the financial position of the DNCC. First, an \$800.00 check that was outstanding when the Final Audit Report was issued has since cleared the bank. Second, the DNCC made a payment of \$25.00 on April 12, 1994, to the District of Columbia for the DNCC's annual corporate fee. Accordingly, the repayment has been adjusted as follows:

- 1) Unspent Funds has been reduced from \$3,872.29 to \$3,847.29.
- 2) State Dated Committee Checks has been reduced from \$809.50 to \$9.50.

If you have any further questions regarding this matter, please call our office at (202) 863-7110.

Sincerely,



Joseph E. Sandler
 DNC General Counsel
 Neil P. Reiff
 DNC Deputy General Counsel

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC.

430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, DC 20003

NationsBank

NationsBank of DC, N.A.
Washington, DC 20006

4196

15-128
34

PAY Three Thousand, Eight Hundred and Fifty Six Dollars and 79/100

3,856.79

TO THE ORDER OF
United States Treasury
Washington, D.C.

DATE 5/5/94

AMOUNT

Robert M. Baker
TREASURER

Syron Rich

⑆004196⑆⑆054001204⑆⑆230230⑆⑆

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC.

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY AND RECEIPT DESIRED

DELUXE FORM TWCP-3 V-2

DATE	DESCRIPTION	AMOUNT
	Repayment of Unspent Funds	

ATTACHMENT _____

Page _____ of _____

DNC SERVICES CORPORATION

NON FEDERAL ACCOUNT NO. 4
430 SOUTH CAPITOL STREET, SE.
WASHINGTON, DC 20003

SOVRAN BANK
NATIONAL
MAIN OFFICE
1100 K STREET, NW
WASHINGTON, D.C. 20004

1618

May 5 19 94

15-120
340 D01

PAYED 3348100 CTS

PAY _____ DOLLARS \$ 33,481.00

TO
THE
ORDER
OF

United States Treasury
Washington, D.C.

David Walker
Syron Hicks

⑆001618⑆ - ⑆054001204⑆ 268614 7⑆

DNC SERVICES CORPORATION
NON FEDERAL ACCOUNT NO. 4

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED

DELUXE - FORM WYCP-3 V-7

Repayment fo 1992 Convention

1994 DEMOCRATIC CONVENTION
COMMITTEE, INC.
430 SOUTH CAPITOL STREET, SE.
WASHINGTON, DC 20003

First Bank
FIRST BANK OF DC, N.A.
WASHINGTON, DC 20008

195

1994

Twenty Five Dollars and no cents

April 12, 1994 25.00
DATE April 12, 1994

TO
THE
ORDER
OF

D.C. Treasurer
c/o DCRA
614 H. Street, N.W.
Washington, D.C. 20001

Robert Watson
TREASURER

NOT NEGOTIABLE

⑆001295⑆ ⑆054001201⑆ 230230 ⑆⑆

1994 DEMOCRATIC CONVENTION
COMMITTEE, INC.

DELUXE - FORM TFCPS V-2

Corporate Rec 1994

05 / 012

Other

Other

Convention

EXPENSE CODE

COST CENTER

AMOUNT

TOTAL

VOUCHER #

ATTACHMENT

Page _____ of _____

NationsBank

Bank Statement

NATIONS BANK OF D.C., N.A.
1111 K STREET N.W.
WASHINGTON, D.C. 20006

0-23-02306

(3/000/399)
NON-PROFIT CHECKING

PAGE

LAST STATEMENT DATE 02-28
THIS STATEMENT DATE 03-31

1992 DEMOCRATIC NATIONAL
CONVENTION COMMITTEE INC
430 SOUTH CAPITOL ST SE
WASHINGTON DC 20003

ENCLOSURES

DEPOSITS -- CHECKS/CHGS -- CHECKING 0-23-02306 -- REFERENCE

15	800.00	CHECK	4193	34138
02	48,872.90	CHECK	4194	34107
		TOTAL CREDITS		
.00	49,672.90	TOTAL DEBITS		

DAILY BALANCES	(AVERAGE BALANCE	5,819)		
53,554.69	02-28	4,681.79	03-02	3,881.79 03-15
BEGINNING BALANCE	53,554.69	ENDING BALANCE		3,881.79

FEDERAL TAX ID NUMBER 52-0958906

TELEPHONE SERVICE	301-891-7400	OR	800-222-7162	DIRECT WRITTEN INQUIRIES TO
TTY (HEARING IMPAIRED)	301-270-7081			NATIONS BANK OF D.C., N.A.
FAX	301-270-7498			6495 NEW HAMPSHIRE AVENUE
				HYATTSVILLE, MARYLAND 2078

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC
430 SOUTH CAPITOL STREET, SE.
WASHINGTON, DC 20003

NationsBank
NationsBank of DC, N.A.
Washington, DC 20006

4193
15-00
540
001

ATTACHED
Page _____ of _____

PAY *****Eight Hundred and no/100*****

020237482	004	0870	0803	25	02
		DATE			AMOUNT
		2/1/94			\$800.00

TO THE ORDER OF Thomas Murphy
1409 SE 46th Lane
Cape Coral, Fla. 33904

Robert Watson
Treasurer

⑈004193⑈ ⑆054001204⑆ 230230 6⑈ ⑆0000080000⑆



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 12, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

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

SUBJECT: REPAYMENT RECEIVED FROM THE 1992 DEMOCRATIC NATIONAL
CONVENTION COMMITTEE, INC.

The final audit report on the 1992 Democratic National Convention Committee, Inc. required a repayment to the U.S. Treasury in the amount of \$38,163. This consisted of \$33,481 for impermissible use of public funds, \$3,872 in unspent funds, and \$810 in stale dated checks.

The Committee was given 90 days to make the repayment (July 8, 1994) or 30 days to contest the initial repayment determination (May 9, 1994). On May 5, 1994, Committee Counsel delivered two checks totaling \$37,338. This is \$825 less than the amount specified in the initial repayment determination. The difference is \$800 for a stale dated check that has recently cleared the Committee's account and \$25 in additional winddown expenses for the renewal of the Committee's corporate charter. (A copy of the Committee's letter is at Attachment 1)

In the opinion of the Audit staff the payments received satisfy the initial repayment determination.

This memorandum is being circulated for your information. Should you have any questions, please contact Joe Stoltz at 219-3720.

cc General Counsel

Public Disclosure
(Cooper)

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION

MAY 12 3 10 PM '94

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cc General Counsel

1994

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

David Wilhelm, Chairman

May 5, 1994

Mr. Robert Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Costa:

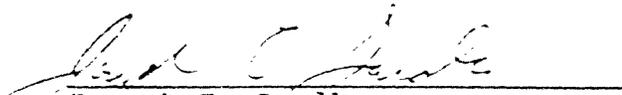
The 1992 Democratic National Convention Committee, Inc. ("DNCC") is in receipt of the Final Audit Report of the Federal Election Commission. Accordingly, enclosed please find two checks in the total amount of \$37,337.79, payable to the United States Treasury. The first check, in the amount of \$3,856.79, represents all unspent funds remaining in the DNCC account. The second check, in the amount of \$33,481.00, is being forwarded pursuant to the Commission's acceptance of the Audit Division's recommendation #1, partial acceptance of recommendation #2, and acceptance of recommendation #3 contained in the Final Audit Report.

Please note that since the issuance of the Final Audit Report, there have been two changes to the financial position of the DNCC. First, an \$800.00 check that was outstanding when the Final Audit Report was issued has since cleared the bank. Second, the DNCC made a payment of \$25.00 on April 12, 1994, to the District of Columbia for the DNCC's annual corporate fee. Accordingly, the repayment has been adjusted as follows:

- 1) Unspent Funds has been reduced from \$3,872.29 to \$3,847.29.
- 2) State Dated Committee Checks has been reduced from \$809.50 to \$9.50.

If you have any further questions regarding this matter, please call our office at (202) 863-7110.

Sincerely,



Joseph E. Sandler
DNC General Counsel
Neil P. Reiff
DNC Deputy General Counsel

Calculation of Unspent Portion of the Entitlement
of the 1992 Democratic Nation Convention Committee, Inc.
as of December 7, 1992

ASSETS

Cash on Hand		\$ -0-
Cash in Bank		
Operating at 12/7/92	149,581	
Payroll at 12/7/92	<u>3,313</u>	
<u>Total Cash</u>		\$152,894.00
 Add:		
Accounts Receivable	\$ 49,099	
Capital Assets	<u>27,342</u>	<u>\$ 76,441.00</u>
<u>Total Assets</u>		\$229,335.00

LIABILITIES

Accounts Payable	\$ 14,435	
Estimated Winding Down Costs*/	<u>81,782</u>	
<u>Total Liabilities</u>		<u>96,217.00</u>
 Amount Repayable to the United States Treasury		<u>\$133,118.00</u>

* An estimated \$96,743 in printing costs not included, due to lack of documentation.

The Committee made no interim repayment pursuant to 11 CFR 9008.10(e)(2).

As a result of the audit of the New York Host '92 Committee, there is the possibility that \$135,500 in disbursements made by the Host Committee are attributable to the Committee's spending limitation. These disbursements were made with funds that had been commingled with other moneys which do not meet the requirements of 11 CFR 9008.7(d)(3)(1). Should it be determined that these disbursements are attributable to the spending limitation, the Committee's entitlement would be reduced by the \$135,500 in private funds and a repayment in an equal amount would be required. Further, it would be determined that the spending limitation was exceeded by \$2,382. (\$135,500 in chargeable convention expenses less \$133,118 in unspent funds) requiring an additional repayment in that amount. Until a determination is made with respect to the Host Committee, the \$135,500 has been excluded from the preliminary repayment calculation.

Recommendation #6

The Audit staff recommends that, absent a showing to the contrary, within 30 days of service of this report, the Commission make an initial determination that \$133,118 in unspent funds is repayable to the United States Treasury pursuant to 26 USC §9008(h) and 11 CFR §9008.10(e). Also, it is recommended that the Committee demonstrate why no interim repayment pursuant to 11 CFR 9008.10(e)(2) was required.

050201911

W/S Name	W/S Vch No	W/S Int Date	W/S Cont Calc Dte	W/S Cont Inc Amt	W/S O/S Amt	W/S Exp Cde	W/S Date Relmb	W/S O/S	W/S Cont Amt	W/S Cont Bal	W/S Run Amount	W/S Excess Amount	W/S Exc Bal Att Relmb
Alexis Norman	17	05/26/92	05/26/92	665.01	6794.05	6	06/20/92	14	0.00	211.28	211.28		
	20	05/28/92	05/28/92	71.87	6827.92	4	06/20/92	12	73.87	285.15	285.15		
	20	05/30/92	06/25/92	91.09	6879.01	6	06/20/92	4	0.00	285.15	285.15		
	20	05/31/92	05/31/92	247.54	7126.55	4	06/20/92	29	247.54	532.69	532.69		
	20	05/31/92	05/31/92	131.00	7257.55	4	06/20/92	29	131.00	663.69	663.69		
	14	06/02/92	06/02/92	-233.09	7024.46	1	06/20/92	0	0.00	663.69	663.69		663.69
	18	06/02/92	06/13/92	18.16	7042.62	6	06/20/92	16	0.00	663.69	663.69		
	18	06/03/92	06/13/92	50.20	7092.82	6	06/20/92	16	0.00	663.69	663.69		
	18	06/03/92	06/13/92	72.68	7165.50	6	07/15/92	32	0.00	663.69	663.69		
	18	06/07/92	06/07/92	243.48	7408.98	4	07/15/92	38	243.48	907.17	907.17		
	21	06/07/92	06/07/92	187.50	7596.48	4	07/15/92	38	187.50	1094.67	1094.67		
	21	06/07/92	07/08/92	65.05	7661.53	6	07/15/92	7	0.00	1094.67	1094.67		
	20	06/07/92	06/25/92	49.14	7710.67	6	07/15/92	20	0.00	1094.67	1094.67		
	15	06/10/92	06/10/92	463.80	7246.87	1	07/15/92	0	0.00	1087.69	1087.69		1087.69
	20	06/10/92	06/25/92	53.44	7300.31	6	07/15/92	20	0.00	1087.69	1087.69		
	20	06/10/92	06/25/92	33.61	7333.92	6	07/15/92	20	0.00	1087.69	1087.69		
	18	06/11/92	06/11/92	119.37	7453.29	4	07/15/92	34	119.37	1207.06	1207.06		
	19	06/12/92	06/20/92	69.97	7523.26	6	07/15/92	25	0.00	1207.06	1207.06		
	19	06/12/92	06/20/92	25.65	7548.91	6	07/15/92	25	0.00	1307.06	1307.06		
	19	06/12/92	06/20/92	49.50	7598.41	6	07/15/92	25	0.00	1307.06	1307.06		
	21	06/15/92	07/08/92	32.55	7656.64	6	07/15/92	7	0.00	1207.06	1207.06		
	22	06/16/92	06/16/92	676.80	8332.64	4	07/15/92	29	676.80	1883.06	1883.06		
	20	06/16/92	06/25/92	41.88	8374.52	6	07/15/92	20	0.00	1883.06	1883.06		
	21	06/18/92	07/08/92	85.13	8459.65	6	07/15/92	7	0.00	1883.06	1883.06		
	22	06/20/92	06/20/92	64.00	8523.65	4	07/15/92	25	64.00	1941.06	1941.06		
	21	06/21/92	06/21/92	150.63	8674.28	4	08/05/92	45	150.63	2097.69	2097.69		
	22	06/21/92	07/14/92	71.97	8746.25	6	08/05/92	22	0.00	2097.69	2097.69		
	21	06/21/92	07/08/92	27.82	8774.07	6	08/05/92	28	0.00	2097.69	2097.69		
	17	06/22/92	06/22/92	5880.66	2933.41	1	08/05/92	0	0.00	891.19	891.19		891.19
	16	06/22/92	06/22/92	141.56	2791.85	1	08/05/92	0	0.00	891.19	891.19		891.19
	22	06/22/92	07/14/92	30.74	2822.59	6	08/05/92	22	0.00	891.19	891.19		
	20	06/23/92	06/25/92	91.02	2913.61	6	08/05/92	41	0.00	891.19	891.19		
	20	06/23/92	06/25/92	1107.69	4021.30	4	08/11/92	49	1107.69	2001.08	2001.08		
	23	06/25/92	06/25/92	124.03	4145.33	4	08/11/92	49	124.03	2125.11	2125.11		
	20	06/25/92	06/25/92	21.05	4166.38	4	08/11/92	49	0.00	2125.11	2125.11		
	21	06/26/92	06/26/92	135.00	4301.38	4	08/11/92	48	135.00	2260.11	2260.11		
	19	06/29/92	06/29/92	165.12	4436.50	4	08/11/92	48	165.12	2195.11	2195.11		
	18	06/29/92	06/29/92	503.89	4291.26	1	08/11/92	0	0.00	2124.91	2124.91		2124.91
	23	06/30/92	07/26/92	84.31	3871.68	6	08/11/92	18	0.00	1942.70	1942.70		1942.70
	23	07/01/92	07/01/92	144.22	4015.90	4	08/11/92	18	144.22	2086.92	2086.92		
	23	07/01/92	07/26/92	54.71	4070.61	6	08/11/92	63	0.00	2086.92	2086.92		
	23	07/04/92	07/04/92	141.07	4211.68	4	08/11/92	40	141.07	2227.99	2227.99		
	23	07/04/92	07/16/92	52.91	4264.59	6	08/10/92	25	0.00	2227.99	2227.99		
	23	07/04/92	07/16/92	18.24	4302.83	4	08/10/92	25	0.00	2227.99	2227.99		
	21	07/05/92	07/05/92	64.00	4366.83	4	08/10/92	46	64.00	2281.99	2281.99		
	22	07/07/92	07/07/92	9.04	4375.87	4	08/10/92	44	9.04	2101.01	2101.01		
	22	07/08/92	07/08/92	425.41	4940.30	4	08/20/92	43	425.41	2865.46	2865.46		
	21	07/08/92	07/08/92	139.00	5079.30	4	08/20/92	43	139.00	3004.46	3004.46		
	22	07/08/92	07/08/92	148.07	5227.37	4	08/20/92	14	0.00	3004.46	3004.46		
	24	07/09/92	08/06/92	234.75	5462.12	4	08/20/92	40	234.75	3239.21	3239.21		
	22	07/11/92	07/11/92	113.75	5575.87	4	08/20/92	19	113.75	3352.96	3352.96		
	22	07/12/92	07/12/92	210.69	5786.56	4	08/20/92	19	210.69	3563.65	3563.65		
	21	07/13/92	07/13/92	107.20	5893.76	4	08/20/92	18	107.20	3670.85	3670.85		

W/S Name	W/S No	W/S Cont Date	W/S Cont	W/S Cont Inc Amt	W/S Amt	W/S Date	W/S Day	W/S Cont	W/S Min	W/S Entry	W/S Ex. Ret
Alexis Herman	24	07/11/92	08/06/92	99.28	5951.02	08/20/92	14	0.00	1670.85	1670.85	
	21	07/14/92	07/14/92	460.43	6413.45	08/20/92	17	460.43	4131.28	4131.28	
	22	07/14/92	08/11/92	37.02	6450.47	08/20/92	17	0.00	4131.28	4131.28	
	22	07/14/92	07/14/92	46.06	6496.53	08/20/92	17	0.00	4131.28	4131.28	
	20	07/15/92	07/15/92	1976.27	4320.26	08/20/92	14	0.00	2757.08	2757.08	2757.08
	23	07/17/92	07/17/92	420.50	4940.76	08/20/92	14	420.50	1177.58	1177.58	
	24	07/17/92	08/06/92	126.20	5066.96	08/20/92	14	0.00	1101.78	1101.78	
	23	07/18/92	08/06/92	18.70	5083.66	08/20/92	14	0.00	3101.78	3101.78	
	23	07/18/92	07/18/92	2301.53	7385.19	08/20/92	13	2301.53	5601.31	5601.31	
	23	07/18/92	07/18/92	272.32	7657.51	08/20/92	13	272.32	5875.63	5875.63	
	27	07/18/92	08/13/92	708.17	8365.68	08/20/92	15	0.00	6569.84	6569.84	
	27	07/19/92	07/19/92	694.21	9059.89	08/20/92	40	694.21	6569.84	6569.84	
	24	07/19/92	08/06/92	2841.91	11901.80	09/01/92	26	0.00	6569.84	6569.84	
	27	07/19/92	08/13/92	49.26	11951.06	09/01/92	19	0.00	7350.03	7350.03	
	28	07/20/92	07/20/92	780.19	12731.25	09/01/92	43	780.19	7435.03	7435.03	
	23	07/20/92	07/20/92	85.00	12816.25	09/01/92	43	85.00	7435.03	7435.03	
	27	07/20/92	08/13/92	52.82	12869.07	09/01/92	19	0.00	7435.03	7435.03	
	27	07/20/92	08/13/92	67.02	12936.09	09/01/92	19	0.00	7435.03	7435.03	
	27	07/20/92	08/13/92	67.02	12936.09	09/01/92	19	0.00	7435.03	7435.03	
	27	07/20/92	08/13/92	60.12	12996.21	09/01/92	42	220.83	7655.86	7655.86	
	23	07/21/92	07/21/92	359.40	13317.64	09/01/92	42	0.00	8015.26	8015.26	
	23	07/21/92	07/21/92	579.80	13576.44	09/01/92	42	359.40	8595.14	8595.14	
	27	07/21/92	08/13/92	115.11	14156.23	09/01/92	19	0.00	8595.14	8595.14	
	23	07/22/92	07/22/92	140.00	14411.43	09/01/92	41	140.00	8715.14	8715.14	
	25	07/22/92	07/22/92	12.16	14423.79	09/01/92	41	12.16	8747.50	8747.50	
	23	07/24/92	07/24/92	138.10	14562.09	09/01/92	39	138.10	8885.80	8885.80	
	21	07/24/92	08/13/92	1710.72	16292.81	09/01/92	19	0.00	8885.80	8885.80	
	25	07/25/92	08/16/92	79.95	16372.76	09/01/92	6	0.00	8885.80	8885.80	
	23	07/26/92	07/26/92	114.65	16487.41	09/01/92	37	114.65	9000.45	9000.45	
	23	07/26/92	07/26/92	270.31	16757.72	09/01/92	37	270.31	9270.76	9270.76	
	25	07/26/92	07/26/92	311.18	17068.90	09/01/92	37	311.18	9581.94	9581.94	
	24	07/26/92	07/26/92	70.15	17139.05	09/01/92	26	0.00	9581.94	9581.94	
	25	07/26/92	07/26/92	562.64	17681.69	09/01/92	26	0.00	9581.94	9581.94	
	25	07/29/92	07/29/92	57.35	17739.04	09/01/92	34	57.35	9619.29	9619.29	
	27	07/30/92	08/13/92	68.00	1807.04	09/01/92	19	0.00	9619.29	9619.29	
	25	08/01/92	08/26/92	18.74	17825.78	09/01/92	6	0.00	9619.29	9619.29	
	24	08/01/92	08/06/92	96.00	17921.78	09/01/92	26	0.00	9619.29	9619.29	
	21	08/05/92	08/05/92	638.36	17283.42	09/01/92	20	0.00	9222.48	9222.48	9222.48
	22	08/11/92	08/13/92	131.40	17614.82	09/01/92	2	131.40	9353.88	9353.88	
	22	08/11/92	08/13/92	1621.25	15793.57	09/01/92	0	0.00	7916.90	7916.90	7916.90
	26	08/11/92	08/13/92	128.00	15921.57	09/01/92	19	128.00	8044.90	8044.90	
	26	08/11/92	08/13/92	144.00	16065.57	09/01/92	19	144.00	8188.90	8188.90	
	26	08/11/92	08/13/92	144.00	16209.57	09/01/92	19	144.00	8312.90	8312.90	
	27	08/11/92	08/13/92	13.65	16223.22	09/01/92	1	0.00	8312.90	8312.90	
	26	08/11/92	08/13/92	144.00	16367.22	09/01/92	1	0.00	8312.90	8312.90	
	27	08/11/92	08/13/92	1760.71	18127.93	09/24/92	42	0.00	8312.90	8312.90	
	23	08/20/92	08/20/92	9452.56	12475.37	09/24/92	35	0.00	1311.06	1311.06	1311.06
	25	08/20/92	08/20/92	140.00	12615.37	09/24/92	15	140.00	1451.06	1451.06	
	25	08/20/92	08/26/92	140.00	12755.37	09/24/92	29	0.00	1451.06	1451.06	
	25	08/20/92	08/26/92	28.50	12783.87	09/24/92	29	0.00	1451.06	1451.06	
	25	08/21/92	08/21/92	194.84	12978.71	09/24/92	34	194.84	1645.90	1645.90	
	26	08/21/92	08/21/92	115.00	13091.71	09/24/92	11	115.00	1760.90	1760.90	
	24	08/21/92	09/14/92	43.43	13137.14	09/24/92	10	0.00	1760.90	1760.90	
	25	08/22/92	08/22/92	45.00	13202.14	09/24/92	11	45.00	1825.90	1825.90	
	25	08/22/92	08/26/92	258.67	13460.76	11/16/92	82	126.85	1952.75	1952.75	
	25	08/22/92	08/26/92	65.00	13525.76	11/16/92	82	65.00	4017.75	4017.75	

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1617050

W/S Name	W/S No	W/S Cont Inc	W/S Cont Date	W/S Cont Date	W/S Cont Inc Amt	W/S O/S Amt	W/S Exp Cde	W/S Date Reimb	W/S Day O/S	W/S Cont Amt	W/S Run Contr Bal	W/S Excess Amt	W/S Excess Amt Reimb
Anne Reinhold	6	07/11/92	07/11/92		7.00	1294.15	5	08/06/92	26	0.00	211.15	211.15	
	6	07/12/92	07/12/92		1.50	1257.65	5	08/06/92	25	0.00	211.15	211.15	
	6	07/12/92	07/12/92		4.25	1261.90	5	08/06/92	25	0.00	211.15	211.15	
	6	07/12/92	07/12/92		0.00	1269.90	5	08/06/92	25	0.00	211.15	211.15	
	6	07/12/92	07/12/92		6.00	1275.90	5	08/06/92	25	0.00	211.15	211.15	
	6	08/06/92	08/06/92		1275.90	0.00	1		0	0.00	1000.00		

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Auditee: _____

Explanation of Symbols and
Methodology Used in Generating
Report of Apparent Excessive Contributions
Resulting from Staff Advances as
Defined under 11 C.F.R. 116.5

Field Definitions

- a) W/S Name
(Worksheet Name) name of individual generally per Committee's data tape supplied to Audit staff.
- b) W/S Vch No.
(Worksheet Voucher Number) sequential number assigned by the Audit staff to the expenses associated with each voucher/reimbursement request and, if possible, to the related reimbursement(s); if the reimbursement could not be directly associated with the payment of specific expenses, then the reimbursement is numbered '999'.
- c) W/S Cont
Inc Date
(Worksheet Contribution
Incurrence Date) generally the date on which the expense was incurred per receipt or invoice.
- d) W/S Cont
Calc Dte
(Worksheet Contribution
Calculation Date) same as W/S Cont Inc Date except when a personal credit card is used for the cardholder's travel and subsistence and the a credit card statement is available. In this case, the statement/closing date is used as the calculation date. (11 CFR 116.5(b)(2))
- e) W/S Contr
Inc Amt
(Worksheet Contribution
Incurrence Amount) the amount of each expense (positive numbers) associated with a voucher/reimbursement request, or the amount of each reimbursement and of each debt settlement (negative numbers).

Field Definitions

- f) W/S
O/S Amt
(Worksheet Outstanding
Amount) a running balance of expenses
and direct contributions net
of reimbursements and debt
settlements to date.
- g) W/S
Exp
Cde
(Worksheet
Expense Code) 1 thru 3
are negative
amounts 1 - reimbursements
2 - debt settlements
3 - miscellaneous
4 thru 7
are positive
amounts 4 - advances made by an
individual for other
than his/her own travel
and subsistence, (e.g.,
others' subsistence,
office supplies, other
campaign expenses).
5 - advances made by an
individual for his/
her own travel and
subsistence paid by other
than personal credit card.
6 - advances made by an
individual for his/her
own travel and subsis-
tence paid with his/her
own personal credit card.
7 - direct contributions
- h) W/S Date
Reimb
(Worksheet Date
of Reimbursement) date on which each expense was
reimbursed, assuming a
chronological order of
payment (i.e., expenses
incurred first were
reimbursed first, irrespective
of the specific expenses
associated with a given
reimbursement by a committee).

Field Definitions

- (i) W/S Days O/S
(Worksheet Days Outstanding - Calculation Date vs. Date of Reimbursement)
- the number of days between the calculation date and the date the expense was reimbursed (i.e., W/S Date Reimb. - W/S Cont Calc Dte).
- (j) W/S Contr Amt
(Worksheet Contribution Amounts)
- determined by the expense code--for each expense code there is a different number of days within which the expense must be reimbursed before it becomes a contribution (explained below under 'Data and Methodology Used')--and the W/S Days O/S.
- (k) W/S Run Contr Bal
(Worksheet Running Contribution Balance)
- a running balance that starts w/ -1000 where appropriate. (\$1000 contribution limitation is built in) and adds 'W/S Contr Amt' successively; as reimbursements are encountered, all contributions paid on that 'W/S Date Reimb' are subtracted.
- (l) W/S Excess Amount
(Worksheet Excessive Contribution Amount)
- the amount of excessive contributions (i.e., the W/S Run Contr Bal is positive) as of each incurrence date;
- (m) W/S Exc Bal Aft Reimb
(Worksheet Excessive Contribution Balance After Reimbursement)
- the amount of excessive contributions (i.e., the W/S Run Contr Bal is positive) remaining after each reimbursement is applied.

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American Media, Inc.

Attachment 2
Page 1 of 2

TO: Democratic National Committee
FROM: Great American Media, Inc.
DATE: July 1, 1992
RE: Invoice # GAM92-223

Production

Film Production of the "Bill Clinton Story"
a biographical film to be shown at the
Convention. Production costs include 5 days
of filming, film stock, camera crew
and equipment, and grip & lighting
equipment..... \$ 65,000.00
(this does not include post-production)

Payment Terms:

Partial Payment Due immediately..... \$ 30,000.00
Partial Payment Due July 8, 1992..... \$ 35,000.00
65,000.00

7/9 Recd 30,000.00

Net Due 35,000.00

25 24

TO: Democratic National Committee
FROM: Great American Media, Inc.
DATE: July 1, 1992
RE: Invoice # GAM92-223

Production

Production for Convention film. Production costs include 5 days of filming, film stock, camera crew and equipment, and grip & lighting equipment \$ 65,000.00
(this does not include post-production)

Payment Terms:

Partial Payment Due immediately..... \$ 30,000.00 ✓
Partial Payment Due July 8, 1992..... \$ 35,000.00
65,000.00

Products Value

Received in Audit
9/3/93



Democratic National Committee

September 3, 1993

By Hand

Robert J. Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Interim Report of the Audit Division on the 1992
Democratic National Convention Committee, Inc.

Dear Mr. Costa:

Enclosed is the response of the 1992 Democratic National Convention Committee, Inc. to the Interim Report of the Audit Division on the 1992 Democratic National Convention Committee, Inc.

We very much appreciate the courteous and professional manner in which the Audit staff conducted the audit of the Committee. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely yours,

Joseph E. Sandier
Joseph E. Sandier
General Counsel

Neil P. Reiff
Neil P. Reiff
Deputy General Counsel

**BEFORE THE
FEDERAL ELECTION COMMISSION**

**RESPONSE OF THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.
TO THE INTERIM REPORT OF THE AUDIT DIVISION**

The 1992 Democratic National Convention Committee, Inc. (the "Committee") hereby responds to the Interim Report of the Audit Division on the 1992 Democratic National Convention Committee, Inc. (the "Interim Audit Report"), submitted under cover of a letter from Robert J. Costa dated July 29, 1993, as follows:

Response to Recommendation # 1--Failure to Itemize Debts and Obligations

The Committee is filing, with this Response, amended Schedules D for each period in which debts should have been reported, in accordance with the schedule of debts provided by the Audit Division. The Schedules D are attached hereto as Exhibit 1 and we hereby request that they be filed as amendments to the Committee's reports for the applicable periods, as shown on the amended pages. These are intended to supersede and replace any other debt schedules that have been filed for these periods.

Response to Recommendation # 2: Excessive Contributions from Staff

No unlawful contributions to the Committee were made by the staff members who charged expenses on their personal credit cards and were reimbursed for those expenses, nor does the Committee have any repayment obligation with respect to those amounts.

A. The Contributions Alleged to Have Been Made Were Within the Limits of the Act

The amounts alleged to have been contributions by the individual staff members to the Committee complied with the limits and prohibitions of the Federal Election Campaign Act of 1971 as amended (the "Act"). The Interim Audit Report alleges that, under 11 C.F.R. § 116.5, Alexis Herman's credit card charges constituted a contribution in the amount of \$9,639.29 and that Anne Reingold's credit card charges constituted a contribution in the amount of \$5,778.96, for a total of \$15,418.25. (Interim Audit Report at p. 4). The worksheet attached to the Interim Audit Report allowed for a contribution limit of \$1,000 from each individual.

It is clear, however, that an individual may contribute up to \$20,000 per calendar year to the 1992 Democratic National Convention Committee. The Committee is "established and maintained by" the Democratic National Committee ("DNC"), within the meaning

of 2 U.S.C. § 441a(a)(1)(B), and is indisputably a political committee "established, financed, maintained, or controlled by" the DNC within the meaning of 11 C.F.R. § 110.3(b)(i). As explained in the Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43046 (August 12, 1993):

The Commission notes that under new section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore contributions until reimbursed. Thus, the question has arisen as to the maximum amount a convention committee can accept in staff advances if it provides reimbursement and accepts full public funding. Given that the convention committee is established by the national committee, and is therefore affiliated with the national committee, it would share the national committee's \$20,000 contribution limit.

58 Fed. Reg. at 43047 (emphasis added).

Accordingly, under 2 U.S.C. § 441a(a)(1)(B) and 11 C.F.R. §§ 110.1(c)(1), the amount that an individual can contribute to the 1992 Democratic National Convention Committee, and that the Committee can therefore "accept in staff advances if it provides reimbursement and accepts full public funding," is \$20,000 per calendar year¹.

Neither Ms. Herman nor Ms. Reingold made any contribution to the DNC during calendar year 1992, other than the contributions alleged to have been made by virtue of their credit card charges. Thus, neither Ms. Herman whose contribution is alleged to have been \$9,639, nor Ms. Reingold whose contribution is alleged to have been \$5,778, exceeded the applicable contribution limit, and the Committee therefore did not receive or accept any unlawful contribution.

B. The Committee Did Not Accept or Retain Any Contribution that Would Require Repayment

The question of whether the alleged contributions were lawful under the Act is, of course, an issue separate from that of whether such contributions give rise to any repayment obligation. In this case, however, it is clear that the Committee has not in any event accepted any excessive contributions--in any amount--which would require repayment under 11 C.F.R. § 9008.10(c).

¹ It should be noted that the \$2,000 limit on contributions to party committees provided for in 2 U.S.C. §431(8)(A)(iv) and 11 C.F.R. § 100.7(b)(8) applies only to unreimbursed payments. Since the payments (credit card charges) in question were in fact reimbursed, these provisions are inapplicable.

As the worksheets attached to the Interim Audit Report demonstrate, all of the credit card charges made by Alexis Herman and Anne Reingold were fully reimbursed by the Committee. Thus, the Committee did not use the personal credit cards of either staffer to defray any Convention expenses and thus has not, by virtue of those charges, accepted contributions which, when added to the amount of public funds received, exceed the expenditure limitation for purposes of 11 C.F.R. § 9008.10(c).

Indeed, under 11 C.F.R. § 116.5, "reimbursements for . . . nonexempt expenses are treated as refunds of the staff members' contributions." Explanation and Justification of Regulations on Debts Owed by Candidates and Political Committees, 55 Fed. Reg. 26378, 26383 (June 27, 1989) (emphasis added). The Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43046 (August 12, 1993), similarly makes clear that--

under section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore contributions, until reimbursed.

58 Fed. Reg. at 43047 (emphasis added). In this case, the Committee has fully reimbursed, and has therefore legally refunded, all of the amounts which allegedly constitute contributions. For that reason, the Committee has no repayment obligation with respect to these amounts.

Response to Recommendation # 3: Misappropriation of Committee Funds

The Audit staff has recommended that no further action be taken with respect to this matter, and therefore no response is required.

Response to Recommendation # 4: Alleged Candidate Expenses.

As explained below, the film on President Clinton's life, entitled "The Man from Hope," is the property of the Clinton for President Committee ("CFP") and was paid for by CFP. To avoid having CFP make an unlawful and/or repayable contribution to the Committee, the Committee paid CFP fair consideration for use of the film at the Convention, in the amount of \$30,000, and made that payment in-kind to CFP, i.e., by paying the vendor that portion of the costs of the film. This payment--which was in effect a fee or charge for use of the film as part of the Convention proceedings--was clearly a proper and qualified Convention expense.

A. Factual Background.

It was originally contemplated that this film would be produced solely for the purpose of being shown at the Convention and, therefore, that the Committee would pay for all of the costs of producing it. On July 1, 1992, the producer of the film, Great American Media, Inc., ("Great American") submitted an invoice to the Committee for \$65,000, representing the costs of set-up and filming, but not including post-production costs (editing, creating and dubbing sound, etc.). This invoice is attached as Exhibit 2-A.

This invoice was due to be paid in two installments: one for \$30,000 due "immediately" and the remaining \$35,000 due on July 8, 1992. On July 7, 1992, the Committee paid the first installment of \$30,000, with check # 2697.

During the week of the Convention, the Clinton for President Committee ("CFP") decided that it wished to control all use of the film, if any, after the Convention. Great American, which owned the copyright, was so informed and the transfer to CFP of all rights in and to the film was acceptable to the Committee.

However, it was determined that the Committee must make some payment to CFP in order to avoid having CFP make an unlawful contribution to the Committee--that is, to avoid having CFP pay the entire cost of an item which was in fact used as part of the Convention program, and which was therefore in part a Convention expense.

It was mutually agreed by CFP and the Committee that use of the film at the Convention should be valued at \$30,000--approximately one-sixth of the cost of the film. This was certainly a reasonable valuation for the rights to use the film at the Convention, considering the large number of people who viewed the film both at the Convention hall and through television broadcasts of the Convention proceedings, and considering that the film was a significant part of those proceedings.

Rather than have the \$30,000 already paid by the Committee to Great American Media refunded, and then have the Committee pay a check to CFP, it was decided to treat the \$30,000 payment to Great American already made as payment of the \$30,000 fee, which Great American would then deduct from the amount otherwise chargeable to CFP.

The total cost of producing the film was \$ 187,237. Of this, the Committee agreed to pay the \$30,000 and CFP agreed to pay the remaining \$157,237.

In accordance with this arrangement, the Committee was not required to pay the second installment of the July 1, 1992 invoice from Great American Media. On July 21, 1993, therefore, Great American issued a credit memo of \$35,000 to the Committee, indicating that the July 1 invoice (GAM 92-223, Exhibit 2-A) should

be treated as having been paid in full. See credit memo attached as Exhibit 2-B.

We are advised by Great American that, on that same day, July 21, Great American billed CFP for that \$35,000, since it was CFP that owed the balance of the July 1 invoice originally sent to the Committee, as well as all of the remaining production costs, under the arrangement described above.

We are advised that CFP paid that \$35,000 invoice on July 22, 1993 (as the Interim Audit Report notes). We are further advised that, on August 4, 1992, Great American billed CFP for the remaining costs, equal to \$122,237.

On September 9, 1992, the Committee mistakenly paid the remaining \$35,000 from Invoice GAM92-223 (Ex. 2-A). At that time, the Committee owed Great American Media \$12,750 for another, unrelated project, namely the Monday presentation of delegate stories and the video wall. See invoice 92-226 attached as Exhibit 2-C. On September 25, 1992, therefore, Great American refunded the difference between the balance owed (\$12,750) and the amount the Committee mistakenly paid (\$35,000), which equals \$22,250. See Exhibit 2-D, the account history for the 1992 Democratic National Convention Committee provided by Great American.

Thus, the Committee paid only a total of \$30,000 for use of the film.

B. Legal Analysis

The \$30,000 paid by the Committee for use of the film was a use of the public funds that was permissible and qualified under 11 C.F.R. § 9008.6(a).

1. The Committee Could Lawfully Have Paid the Entire Cost of the Film

At the outset, it should be clear that had the Committee decided to retain all the rights to the film for itself, it could have lawfully have paid the entire cost of the film. The film was shown during and as part of the Convention proceedings, and therefore the expense of producing it is indisputably an expense incurred "for the purpose of conducting a presidential nominating convention." 11 C.F.R. § 9008.6(a)(4).

Further, the costs of such a film do not constitute "expenses" of a candidate within the meaning of 26 U.S.C. § 9008(c) and 11 C.F.R. § 9008.6(b)(1). The term "expenses of any candidate" as used in those provisions clearly refers to the expenses incurred by a candidate and his/her staff to attend the Convention, i.e., housing, travel, subsistence, etc. This conclusion is reinforced by 11 C.F.R. § 9008.7(e), which provides that expenditures made by

presidential candidates from their campaign accounts and by delegates "for the purpose of attending or participating in the Convention" do not count against the national committee's expenditure limitation. The Explanation and Justification for 11 C.F.R. § 9008.7(e) confirms that the candidate "expenses" referred to in 26 U.S.C. § 9008(c) are expenses made for the purpose of attending the Convention:

Subsection (e) provides that amounts paid by candidates from campaign funds or by delegates or others from personal funds to attend the convention do not count against the national committee's expenditure limitation. Since 26 U.S.C. § 9008(c) prohibits the use of public funds to pay the expenses of any candidate or delegate to participate in the convention, such amounts should not count against the national committee's expenditure limitation.

Explanation and Justification for Regulations on Federal Financing of Presidential Nominating Convention and the Presidential Election Campaign Fund, 44 Fed. Reg. 63036, 63038 (November 1, 1979) (emphasis added).

Clearly, the costs of a film about the candidate to be shown as part of the Convention proceedings are not "expenses of [a] candidate. . . to participate in the Convention" and therefore are not candidate expenses within the meaning of 26 U.S.C. § 9008(c).

2. The Committee Paid a Reasonable Portion of the Cost to Avoid Accepting an Unlawful or Repayable Contribution from CFP

In this case, the problem was not avoiding a contribution by the 1992 Democratic Convention Committee to CFP, but the other way around--i.e., avoiding a contribution by CFP to the Committee. Once it was agreed that CFP would own the film and be responsible for all the costs, the question became one of compensating CFP properly for use of the film at the Convention, which use was--for the reasons explained above--obviously a proper Convention expense, chargeable to the Convention.

Since the film was to become and remain the property of CFP, had the Committee used the film without paying any compensation or consideration, that clearly would have constituted an in-kind contribution by CFP to the Committee. As an authorized committee of a candidate, CFP is considered a "person" and thus subject to the contribution limitations set forth in 2 U.S.C. § 441a(a)(1). See, e.g., Advisory Opinion 1986-36. Thus, CFP could contribute only \$20,000 to a national party committee, such as the 1992 Democratic National Convention Committee. 2 U.S.C. § 441a(a)(1)(B); 11 C.F.R. § 110.1(b)(1). It was determined that the value of use of

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the film at the Convention clearly exceeded \$20,000. Further, if the Committee accepted such a contribution, regardless of the amount, to defray Convention expenses, the Committee would be obligated to repay the amount of that contribution to the U.S. Treasury. 11 C.F.R. § 9008.10(c).

Therefore, it was not only proper but legally required for the Committee to compensate CFP for a fair and reasonable charge for use of the film at the Convention. As explained above, \$30,000 was a fair valuation of this use, and the means of making this payment--covering that portion of the costs of production--was entirely lawful and appropriate.

For these reasons, the Audit staff should find that the partial payment for production of the film was a qualified Convention expense.

Response to Recommendation # 5: Parking Violations

The Committee agrees that payments for parking tickets do not represent an allowable use of the public grant and, accordingly, will repay to the United States Treasury the sum of \$5,675 within 90 days of the date of the Commission's July 29, 1993 letter in accordance with 11 C.F.R. § 9008.10(g).

Response to Recommendation # 6: Unspent Portion of Fund Payment

Attached as Exhibit 3 is a calculation of the actual amount of the unspent portion of the fund payment, including a listing of expenses actually incurred by the Committee between December 7, 1992 and today. Attached as Exhibit 4 are bank statements for the period December 1, 1992 through July 31, 1992. As the last page of Exhibit 3 indicates, the actual amount of cash on hand as at the close of December 7, 1992 was \$154,710.14.² The unspent portion of the fund entitlement is calculated as follows:

² It appears that the discrepancy between our determination of cash on hand as of 12/7/92 and the Audit staff's determination is due to an uncashed check in the payroll account, which was credited on December 1, 1992. See bank statement for payroll account for the period 12/1 to 12/31/92, which shows that the actual cash on hand in the payroll account as of 12/7/92 was \$5,486.25.

Closing cash on hand as at 12/7/92	\$ 154,710.14
Receipts 12/8/92 through today	<u>84,928.02</u>
Total assets	\$ 239,638.16
Expenditures made 12/8/92 through today (Per Exhibit 3)	\$ (238,489.63)
Plus: stale checks ³	<u>16,683.07</u>
Amount repayable as of today	17,831.60

The Committee believes that there are no further outstanding accounts payable and, accordingly, subject to additional vendors cashing stale checks or requesting re-issuance of checks in the interim, intends to repay the amount shown above (\$17,831.60) within 24 months of the last date of 1992 Democratic National Convention in accordance with 11 C.F.R. § 9008.10(e)(3).

No interim payment pursuant to 11 C.F.R. § 9008.10(e) was required because, to our knowledge, the Committee submitted various budgets to the Audit staff showing that essentially no unspent funds were projected to remain, after allowing for anticipated expenses. And, in fact, as Exhibit 3 demonstrates, without counting stale checks the actual unspent amount turned out to be only \$1,148.53. To our knowledge, the Commission never determined, on December 7 or at that time, that the amount anticipated to be spent was unreasonable and, therefore, there was no basis for repaying any amount on an interim basis.

Finally, we note the reference in the Interim Audit Report to the audit of the New York Host '92 Committee the "Host Committee"). We have reviewed the Host Committee's June 30, 1993 response to the Interim Audit Report and it appears that the Host Committee has conclusively demonstrated that no disbursements were made with any moneys other than those fully meeting the requirements of 11 C.F.R. § 9008.7(d)(3)(i).

It is our position, however, that even if the Commission should ultimately find that some disbursements were made by the

³ The Committee has attempted, and continues to attempt, to contact payees of uncashed checks. See Exhibit 5 attached hereto. In those cases in which a vendor who is owed money has claimed that no check has been received or that a check has been lost, the Committee has voided the uncashed check and issued a new one.

Host Committee with moneys not meeting those requirements, the Convention Committee should not be required to make any repayment by reason of those disbursements. Any such disbursements were made without the knowledge, consent or cooperation of the Convention Committee and it would be grossly unfair and illogical to penalize the Convention Committee or treat such disbursements as resulting in any repayment obligation.

The Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43046 (August 12, 1993), recognizes that a serious issue exists as to whether host committee expenditures which violate the regulations should result in a repayment obligation by the convention committee as distinct from an enforcement action against the host committee:

[H]ost committee expenditures for convention functions other than the purposes spelled out in [proposed] section 9008.52 and 9008.53 would count against the convention committee's spending limits. However, comments are requested as to whether it would be preferable to handle such situations through enforcement actions under 2 U.S.C. § 437g. The Commission is also interested in comments on how to address situations where a host committee receives contributions from impermissible sources, such as nonlocal businesses, which are then used to defray convention expenses or for other permissible purposes. In some cases, it may be appropriate to count these amounts against the convention committee's spending limits, although there may be situations where enforcement actions are warranted.

58 Fed. Reg. at 43048 (emphasis added).

It is our position that, where host committee expenditures have been made, or contributions received and used to defray convention expenses, in violation of the regulations governing the host committee, but without the knowledge, consent or cooperation of the convention committee, the proper approach is to initiate an enforcement action against the host committee rather than to impose any penalty or repayment obligation on the convention committee. We will of course be submitting comments to that effect in connection with the rulemaking. We respectfully contend that, in the interim, as a matter of basic logic and fairness, this approach should be applied in connection with the current audit of the Committee.

Respectfully submitted,



Joseph E. Sandler
General Counsel

Neil P. Reiff
Deputy General Counsel

Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

(202) 863-7110

Dated: September 3, 1993

ATTACHED

Page 11 of 11

REPORT OF THE AUDIT DIVISION
ON

**1992 Democratic National Convention
Committee, Inc.**

Approved March 10, 1994



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

ATTACHMENT
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the advances were later reimbursed by the Committee. Because the advances were not exempt from the definition of contribution, they constituted impermissible contributions, totaling \$15,418. In response to the interim audit report the Committee argued that it shared the National Committee's \$20,000 annual limitation on contributions from individuals and that, the contributions were permissible. The audit report rejected this argument because convention committees that receive full federal funding may not accept any contributions.

Improper Use of Funds - 11 CFR 9008.6(b)(1), (2) and (4) and 9008.10(d). This section of the report deals with funds that were not expended on qualified convention expenses. These expenditures fall into four categories. Each is discussed below.

1. Misappropriation of Committee Funds - The Committee discovered that an employee had misappropriated \$5,000. When discovered, the employee was dismissed and steps were taken to recover the funds. Since the \$5,000 was recovered, the audit report does not recommend a repayment to the U.S. Treasury.

2. Candidate Expenses - The Committee is not permitted to use federal funds to pay the expenses of any candidate who participates in the Convention. The audit identified a \$30,000 payment for part of the production costs of a biographical film about President Clinton, which was shown at the Convention immediately preceding the President's acceptance speech. The interim audit report classified this payment as an impermissible payment of candidate expenses. The Committee argued that it could have paid the entire production cost as a convention expense since the film was shown during the convention and the payment was not for the candidate's personal expenses. Further, the Committee argued, that the payment was necessary to avoid a contribution from the owner of the film, Clinton For President, Inc. The Audit Division rejected these arguments because (1) the showing of the film benefited President Clinton, (2) the timing of the film alone does not determine whether it is a convention expense, and (3) the prohibition against paying candidate expenses is not limited to personal expenses. On the other hand, the Commission acknowledged that, in part, the Convention legitimately serves as a vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.

3. Parking Violations - The Committee paid New York City parking violations totaling \$5,676. These are not expenses that may be paid with federal funds. In response to the interim audit report, the Committee acknowledged its obligation to make a \$5,676 repayment to the U.S. Treasury.

4. Post Convention Purchases - As a result of follow up work done after the interim audit report was issued, a number of expenditures were identified that were not considered permissible convention expenses. Included were \$20,431 in gifts for senior staff and party leaders reported as office supplies and printing. Also, the Committee paid \$10,000 in consulting expenses for a study of the role of African Americans in the 1992 Democratic Convention to be presented to the Democratic Party for its archives. With respect to the gifts the Committee argues that it is standard practice. Nothing beyond a copy of the report was presented for the consulting payments. After discussion of this matter, the Commission allowed gifts valued at \$150 or less as commemorative items of nominal value. These total \$2,626. The final audit report contains an initial determination that amounts totaling \$27,805, are repayable to the U.S. Treasury.

Unspent Funds - 11 CFR 9008.10(e). If any portion of the federal grant remains unspent after all expenses are paid, the unspent portion must be returned to the U.S. Treasury. The Committee has \$3,872 in unspent funds.

Stale Dated Committee Checks - 26 U.S.C. §9008(h) and 11 CFR 9007.6. The sum of any checks issued by the Committee that are not cashed by the payees must be paid to the U.S. Treasury. The Committee has two such checks totaling \$810.

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REPORT OF THE AUDIT DIVISION
ON THE
1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the 1992 Democratic National Convention Committee, Inc. (the Committee), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention involved is held.

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

B. Audit Coverage

The audit covered the period July 2, 1991, the date the Committee opened a bank account, through September 30, 1992, the final coverage date of the most recent report filed at the time of the audit. In addition, financial activity that occurred beginning in 1989, and was paid by the Democratic National Committee and subsequently reimbursed by the Committee, was included in the audit as well as certain financial activity through February 8, 1994 to determine any amounts due to the United States Treasury. During the period, the Committee reported an opening cash balance of \$-0-, total receipts of \$11,233,088, total disbursements of \$10,732,803, and a closing cash balance on September 30, 1992 of \$500,284.

3. Campaign Organization

The Committee registered with the Federal Election Commission on June 14, 1991, as the national convention committee of the Democratic Party. The Treasurers for the period audited were Robert A. Farmer from June 14, 1991 to September 11, 1992, and the Honorable Robert T. Matsui from September 11, 1992 to the present.

During the period audited, the Committee was headquartered in Washington, D.C., but for a portion of the period an office was also maintained in New York City. The current office is in Washington, D.C.

To handle its financial activity, the Committee had a general account from which most disbursements were made, a payroll account, and three deposit accounts used to hold federal funds. The Committee made approximately 5,000 disbursements.

The Committee was paid \$11,048,000 in federal funds. This represents the full entitlement established at 26 USC 9008(b).

D. Audit Scope and Procedures

The audit included a review of the following general categories:

1. The Committee's compliance with statutory limitations with respect to the receipt of contributions and loans (see Finding II.B.);
2. The Committee's compliance with the statutory requirements regarding the receipt of contributions from prohibited sources, such as those from corporations and labor organizations;
3. The itemization and proper disclosure of receipts, as well as the completeness and accuracy of the information disclosed;
4. The itemization and proper disclosure of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. Proper disclosure of the Committee's debts and obligations (see Finding II.A.);
6. The accuracy of total reported receipts, disbursements, and cash balances as compared to Committee bank records;
7. Adequate recordkeeping for Committee transactions;

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8. The Committee's financial position with respect to any unexpended funds see Finding III.B. ;
9. The Committee's compliance with requirements concerning expenditures for convention expense (see Finding III.A. ;
10. The Committee's compliance with spending limitations See Finding III.B. ; and,
11. Other audit procedures that were deemed necessary in the situation.

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

As part of the Commission's standard audit process, an inventory of the Committee's records was conducted prior to the beginning of fieldwork to determine if the records were materially complete and in an auditable state. The Committee's records were materially complete and, by agreement with the Committee, audit fieldwork commenced immediately.

II. Findings and Recommendations - Non-Repayment Matters.

A. Reporting Requirements - Failure to Itemize Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code states, in relevant part, that the amount and nature of outstanding debts and obligations owed by or to such political committee shall be reported.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. Section 104.11(b) states, in relevant part, a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

The Committee reported no debts or obligations on their FEC disclosure reports. A review of disbursements revealed 138 items over \$500, totaling \$660,399, that should have been reported as debts.

The majority of these items should have appeared on the Post Convention report covering the period from July 1, 1992 to August 31, 1992. The Committee explained that many of these expenses were outstanding beyond the close of the reporting period because the bills had been sent to a temporary office set up in New York during the convention. These bills were then forwarded to the Washington office along with other mail and therefore processing was delayed. The Committee explained that the remaining obligations which should have appeared on Schedules D in the July and October 1992 Quarterly reports were the result of delayed billings or were held pending authorization from the New York Host Committee. At the exit conference, the Committee was given a schedule of debts and the period in which they should have been reported.

In the Interim Audit Report the Audit staff recommended that the Committee file amended Schedules D (Debts and Obligations) for each period in which debt should have been reported. In response to the Interim Audit Report the Committee filed Schedules D for each relevant reporting period. These schedules contained all debts that were noted during the audit as missing from the Committee's disclosure reports.

B. Excessive Contributions From Staff

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

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

Section 9008(h) of Title 26 of the United States Code states that "the Commission shall have the same authority to require repayments from the national committee of a major or minor party as it has with respect to repayments from any eligible candidate under section 9007(b)."

Section 9007(b) of Title 26 of the United States Code lists the basis for repayment determinations for candidates for President of the United States who have accepted federal funding for their general election campaigns. Subsection 3 states that "if the Commission determines that the eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of section 9006(c) to defray qualified campaign expenses . . .), it shall notify such candidates of the amount of contributions so accepted, and such candidates shall pay the Secretary of the Treasury an amount equal to such amount."

The Committee's payments of expense reimbursements were reviewed to determine if contributions had been made. The review disclosed that persons were reimbursed for both their own travel and subsistence expenses as well as expenses for non-travel items and the travel and subsistence of other persons. Two persons, including the Committee's chief executive officer were determined to have made contributions totaling \$15,418 (see Attachment 1.) At the time of the audit, no expense reimbursement requests were outstanding. At the exit conference, the Committee was advised of this finding. The Committee made no comment.

In the Interim Audit Report the Audit staff recommended that the Committee either demonstrate that no contributions occurred with respect to these expense reimbursements, or offer any other information that is believed to be relevant to the issue.

In response the Committee offered two arguments as to why these contributions are permissible. First, the Committee argues that the contributions resulting from the staff advances were within the contribution limitations of the Act. The Committee reasons that "an individual may contribute up to \$20,000 per calendar year to the 1992 Democratic National Convention Committee. The Committee is 'established and maintained by' the Democratic National Committee ('DNC'), within the meaning of 2 U.S.C. §441a(a)(1)(B), and is indisputably a political committee 'established, financed, maintained, or controlled by' the DNC within the meaning of 11 C.F.R. §110.3(b)(i)." The Committee also notes the Commission's Notice of Proposed Rulemaking on Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions. In that Notice the Commission asks for public comment on the subject of a contribution limitation for convention committees for the purpose of staff advances in future election cycles. The Committee concludes that it shares the DNC's \$20,000 contribution limitation and since the staff advances noted in the interim audit report were less than \$20,000 per person the advances were permissible.

As noted above, 16 U.S.C. §9008(h) refers the reader to section 9007(b) for repayment authorities with respect to convention committees. That section, at subsection (b)(3), states that any contribution received may result in a repayment determination. That language clearly establishes that convention committees who accept their full entitlement are not permitted to accept contributions in any amount. The Committee received their full entitlement and thus was not permitted to receive any contributions.

Second, the Committee argues that it did not accept or retain any contribution that would require repayment. The Committee argues that since the reimbursements were made, and no amounts are outstanding from any of the travel reimbursements that generated the contributions, no repayment is necessary. It is noted that the Interim Audit Report made no recommendation that a repayment be made. Rather, what was requested was information to show that the contributions resulting from the staff advances noted were permissible. No such information has been provided.

III. Findings and Recommendations - Repayment Matters

A. Improper Use of Funds

Section 9008.6(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that no part of any payment made under 11 CFR §9008.8 shall be used to defray the expenses of any candidate, delegate or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention.

Section 9008.6(b)(2) of Title 11 of the Code of Federal Regulations states that, "public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the state in which such expense is incurred or paid, or any regulation prescribed under federal or State laws."

Section 9008.6(a)(4) of Title 11 of the Code of Federal Regulations states in, relevant part, that convention expenses include all expenses incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention related activities.

Section 9008.13 d) states, in relevant part, if the Commission determines that any amount of any payment to the convention committee under 11 CFR §9008.8 b) was used for any purposes other than the purposes authorized at 11 CFR §9008.6, it shall notify the national committee of the amount improperly used and such national committee shall pay to the Secretary an amount equal to the amount specified.

1. Misappropriation of Committee Funds

During the reconciliation of the Committee's bank records to the disclosure reports, an unexplained and undocumented \$5,000 adjustment was noted on the Committee's September, 1992 cash reconciliation. The Audit staff inquired about the item and Committee officials explained that the amount represented a recovery of funds misappropriated by an employee. The employee was part of the Committee's accounting staff who, when the supervisor was traveling, had access to the Committee's blank check supply. The employee forged a signature on four checks and negotiated them. When the Committee discovered the problem, the checks were presented to the bank. The bank was able to collect the funds from the individual and credit the Committee's account. The individual was immediately terminated when the discovery was made. The Committee feels that because of the circumstances and the satisfactory resolution of the matter, their responsibility in the incident is negligible.

Since the improperly used funds have been recovered by the Committee, in the Interim Audit Report the Audit staff recommended no further action be taken in this matter. The Committee's response contained no further information.

2. Candidate Expenses

On July 16, 1992, prior to President Clinton's speech accepting the Democratic nomination for President, a film on President Clinton's life was shown at the Convention and was available for broadcast by several television networks as part of the television coverage of the proceedings.

The film was produced through Great American Media, Inc. The Committee made four payments to the firm. The Interim Audit Report explained that two of the four payments were apparently for production of the biographical film. The invoice for production costs related to the film was submitted by Great American Media, Inc. and addressed to the Democratic National Committee. It was paid in two installments, \$30,000 on July 7, 1992 and \$35,000 on September 9, 1992. One invoice refers to the production as the "Bill Clinton Story". The other two payments are for \$5,490 and \$18,880 described as the cost of producing the live vignettes out of Seattle, WA and Charleston, SC for Tuesday

of the Convention, and Great American Media, Inc. work, travel and payment of talent relating to Monday's delegate stories and video wall, respectively. Both of these invoices are addressed to "Alexis Herman, DNCC" Democratic National Convention Committee. Alexis Herman was the Committee's chief executive officer. These do not appear to be related to the production of the biographical film.

During the Audit of the Clinton for President Committee (CFP), it was learned that CFP also made payments to Great American Media, Inc. for the production of this film. On July 22, 1992, CFP paid \$35,000 associated with the same invoice described above. It therefore appeared that this amount was paid by both Committees. On September 4, 1992, CFP paid \$122,237 in response to an invoice that showed a total production cost for the film of \$188,237 with an outstanding balance due of \$122,237. The difference is \$65,000, the amount billed to the Committee. Also on September 4, 1992, CFP paid \$1,591 on an invoice for additional production charges for the convention film not included on the earlier invoices, and finally on August 25, 1992, CFP paid an administrative charge of 2% on the \$122,237 invoice as provided in the contract with Great American Media, Inc. This amount was \$2,445.

The Interim Audit Report concluded that the total cost of producing the Convention film appeared to have been \$191,273 with the Committee paying \$65,000 and CFP paying \$161,273. These individual amounts included the \$35,000 apparently paid by both committees.

The Interim Audit Report also noted that the Committee had received a \$22,250 refund check dated September 25, 1992 from Great American Media, Inc. The refund was recorded as a credit to the Committee's video production general ledger account, but available documentation did not provide a detailed explanation of the reason for the refund.

Given the above, at the time of the Interim Audit Report it appeared that the Committee had expended \$65,000, potentially less a \$22,250 refund, for the production of a film which constituted an expense of a candidate attending the convention and was therefore a non-qualified convention expense.

The recommendation in the Interim Audit Report requested the Committee to:

- a. Provide documentation from Great American Media, Inc. to demonstrate the reason for the \$22,250 refund received; and

With respect to the first point the Committee argues that since the film was shown during, and as part of the Convention proceedings, the cost of producing the film is an expense for the purpose of conducting the Convention and therefore a permissible use of the public grant. The Committee also argues that production costs of the film do not constitute expenses of a candidate within the meaning of 26 USC §9008(c).

The argument that showing the film during the Convention establishes the production costs as a permissible use of Federal funds was not convincing to the Audit Division. In the view of the Audit Division, to follow such an argument would lead to the conclusion that any expense for any goods or services used during the Convention proceedings is a permissible convention expense regardless of the purpose of that expense. As noted above, Section 9008.6(a)(4) of the Code of Federal Regulations defines a convention expense as those incurred by or on behalf of a political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention. The section then goes on to present a non-exhaustive list of the type of expenses that are included. Although the list presented in the regulation is not meant to be all encompassing, it could be argued that none of the expenses listed suggested that any expense may be candidate specific. Nonetheless, the Commission decided that a portion of the production cost of a biographic film about the party's nominee presented to the Convention, after the nomination has occurred, and made available for broadcast to television networks as part of their Convention coverage, would fall within the 9008.6(a)(4) standard of a proper Convention expense "for the purpose of conducting a presidential nominating convention."

The argument that "expenses of any candidate" as used in 26 USC §9008(c) includes only expenses such as housing, travel, and subsistence was likewise not convincing to the Audit Division. The Committee reasons that given 11 CFR §9008.7(e) states that expenses paid by a candidate for the purpose of attending or participating in the Convention do not count against the National Committee's expenditure limitation, therefore, the only types of convention related expenses that the National Committee may not pay for a candidate with the Federal grant are expenses for housing, travel, and subsistence. Though the Audit Division agreed that such expenses are likely to be the most common examples, the language at 26 USC §9008(c) suggests no such limitation. That section states that "No part of any payment made under subsection (b) shall be used to defray the expenses of any candidate or delegate who is participating in any presidential nominating convention." Neither the plain language of the statute, nor the legislative or regulatory history of this provision, nor the corresponding regulation, suggests the narrow interpretation argued by the Committee.

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The Committee's second argument, that the \$30,000 payment to the media firm for production costs of the film was compensation to CFP for the Committee's use of the film at the convention, and was necessary to avoid a contribution to the Committee from CFP^{2/}, depends on the first argument being accepted.

However, even if the first argument is accepted, in the view of the Audit Division, it does not follow that the payment was necessary to avoid a contribution from CFP to the Committee. The Audit analysis suggested that if after the convention has made its nomination, and prior to the candidate's acceptance speech, the Committee agrees to show convention attendees a biographical film produced by its nominee at a time when it would be available for broadcast by a number of television networks, doing so is an accommodation to the party's candidate rather than a contribution from the candidate. The Audit Division believes that under any other circumstances a candidate would expect to purchase air time to broadcast a film to a large audience rather than expect to be paid for the use of the film. On the other hand the Commission acknowledged that, in part, the convention legitimately serves as the vehicle to promote its nominee. Therefore, the Commission determined that the Convention could make the film payment.

The Audit staff recommended that the \$30,000 payment be considered a payment for expenses of a candidate participating in the Convention and repayable to the U.S. Treasury pursuant to 11 C.F.R. §9008.10(d). On March 10, 1994, the Commission considered this matter. It was determined that this payment would be viewed as a permissible Convention expense. In making this decision the Commission considered instances where candidate films were produced and shown at previous conventions, and the candidate specific nature of a convention when, as was the case in 1992, the nominee is known in advance of the Convention.

3. Parking Violations

During the review of disbursements made by the Committee, the Audit staff noted payments to the New York City Violations Bureau. An inspection of the Committee's vendor files revealed check requests, copies of Committee checks, and New York City parking tickets reflecting \$5,676 in payment of violations of New York City parking regulations.

2/ The Committee's response does not comment on the failure of both the Committee and CFP to report any in-kind transactions related to this \$30,000 payment. If at the time of the transaction, the payment to the media firm was considered to be in-kind compensation to CFP for the use of the film, reporting of the in-kind nature of the transaction would have been required by both Committees.

In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the payments do not represent an improper use of public funds. Absent such a showing, the Committee was informed that it would be recommended that the Commission make an initial determination that \$5,676 is repayable to the United States Treasury pursuant to 11 CFR §9008.10(d).

In its response to the Interim Audit Report, the Committee agreed "that payments for parking tickets do not represent an allowable use of the public grant and, accordingly, will repay to the United States Treasury the sum of \$5,675 within 90 days of the date of the Commission's July 29, 1993 letter in accordance with 11 C.F.R. § 9008.10(g)." No such payment has been received.

Recommendation #1

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$5,676 pursuant to 11 CFR §9008.10(d).

4. Post Convention Purchases

In the Interim Audit Report it was concluded that the Committee had unspent funds totaling \$133,118. It was also explained that no allowance was made for the printing of the convention proceedings because the Committee had not provided any support for the estimate of those costs. The figures included in the Interim Audit Report were the result of the review of actual expenses and accounts payable through December 7, 1992 and estimated winding down costs of \$96,217. In its response to the Interim Audit Report the Committee submitted a revised calculation of its financial position including actual receipts and disbursements through September 3, 1993. The unspent funds shown by the Committee total \$1,2893/. In order to verify the Committee's calculation the Audit Staff visited the Committee's offices and reviewed the documentation for the disbursements made after the December 7, 1992 cutoff date. Discussed below are items that the Audit Staff recommends not be considered permissible uses of public funds.

a. Gifts

Payments to two vendors totaling \$20,431 were noted for gifts for various senior convention officials. One vendor was a Washington, D.C. jewelry store which was paid for items such as clocks, silver paperweights, silver boxes, and

3/ The Committee revised this calculation in follow up correspondence. See Finding III.B. and C.

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silver serving trays along with engraving and shipping. The total bill was \$17,431 paid with four checks. The first was dated December 4, 1992 and was reviewed during the original fieldwork. That check was documented by a cash receipt which was not imprinted with the vendor's name and described the purpose as "Deposit On Printing Order Approx 14000". The Committee's year end disclosure report described the expense as "Office Supplies". An additional payment was made on December 17, 1992, and was also reported as "Office Supplies". Two payments were made on February 4, 1993, and reported as "Printing". When questioned about these items the Committee's representative said that it would be necessary to contact someone involved at the time. In a follow up conversation it was stated that such gifts were a standard convention procedure. In follow up correspondence the Committee reiterates its position and notes that in 1988 commemorative gavels were given to senior staff. The Committee also states that the expenditures were not questioned in the past.

The second vendor was an Architect who was paid \$3,000 on December 10, 1992, for an architectural model of the convention podium. The payment was described on the Committee's year end disclosure report as a payment for "Printing". The Committee has informed the audit staff that this model was also given as a gift.

Recommendation #2

The Audit staff recommended that the purchase of these gifts be considered an improper use of federal funds and repayable to the U.S. Treasury. The Commission considered this recommendation on March 10, 1994 and determined that some commemorative items of nominal value are to be expected as a normal expense for a presidential nominating convention, and that those gifts valued at \$150 or less would be permitted. These gifts account for \$2,626 of the \$20,431 questioned. Therefore, the Commission made an initial determination that \$17,805 in gift purchases represents an improper use of federal funds and is repayable to the U.S. Treasury pursuant to 11 CFR §9008.10(d).

b. Research Project

The Audit Staff reviewed a contract with an individual for consulting services for the months of November and December of 1992. The contract called for four payments of \$2,500 each but did not specify the services to be performed. This individual had not received previous payments from the Committee. When the review of post December 7, 1992, payments discussed above was conducted, the four payments were included. Three were made on December 15, 1992, and the fourth was made on January 4, 1993. The Committee was requested to provide a description of the services that were provided under this contract. In response it was explained that this individual was engaged to conduct a historical study for the DNC archives. According to a Committee representative, the report produced is entitled "The Role of

African-American Staff in the Convention and the DNC^{4/}. In the opinion of the Audit Staff this expense is properly paid by the National Committee but is not an expense for the purpose of conducting a presidential nominating convention or convention related activity and, therefore, may not be defrayed with public funds.

Recommendation #3

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic National Convention Committee, Inc. is required to repay the U.S. Treasury \$10,000 pursuant to 11 CFR §9008.10(d).

B. Statement of Financial Position

Section 9008(h) of Title 26 of the United States Code states, in part, that the Commission shall have the same authority to require repayments from the national committee of a major party as it has with respect to repayments from any eligible candidate under Section 9007(b).

In addition, 11 CFR §9008.10 (b) states that if the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR §9008.7 (a), it shall notify such national committee of the amount of such excessive expenditures, and such national committee shall pay the Secretary an amount equal to the amount specified.

Section 9008.10(e)(1) of Title 11 of the Code of Federal Regulations states that if any portion of the payment under 11 CFR §9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

Finally, 11 CFR §§9008.10(g)(1) and (2) state, in part, that if the Commission determines that repayment is required, it shall give written notification of the amounts required to be paid and the reasons therefor; and the national committee shall repay to the Secretary, with 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee, the Commission may grant a 90 day extension of the repayment period.

As discussed above, the Interim Audit Report contained a calculation of unspent funds that showed a remaining balance of \$133,118. This calculation was based on a review of actual

4/ Subsequently a copy of the report was provided. The exact title is, African American Leadership of the National Democratic Party 1989-1992 Historical-Philosophical-Reflections.

Calculation of Financial Position and Spending Subject To The
Expenditure Limitation For The
1992 Democratic National Convention Committee, Inc.
as of December 7, 1992
Determined at September 3, 1993

ASSETS

Cash on Hand		\$	-0-
Cash in Bank			
Operating at 12/7/92	\$154,989		
Payroll at 12/7/92	<u>5,486</u>		

Total Cash		\$160,475
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Add:

Accounts Receivable and Capital Assets a/		<u>84,928</u>
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Total Assets		\$245,403
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LIABILITIES

Disbursements for Convention Expenses and Winding Down Costs Through September 3, 1993 b/		234,290
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Accounts Payable		<u>7,241</u>
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Total Liabilities		<u>241,531</u>
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Remaining Federal Funds		\$ <u>3,872</u>
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Add: Expenses Constituting Improper Uses of Federal Funds (Findings III.A.) Included Above Not Applicable To The Spending Limitation		<u>33,481</u>
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Spending Limitation Remaining		\$ <u>37,353</u>
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Notes To The Calculation of Financial Position and Spending Subject
To The Expenditure Limitation For The
1992 Democratic National Convention Committee, Inc.

- a/ The Interim Audit Report contained estimates of \$49,099 for Accounts Receivable and \$27,342 for Capital Assets, for a total of \$76,441. Between December 8, 1992 and February 8, 1994 actual receipts from Accounts Receivable and the sale of assets were \$84,928.
- b/ As of December 7, 1992, the Committee had recorded Accounts Payable of \$14,435 and estimated winding costs of down costs were \$81,782 excluding the cost of printing of the official proceedings. Between December 8, 1992 and February 8, 1994 the Committee's actual disbursements totaled \$234,290 including the cost of the proceedings and the majority of the impermissible expenses discussed above.

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The financial position presented above shows that the Committee has unspent funds in the amount of \$3,872. Also, the amounts determined to be impermissible uses of the public grant noted as repayable to the U.S. Treasury in Finding III.A. above are not applicable to the spending limitation. Therefore, the amount remaining in the Committee's spending limitation is \$37,353.

Finally, as a result of the audit of the New York Host '92 Committee, there was, at the time of the Interim Audit Report, the possibility that \$135,500 in disbursements made by the Host Committee would be considered attributable to the Committee's spending limitation. These disbursements were made with funds that had been commingled with other moneys which did not meet the requirements of 11 CFR §9008.7(d)(3)(i). The Interim Audit Report advised the Committee of the potential affect of these expenditures on its compliance with spending limitations and potential repayments. As a result of the New York Host '92 Committee's response to the Interim Audit Report resulting from that audit, it was determined that although the funds had been commingled as described, sufficient permissible funds were in the account when the expenditures in question were made. Therefore, it was determined that none of the expenditures will be attributed to the Committee's spending limitation.

Recommendation #4

The Audit staff recommends that the Commission make an initial determination that 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$3,872 in unspent funds pursuant to 11 C.F.R. §9008.10(e)(1).

C. State-Dated Committee Checks

Section 9008(h) of Title 26 of the United States Code states that the Commission shall have the same authority to require repayments from the national committee of a political party as it has with respect to repayments from any eligible candidate under section 9007(b).

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The Committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

As part of the Committee's response to the Interim Audit Report, a stale-dated outstanding check amount of \$16,683 is noted as repayable. This amount was verified to the audit workpapers. For a portion of these checks letters to the payees are included that inform the payee that unless action was taken by the payee within 14 days, the Committee would adjust its accounting records to show that no obligation existed.

In follow-up correspondence the Committee shows all of the checks to have been either voided or reissued. For the voided checks documentation has been submitted to support the Committee's action. A summary of the outstanding check amounts is shown below:

- ° 9 checks totaling \$6,019 were voided and replaced, and the replacement checks have cleared the Committee's account.
- ° 14 checks totaling \$9,670 were voided and a copy of the letter noted above was provided.
- ° 1 check for \$185 was found voided in Committee files. A copy was supplied.
- ° 2 checks totaling \$810 were reissued and are still outstanding.

Recommendation #5

The Audit Staff recommends that the Commission make an initial determination that the 1992 Democratic Convention Committee, Inc. is required to pay the U.S. Treasury \$810 representing the value of uncashed Committee checks.

IV. Repayment Summary

A. Improper Use Of Funds

1. Parking Violations (III.A.3.)	5,676
2. Post Convention Expenses (III.A.4.)	
Gifts (III.A.4.a)	17,805
Research Project (III.A.4.b)	10,000

B. Unspent Funds (III.B.) 3,872

C. Stale Dated Committee Checks (III.C.) 810

Amount Due to The U.S. Treasury \$38,163

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Page _____ of _____

W/S Name

W/S Unit
W/S Code
W/S Title

W/S Salary
W/S Amt

W/S Amt

W/S Date Pay
W/S Month

W/S Pay

W/S Units

W/S Run

W/S Expense

W/S Budget

Alvin Holman

W/S Unit	W/S Code	W/S Title	W/S Salary	W/S Amt	W/S Amt	W/S Date Pay	W/S Month	W/S Pay	W/S Units	W/S Run	W/S Expense	W/S Budget
01/15/92	01/15/92		92.00	1073.72	6	04/21/92	19	0.00	1000.00			
01/17/92	01/17/92		162.00	1015.72	6	04/21/92	21	0.00	1000.00			
01/20/92	01/20/92		755.25	6570.91	6	04/21/92	21	0.00	1000.00			
01/24/92	01/24/92		1076.44	2594.51	1			0.00	1000.00			
01/24/92	01/24/92		149.04	2704.17	4	04/21/92	10	149.44	650.16			
01/27/92	01/27/92		109.50	2053.01	4	04/21/92	27	109.50	740.66			
01/27/92	01/27/92		1231.16	4005.01	6	04/21/92	27	0.00	740.66			
01/30/92	01/30/92		102.00	4227.23	6	05/06/92	10	0.00	740.66			
04/01/92	04/01/92		1005.46	5312.69	6	05/06/92	10	0.00	740.66			
04/01/92	04/01/92		6.50	5319.19	6	05/06/92	10	0.00	740.66			
04/01/92	04/01/92		6.10	5325.37	6	05/06/92	29	6.10	734.40			
04/01/92	04/01/92		0.24	5331.61	4	05/06/92	29	0.24	726.24			
04/01/92	04/01/92		4.12	5337.73	4	05/06/92	29	4.12	722.12			
04/01/92	04/01/92		10.10	5340.03	4	05/06/92	29	10.10	711.02			
04/01/92	04/01/92		267.35	5615.10	4	05/06/92	27	267.35	444.47			
04/01/92	04/01/92		21.00	5630.30	6	05/06/92	27	0.00	444.47			
04/01/92	04/01/92		26.03	5665.21	6	05/06/92	10	0.00	444.47			
04/10/92	04/10/92		146.00	5011.21	6	05/06/92	0	0.00	444.47			
04/16/92	04/16/92		190.26	6001.47	4	05/06/92	20	190.26	254.21			
04/18/92	04/18/92		2309.02	8310.49	4	05/06/92	10	0.00	254.21			
04/18/92	04/18/92		55.00	8365.40	6	05/06/92	0	0.00	254.21			
04/22/92	04/22/92		120.00	8405.40	6	05/06/92	0	0.00	254.21			
04/23/92	04/23/92		4005.21	4400.20	1			0.00	254.21			
04/26/92	04/26/92		52.22	4452.40	6	05/06/92	10	0.00	254.21			
04/26/92	04/26/92		60.00	4512.40	6	05/06/92	25	0.00	254.21			
04/26/92	04/26/92		60.00	4572.50	6	05/21/92	25	0.00	254.21			
04/26/92	04/26/92		120.00	4692.50	4	05/21/92	24	120.00	191.55			
04/21/92	04/21/92		120.00	4812.50	4	05/21/92	24	120.00	271.55			
04/21/92	04/21/92		00.92	4701.62	6	05/21/92	14	0.00	271.55			
04/21/92	04/21/92		77.46	4778.08	6	05/21/92	14	0.00	271.55			
04/21/92	04/21/92		120.00	4908.08	6	05/21/92	0	0.00	271.55			
04/21/92	04/21/92		19.99	4928.05	6	05/21/92	0	0.00	271.55			
04/01/92	04/01/92		10.40	4938.25	6	05/21/92	14	0.00	271.55			
04/01/92	04/01/92		1420.17	6357.42	6	06/10/92	94	0.00	271.55			
04/01/92	04/01/92		124.00	6481.42	4	06/22/92	40	124.00	149.55			
04/01/92	04/01/92		124.00	6605.42	4	06/22/92	40	124.00	25.55			
04/01/92	04/01/92		49.00	6654.42	4	06/22/92	39	0.00	25.55			
04/01/92	04/01/92		120.00	6774.42	6	06/22/92	27	0.00	25.55			
04/01/92	04/01/92		4991.50	4023.92	1			0.00	25.55			
04/01/92	04/01/92		55.25	4079.17	6	06/22/92	27	0.00	25.55			
04/01/92	04/01/92		3216.06	8095.03	6	06/22/92	27	0.00	25.55			
04/01/92	04/01/92		43.39	8138.42	6	06/22/92	17	0.00	25.55			
04/01/92	04/01/92		203.17	8341.59	4	06/22/92	39	203.17	-200.03			
04/01/92	04/01/92		233.09	8574.50	6	06/22/92	32	0.00	-200.03			
04/01/92	04/01/92		160.11	9034.69	4	06/22/92	36	160.11	151.20			
04/01/92	04/01/92		11.72	9046.41	6	06/22/92	27	0.00	151.20			
04/01/92	04/01/92		91.55	9137.96	6	06/22/92	17	0.00	151.20			
04/01/92	04/01/92		19.85	9157.81	6	06/22/92	0	0.00	151.20			
04/01/92	04/01/92		6.72	9164.52	6	06/22/92	17	0.00	151.20			
04/01/92	04/01/92		1496.01	5460.52	1			0.00	151.20			
04/01/92	04/01/92		10.11	5499.65	6	06/22/92	27	0.00	151.20			
04/01/92	04/01/92		60.00	5558.65	4	06/22/92	11	60.00	28.72			
04/01/92	04/01/92		240.00	5798.65	4	06/22/92	11	240.00	211.20			
04/01/92	04/01/92		120.00	5918.65	4	06/22/92	27	0.00	211.20			
04/01/92	04/01/92		55.00	5973.14	4	06/22/92	0	0.00	211.20			
04/01/92	04/01/92		12.05	6006.59	4	06/22/92	27	0.00	211.20			
04/01/92	04/01/92		41.70	6050.29	4	06/22/92	27	0.00	211.20			
04/01/92	04/01/92		10.75	6009.04	4	06/22/92	27	0.00	211.20			

W/S Name	W/S Cont No	W/S Cont Date	W/S Cont Amt	W/S Cont O/S Amt	W/S Cont Exp Date	W/S Cont Reimb	W/S Cont Day	W/S Cont Amt					
Allyson Holman	26	08/16/92	00/26/92	200.00	13766.56	4	11/16/92	02	200.00	4750.55	4750.55	4750.55	4750.55
	26	08/27/92	00/27/92	144.00	13910.56	4	11/16/92	01	144.00	4407.55	4407.55	4407.55	4407.55
	26	08/27/92	00/18/92	144.00	14054.56	4	11/16/92	61	144.00	4546.55	4546.55	4546.55	4546.55
	24	08/28/92	00/28/92	3706.50	10207.00	1		0	0.00	1857.14	1857.14	1857.14	1857.14
	27	09/01/92	09/01/92	6945.62	2402.16	1		0	0.00	215.49	215.49	215.49	215.49
	26	09/14/92	09/14/92	59.54	2461.90	6	11/16/92	63	59.54	295.01	295.01	295.01	295.01
	25	09/15/92	09/15/92	1371.54	2090.16	1		0	0.00	295.01	295.01	295.01	295.01
	26	09/29/92	09/29/92	1310.17	700.19	1		0	0.00	219.01	219.01	219.01	219.01
	20	11/16/92	11/16/92	700.19	0.00	1		0	0.00	1000.00	1000.00	1000.00	1000.00

W 5 Name Anne Beirngold

W/S No	W/S Cont Int Date	W/S Cont Rate	W/S Cont Int Amt	W/S O/S Amt	W/S Exp Date	W/S Pay	W/S Cont Amt	W/S Run Cont Amt	W/S Release Amt	W/S Cont Amt
1	11/18/91	11/18/91	113.50	4801.44	5	01/20/92	94	113.50	1801.44	1801.44
1	11/19/91	11/20/91	16.00	4817.44	5	01/20/92	91	16.00	1817.44	1817.44
1	11/20/91	11/20/91	16.00	4833.44	5	01/20/92	92	16.00	1833.44	1833.44
1	11/20/91	11/20/91	113.50	4947.00	6	02/20/92	97	113.50	1947.00	1947.00
1	11/25/91	11/25/91	16.00	4963.00	5	01/20/92	87	16.00	1963.00	1963.00
1	11/25/91	11/25/91	113.50	5076.54	6	02/20/92	87	113.50	4076.54	4076.54
1	11/26/91	11/26/91	16.00	5092.54	5	01/20/92	86	16.00	4092.54	4092.54
1	11/26/91	11/26/91	113.50	5206.04	6	02/20/92	86	113.50	4206.04	4206.04
1	12/02/91	12/02/91	16.00	5222.04	5	02/20/92	80	16.00	4222.04	4222.04
1	12/02/91	12/02/91	113.50	5335.54	6	02/20/92	80	113.50	4335.54	4335.54
1	12/03/91	12/03/91	16.00	5351.54	5	02/20/92	79	16.00	4351.54	4351.54
1	12/04/91	12/04/91	16.00	5367.54	5	02/20/92	78	16.00	4367.54	4367.54
1	12/04/91	12/04/91	16.00	5383.54	5	02/20/92	77	16.00	4383.54	4383.54
1	12/05/91	12/05/91	251.25	5635.19	6	02/20/92	76	251.25	4635.19	4635.19
1	12/05/91	12/05/91	16.00	5651.19	5	02/20/92	76	16.00	4651.19	4651.19
1	12/06/91	12/06/91	16.00	5667.19	5	02/20/92	76	16.00	4667.19	4667.19
1	12/06/91	12/06/91	113.50	5780.79	6	02/20/92	67	113.50	4780.79	4780.79
1	12/15/91	12/15/91	16.00	5854.39	5	02/20/92	67	16.00	4854.39	4854.39
1	12/15/91	12/15/91	73.50	5970.39	6	02/20/92	66	73.50	4970.39	4970.39
1	12/16/91	12/16/91	16.00	5986.39	5	02/20/92	66	16.00	4986.39	4986.39
1	12/17/91	12/17/91	16.00	5986.39	5	02/20/92	65	16.00	4986.39	4986.39
1	12/18/91	12/18/91	16.00	5986.39	5	02/20/92	64	16.00	4986.39	4986.39
1	12/19/91	12/19/91	16.00	5986.39	5	02/20/92	63	16.00	4986.39	4986.39
1	12/19/91	12/19/91	120.61	6209.00	6	02/20/92	63	120.61	5209.00	5209.00
1	12/20/91	12/20/91	16.00	6225.00	5	02/20/92	62	16.00	5225.00	5225.00
1	12/20/91	12/20/91	16.00	6259.06	6	02/20/92	62	16.00	5259.06	5259.06
1	12/20/91	12/20/91	113.50	6373.46	6	02/20/92	62	113.50	5373.46	5373.46
1	12/20/91	12/20/91	142.00	6415.46	6	02/20/92	62	142.00	5415.46	5415.46
1	01/21/92	01/21/92	20.00	6435.46	5	02/20/92	62	20.00	5435.46	5435.46
1	01/21/92	01/21/92	142.00	6497.46	6	02/20/92	62	142.00	5497.46	5497.46
1	01/22/92	01/22/92	20.00	6597.46	5	02/20/92	61	20.00	5597.46	5597.46
1	01/22/92	01/22/92	17.50	6629.96	5	02/20/92	61	17.50	5629.96	5629.96
1	01/22/92	01/22/92	142.00	6781.96	6	02/20/92	61	142.00	5781.96	5781.96
1	01/10/92	01/10/92	20.00	6801.96	5	02/20/92	61	20.00	5801.96	5801.96
1	01/10/92	01/10/92	12.00	6813.96	5	02/20/92	61	12.00	5813.96	5813.96
1	01/11/92	01/11/92	20.00	6833.96	5	02/20/92	61	20.00	5833.96	5833.96
1	01/11/92	01/11/92	64.00	6897.96	6	02/20/92	61	64.00	5897.96	5897.96
1	02/12/92	02/12/92	0.00	6897.96	5	02/20/92	61	0.00	5897.96	5897.96
1	02/12/92	02/12/92	0.50	6898.46	5	02/20/92	61	0.50	5898.46	5898.46
1	02/18/92	02/18/92	9.50	6907.96	5	02/20/92	61	9.50	5907.96	5907.96
1	02/19/92	02/19/92	7.00	6914.96	5	02/20/92	61	7.00	5914.96	5914.96
1	02/20/92	02/20/92	2103.06	6217.10	1		00	2103.06	2675.10	2675.10
1	02/20/92	02/20/92	359.60	6576.70	1		00	359.60	3034.70	3034.70
1	02/20/92	02/20/92	7.75	6584.45	1		00	7.75	3042.45	3042.45
1	02/20/92	02/20/92	614.50	6898.95	1		00	614.50	3656.95	3656.95
1	02/20/92	02/20/92	7.00	6905.95	1		00	7.00	3663.95	3663.95
1	02/25/92	02/25/92	0.75	6906.70	1		00	0.75	3664.70	3664.70
1	02/26/92	02/26/92	10.00	6916.70	1		00	10.00	3674.70	3674.70
1	02/26/92	02/26/92	5.75	6922.45	1		00	5.75	3680.45	3680.45
1	02/21/92	02/21/92	0.00	6922.45	1		00	0.00	3680.45	3680.45
1	02/28/92	02/28/92	6.50	6928.95	1		00	6.50	3686.95	3686.95
1	02/28/92	02/28/92	4.75	6933.70	1		00	4.75	3691.70	3691.70
1	01/01/92	01/01/92	0.75	6934.45	1		00	0.75	3692.45	3692.45
1	01/01/92	01/01/92	0.00	6934.45	1		00	0.00	3692.45	3692.45
1	01/04/92	01/04/92	10.75	6945.20	1		00	10.75	3703.20	3703.20
1	01/07/92	01/07/92	10.00	6955.20	1		00	10.00	3713.20	3713.20

W/S Name
 W/S Unit
 W/S Cont
 W/S Inc Amt
 W/S O/S Amt
 W/S REP Date
 W/S Day
 W/S Rate
 W/S Cont
 W/S Per
 W/S Amount
 W/S Amt

Anna Bergquist

W/S	Unit	W/S	Cont	W/S	Inc Amt	W/S	O/S Amt	REP	W/S	Day	W/S	Cont	W/S	Per	W/S	Amount	W/S	Amt
01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92	01/00/92
6	01/00/92	01/00/92	01/00/92	01/00/92	1 50	144 25	5	06/06/92	150	1 50	85 75	14 09						
6	01/00/92	01/00/92	01/00/92	01/00/92	8 50	152 75	5	06/06/92	150	8 50	43 25	16 14						
6	01/10/92	01/10/92	01/10/92	01/10/92	9 25	162 00	5	06/06/92	149	9 25	810 00	57 49						
6	01/20/92	01/20/92	01/20/92	01/20/92	5 00	167 00	5	06/06/92	119	5 00	011 00	62 24						
6	01/10/92	01/10/92	01/10/92	01/10/92	9 50	176 50	5	06/06/92	129	9 50	821 50	66 74						
6	01/31/92	01/31/92	01/31/92	01/31/92	1 75	180 25	5	06/06/92	128	1 75	819 75	71 99						
6	04/01/92	04/01/92	04/01/92	04/01/92	5 75	186 00	5	06/06/92	127	5 75	818 00	76 99						
5	04/01/92	04/01/92	04/01/92	04/01/92	99 25	66 75	1	06/06/92	121	0 00	913 25	80 99						
6	04/01/92	04/01/92	04/01/92	04/01/92	10 99	125 74	4	06/06/92	119	10 99	819 26	89 99						
6	04/00/92	04/00/92	04/00/92	04/00/92	3 50	129 24	4	06/06/92	119	3 50	810 76	95 49						
6	04/00/92	04/00/92	04/00/92	04/00/92	46 01	175 25	6	06/06/92	119	46 01	824 75	106 14						
6	04/15/92	04/15/92	04/15/92	04/15/92	4 50	179 75	5	06/06/92	113	4 50	820 25	111 00						
6	04/21/92	04/21/92	04/21/92	04/21/92	26 00	205 75	5	06/06/92	101	26 00	794 25	122 49						
6	04/21/92	04/21/92	04/21/92	04/21/92	11 00	216 75	5	06/06/92	101	11 00	781 25	127 49						
6	04/21/92	04/21/92	04/21/92	04/21/92	120 00	316 75	6	06/06/92	101	120 00	663 25	144 02						
6	04/20/92	04/20/92	04/20/92	04/20/92	50 00	306 75	5	06/06/92	100	50 00	602 25	149 02						
6	04/20/92	04/20/92	04/20/92	04/20/92	11 00	397 75	5	06/06/92	100	11 00	482 25	159 02						
6	04/20/92	04/20/92	04/20/92	04/20/92	120 00	512 75	5	06/06/92	100	120 00	359 25	172 52						
6	04/20/92	04/20/92	04/20/92	04/20/92	27 00	540 75	5	06/06/92	100	27 00	259 00	181 02						
6	04/20/92	04/20/92	04/20/92	04/20/92	195 45	746 20	6	06/06/92	100	195 45	241 00	190 02						
6	05/11/92	05/11/92	05/11/92	05/11/92	10 00	758 20	5	06/06/92	87	10 00	270 10	200 02						
6	05/11/92	05/11/92	05/11/92	05/11/92	16 00	774 20	5	06/06/92	86	16 00	225 00	216 02						
6	05/12/92	05/12/92	05/12/92	05/12/92	5 50	779 70	5	06/06/92	85	5 50	215 30	221 55						
6	05/13/92	05/13/92	05/13/92	05/13/92	5 00	784 70	5	06/06/92	85	5 00	161 21	227 49						
6	05/10/92	05/10/92	05/10/92	05/10/92	54 09	818 79	6	06/06/92	85	54 09	122 49	231 15						
6	05/19/92	05/19/92	05/19/92	05/19/92	19 72	877 51	6	06/06/92	79	19 72	102 50	231 15						
6	05/26/92	05/26/92	05/26/92	05/26/92	1 00	904 50	5	06/06/92	71	1 00	95 50	231 15						
6	05/21/92	05/21/92	05/21/92	05/21/92	80 59	991 09	6	06/06/92	70	80 59	4 91	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	21 00	1016 09	6	06/06/92	66	21 00	14 09	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	22 05	1016 14	6	06/06/92	66	22 05	16 14	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	21 35	1051 49	6	06/06/92	66	21 35	57 49	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	4 75	1062 24	5	06/06/92	66	4 75	62 24	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	5 25	1066 74	5	06/06/92	66	5 25	66 74	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	5 00	1071 99	5	06/06/92	65	5 00	71 99	231 15						
6	06/02/92	06/02/92	06/02/92	06/02/92	4 00	1076 99	5	06/06/92	65	4 00	76 99	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	9 00	1080 99	5	06/06/92	65	9 00	80 99	231 15						
6	06/01/92	06/01/92	06/01/92	06/01/92	5 50	1085 49	5	06/06/92	62	5 50	89 99	231 15						
6	06/05/92	06/05/92	06/05/92	06/05/92	11 00	1105 49	5	06/06/92	62	11 00	95 49	231 15						
6	06/08/92	06/08/92	06/08/92	06/08/92	7 00	1113 49	5	06/06/92	59	7 00	106 49	231 15						
6	06/08/92	06/08/92	06/08/92	06/08/92	9 00	1122 49	5	06/06/92	59	9 00	113 49	231 15						
6	06/10/92	06/10/92	06/10/92	06/10/92	5 00	1127 49	5	06/06/92	57	5 00	122 49	231 15						
6	06/11/92	06/11/92	06/11/92	06/11/92	6 51	1134 49	5	06/06/92	56	6 51	127 49	231 15						
6	06/11/92	06/11/92	06/11/92	06/11/92	10 00	1144 02	5	06/06/92	56	10 00	134 02	231 15						
6	06/11/92	06/11/92	06/11/92	06/11/92	5 00	1149 02	5	06/06/92	55	5 00	144 02	231 15						
6	06/14/92	06/14/92	06/14/92	06/14/92	5 00	1154 02	5	06/06/92	51	5 00	149 02	231 15						
6	06/16/92	06/16/92	06/16/92	06/16/92	9 00	1161 02	5	06/06/92	51	9 00	154 02	231 15						
6	06/11/92	06/11/92	06/11/92	06/11/92	9 50	1172 52	5	06/06/92	49	9 50	161 02	231 15						
6	06/10/92	06/10/92	06/10/92	06/10/92	9 50	1181 02	5	06/06/92	49	9 50	166 02	231 15						
6	06/29 92	06/29/92	06/29/92	06/29/92	9 00	1199 02	5	06/06/92	48	9 00	172 52	231 15						
6	06 29 92	06 29/92	06 29/92	06 29/92	9 00	1200 02	5	06/06/92	48	9 00	181 02	231 15						
6	07 01 92	07 01/92	07 01/92	07 01/92	8 00	1216 02	5	06/06/92	46	8 00	190 02	231 15						
6	07 02 92	07 02/92	07 02/92	07 02/92	15 11	1231 15	4	06/06/92	46	15 11	199 02	231 15						
6	07 10 92	07 10/92	07 10/92	07 10/92	7 50	1238 65	5	06/06/92	46	7 50	200 02	231 15						
6	07 10 92	07 10/92	07 10/92	07 10/92	8 50	1247 15	5	06/06/92	46	8 50	216 02	231 15						

Analysis of Staff Advances under 11 C.F.R. 116.5 for DWY

W/S Name	W/S Vth No	W/S cont Int Date	W/S cont Int Dte	W/S cont Int Amt	W/S O/S Amt	W/S Rep /de	W/S Date	W/S Day	W/S O/S	W/S cont Amt	W/S cont Unit	W/S Run Rel	W/S Release Amount	W/S Rel
Anne Reinhold	6	07/11/92	07/11/92	1.00	1250.15	5	08/06/92	26	0	0.00		211.15	211.15	
	6	07/12/92	07/12/92	1.50	1257.65	5	08/06/92	25	0	0.00		211.15	211.15	
	6	07/12/92	07/12/92	0.25	1261.90	5	08/06/92	25	0	0.00		211.15	211.15	
	6	07/12/92	07/12/92	0.00	1269.90	5	08/06/92	25	0	0.00		211.15	211.15	
	6	07/12/92	07/12/92	0.00	1275.90	5	08/06/92	25	0	0.00		211.15	211.15	
	6	08/06/92	08/06/92	1275.90	0.00	1			0	0.00		1000.00		

0501913

Field Definitions

- f) W/S
 O/S Amt
 Worksheet Outstanding
 Amount) a running balance of expenses
 and direct contributions net
 of reimbursements and debt
 settlements to date.
- g) W/S
 Exp
 Cde
 (Worksheet
 Expense Code) 1 thru 3
 are negative
 amounts 1 - reimbursements
 2 - debt settlements
 3 - miscellaneous
- 4 thru 7
 are positive
 amounts 4 - advances made by an
 individual for other
 than his/her own travel
 and subsistence, (e.g.,
 others' subsistence,
 office supplies, other
 campaign expenses).
 5 - advances made by an
 individual for his/
 her own travel and
 subsistence paid by other
 than personal credit card.
 6 - advances made by an
 individual for his/her
 own travel and subsis-
 tence paid with his/her
 own personal credit card.
 7 - direct contributions
- h) W/S Date
 Reimb
 (Worksheet Date
 of Reimbursement) date on which each expense was
 reimbursed, assuming a
 chronological order of
 payment (i.e., expenses
 incurred first were
 reimbursed first, irrespective
 of the specific expenses
 associated with a given
 reimbursement by a committee

Field Definitions

- W/S
Days
O/S
Worksheet Days Out-
Standing - Calculation
Date vs. Date of
Reimbursement)
- the number of days between
the calculation date and the
date the expense was reimbursed
(i.e., W/S Date Reimb. - W/S
Cont Calc Dte).
- W/S Contr
Amts
(Worksheet Contribution
Amounts)
- determined by the expense
code--for each expense code
there is a different number of
days within which the expense
must be reimbursed before it
becomes a contribution
(explained below under 'Data
and Methodology Used')--and
the W/S Days O/S.
- k) W/S Run
Contr Bal
(Worksheet Running
Contribution Balance)
- a running balance that
starts w/ -1000 where appropriate.
(\$1000 contribution limit-
ation is built in) and adds
'W/S Contr Amt's' successively;
as reimbursements are
encountered, all contributions
paid on that 'W/S Date Reimb'
are subtracted.
- l) W/S Excess
Amount
(Worksheet Excessive
Contribution Amount)
- the amount of excessive
contributions (i.e., the W/S
Run Contr Bal is positive) as
of each incurrence date;
- m) W/S Exc Bal
Aft Reimb
(Worksheet Excessive
Contribution Balance
After Reimbursement)
- the amount of excessive
contributions (i.e., the W/S
Run Contr Bal is positive)
remaining after each
reimbursement is applied.

Data and Methodology Used

The direct contributions, expense vouchers/reimbursement requests, and reimbursements were reviewed for the period beginning with the Committee's inception date through _____ . Generally, this data was gathered from the Committee's data tape and the Committee's vendor or check files.

Direct contributions appear net of any contribution refund(s) and are recorded for worksheet purposes as of the date of the refund. Otherwise, the deposit date from the Committee's data tape or other source is used. Debt settlements are dated as of the date that the Commission notifies the Committee that the debt settlement plan is acceptable.

Advances made by an individual for other than his/her own travel and subsistence (expense code 4) become contributions if not reimbursed on or before the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual in cash not paid by the individual's personal credit card (expense code 5) become contributions if not reimbursed within 30 days from the date the expense is incurred. Advances made by an individual for his/her own travel and subsistence paid by the individual with his/her own personal credit card (expense code 6) become contributions if not reimbursed within 60 days from the credit card statement date, however, if the credit card statement is not available, 60 days from the date of incurrence is used.

03001913



FEDERAL ELECTION COMMISSION

January 19, 1994

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Peter G. Blumberg
Attorney

SUBJECT: Proposed Final Audit Report for the 1992 Democratic
National Convention Committee, Inc.
(LRA #448/AR-93-38)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report for the Democratic National Convention Committee, Inc. ("the Committee") forwarded to this Office on November 2, 1993. The following memorandum contains our comments on the proposed audit report.^{1/} Should you have any questions, please contact Peter Blumberg, the attorney assigned to this matter.

Generally, we concur with the Audit staff's findings and recommendations in the proposed report. With regard to

^{1/} Since the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend that the Commission's discussion of this document be conducted in open session. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

excessive contributions to cover staff advances (11.B). We note that currently no contribution limit has been fixed by the Commission, and the issue of whether a committee could accept private contributions at all when it opted to receive its maximum entitlement of federal funds under 26 U.S.C. § 9008 is unsettled. The Committee received its entire entitlement of federal funds. Thus, at the time the advances were outstanding, the Committee may have had access to funds in excess of its entitlement. Since the Committee has fully reimbursed the individuals in this case, we believe that the advances should have no entitlement or repayment implications.

We request that the auditors clarify two matters which were discussed in the Interim Audit Report, and appear to be withdrawn now. The Interim Audit Report questioned the \$96,743 in costs the Committee estimated it had incurred to print the official proceedings of the Democratic National Convention ("the Convention"). This amount was questioned because it was more than double the printing costs incurred in 1988. The Final Audit Report does not specifically address the resolution of this expense. The report should include an explanation of how the printing cost issue was resolved. Further, the Interim Audit Report notified the Committee that it may owe another \$259,000 in repayments based on transactions made by the New York 192 Host Committee, Inc. ("the Host Committee"). The Final Audit Report concludes that the Committee has no obligation based on responses filed by the Host Committee. It is suggested that the proposed report explain in greater detail how the Host Committee response extinguished the Committee's potential additional obligations.

II. IMPROPER USE OF FUNDS

The proposed Final Audit Report categorizes four separate expenditures as apparent improper uses of funds pursuant to 11 C.F.R. § 9008.6(a)(4). The auditors identify an expenditure for production costs of a film shown at the Convention, "The Man from Hope," as an impermissible use of funds. The Committee

2/ The Notice of Proposed Rulemaking on Convention Regulations ("NPRM") seeks comment on contribution limits for contributions resulting from reimbursed staff advances, suggesting that because "the convention committee is established by the national committee, and therefore affiliated with the national committee it would share the national committee's \$20,000 contribution limit." The NPRM also notes that the limit would be \$0.00 absent a deficiency in the Presidential Election Campaign Fund or if the convention committee elects not to accept its full entitlement Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 58 Fed. Reg. 43047 (proposed August 12, 1993). The comment period closed on September 17, 1993. The hearing on the proposed rulemaking was held on October 27, 1993.

paid Great American Media, Inc. \$30,000 for a portion of the production costs of the film. The total production cost was \$188,337. Clinton for President "CFP" paid the balance of the cost. The Committee contends that the expense was a permissible use of funds since the costs were incurred "for the purpose of conducting a presidential nominating convention" insofar as the film was shown as part of the Convention proceedings. 11 C.F.R. § 9008.6(a)(4). The Committee also argues that these expenditures should not be considered a prohibited use of funds under 11 C.F.R. § 9008.6(b) because that regulation only prohibits convention committee expenditures for candidate expenses incurred by the candidate in attending the convention, such as housing, travel, and subsistence. Thus, the Committee reasons, if the candidate expense is for an item that does not involve the candidate's attendance, then it could be a permissible expense. Further, the Committee argues that its payment to CFP was in consideration of CFP's permission to show the film during the Convention proceedings. The Committee explained that it had to compensate CFP to avoid receiving an unlawful or repayable contribution from CFP.

The Audit staff argues that the showing of the film at the Convention does not transform it into a convention expense. The auditors also argue that the FECA and regulations prohibit all expenditures made for the candidate. With respect to the Committee's argument that it was obligated to compensate CFP for the benefit of showing the film, the Audit Division argues that this reimbursement is impermissible because it is an "expense of the candidate," and in any event, CFP received free television air time as consideration for the permission to use the film. The proposed Final Audit Report recommends that the Committee repay \$30,000 to the U.S. Treasury.

This Office agrees with the proposed report's recommendation. Convention committees are prohibited from using funds to defray the expenses of any candidate's participation in conventions. 26 U.S.C. § 9008(c); 11 C.F.R. § 9008.6(b)(1). The legislative history of convention financing does not indicate if any candidate related expenses would be a permissible use of convention funds. The convention regulations do not specify all permissible uses for expenditures, but they provide examples, such as the rental of the hall, security, telephones, salaries of employees, etc. 11 C.F.R. § 9008.6(a)(4)(i)-(viii). These examples suggest that the underlying purpose of federal convention funding is the smooth functioning and operation of the convention itself and not the promotion of a certain candidate through candidate-specific expenditures. The use of funds to subsidize the costs of a biographical film of the candidate, or to pay compensation to the owner of the film for the right to use it, does not involve the operations of the Convention. Rather, this use is candidate-specific and, therefore, it is not permissible.

ATTACHMENT
Page 41 of 41

Since the focus is on the operation of the convention, we believe that the prohibition against the expenses related to the candidate's "participation" in the convention includes more than the expenses for the candidate's "attendance." Thus, the Committee is prohibited from paying for any of the candidate's convention expenses, and not just expenses for hotels and meals. Further, the Committee's compensation argument circumvents the intention of 11 C.F.R. §§ 9008.6(a) and 9008.6(b)(1). These sections could be rendered superfluous under the Committee's proposed interpretation. For example, the Committee could argue that it should pay for the candidate's hotel and meals while attending the Convention since the Committee receives the benefit of the candidate's nomination speech as part of the Convention proceedings on the final night of the convention.

The Final Audit Report also identifies three other expenditures in the amount of \$30,431 that are viewed as impermissible. These expenditures involve post-convention payments for gifts and a research project.^{4/} The Committee argues that expenditures for gifts are a long-standing tradition at national party conventions, and that the expenses for similar gifts had never been questioned in past convention audits. Specifically, the Committee cites to an expense for engraved gavels from the 1988 Democratic National Convention. The Committee also stated that the research project was convention-related and, thus, a permissible use of funds.^{5/}

This Office concurs with the Audit Division that the Committee must repay \$30,431 to the Treasury to cover the impermissible funds. However, we recommend that the auditors clarify whether they deem the expenditures as impermissible because of the fact that the actual subject matter of the expenditures were not convention-related, or because they were paid several months after the Convention, which may transform otherwise permissible expenditures into non-convention expenses.

^{3/} For instance, a candidate can participate in a convention by producing a biographical film of herself to be shown at the convention, but not actually attend the convention.

^{4/} The gifts include engraved silver clocks, paperweights, boxes and serving trays, and an architect's model of the convention platform. We note that the Committee, initially, described these expenses as "printing" and "office supply" costs to the auditors.

^{5/} The Committee states that the researcher studied the role of African Americans at the Convention. However, there is no indication that the research had anything to do with conducting the Convention or that it was performed during the Convention. Indeed, the final research report was turned in months after the Convention and the topic is the role of African Americans in the National Democratic Committee, indicating that the expenditure was party-related, not convention-related.

In general, the Commission views expenditures made around the time of the convention as convention expenses. See Final Audit Report on the Arrangements Comm. of the Repub. Nat'l Comm. for the 1988 Repub. Nat'l Convention. Commission approved October 18, 1989, § payments made after the Convention cast doubt on whether an expenditure was convention-related. These expenditures also appear to be impermissible because they are more akin to expenses relating to party business rather than convention business, insofar as they have little to do with "conducting" a convention. See 11 C.F.R. § 9008.6 a. In other situations, the Audit Division has permitted expenditures for gifts such as inexpensive souvenirs to be distributed to campaign workers. These previously permitted expenditures have always been made during the convention and were inexpensive. The gifts in question here are different from previous convention souvenirs since the amount of money involved is significantly higher, and because the expenditures were made long after the Convention, thus, the auditors appear to be treating this Committee consistent with past practice.

67 The recent Notice of Proposed Rulemaking on convention financing also notes this point. Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions 58 Fed. Reg. 43047 (proposed August 12, 1993)

7 The fact the expenditures were paid several months after the Convention, adds to the inference that they were party expenses

05 00197



FEDERAL ELECTION COMMISSION

AK004865

April 5, 1994

The Honorable Robert T. Matsui
Treasurer
1992 Democratic National Convention
Committee, Inc.
430 South Capitol Street, S.E.
Washington, D.C. 20003

Dear Congressman Matsui:

Attached, please find the Final Audit Report on the 1992 Democratic National Convention Committee, Inc. The Commission approved this report on March 10, 1994. As noted on page 3 of the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §9008.10(g)(1) and (2), the Commission has made an initial determination that the Committee is to repay to the Secretary of the Treasury \$38,163 within 90 days after service of this report (July 8, 1994.) Should the Committee or the national committee dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9008.11(a) provide either committee with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (May 9, 1994), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required.

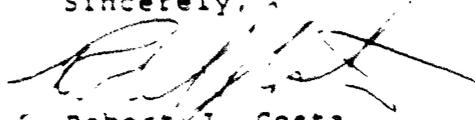
The Commission will consider any written legal and factual materials submitted by either committee within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Committee or the national committee so elects. If either committee decides to file a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

The Commission-approved Final Audit Report will be placed on the public record on April 11, 1994. Should you have any questions regarding the public release of this report, please contact Mr. Ron Harris of the Commission's Press Office at (202) 219-4155.

Robert T. Matsui, Treasurer
Page 2

Any questions you may have related to matters covered during the audit or in the report should be directed to Joe Stoits of the Audit Division at (202) 219-3710.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachments:
Final Audit Report
Legal Analysis

cc: Joseph E. Sandler, Esq.

2025011910705

CHRONOLOGY

1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Pre-audit Inventory Commenced	11/09/92
Audit Fieldwork	11/16/92-01/14/93
Interim Audit Report to the Committee	07/29/93
Response Received to the Interim Audit Report ^{1/}	12/09/93
Final Audit Report Approved	03/10/94

^{1/} Additional response time was granted after the revote and reissuance of the Interim Audit Report following the Courts decision in FEC v. NRA political Victory Fund, et al., No. 91-5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993).

May 5, 1994

Mr. Robert Costa
 Assistant Staff Director
 Audit Division
 Federal Election Commission
 999 E Street, N.W.
 Washington, D.C. 20463

Dear Mr. Costa:

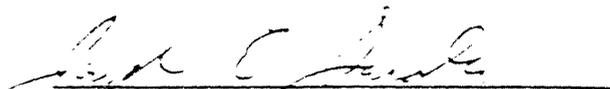
The 1992 Democratic National Convention Committee, Inc. ("DNCC") is in receipt of the Final Audit Report of the Federal Election Commission. Accordingly, enclosed please find two checks in the total amount of \$37,337.79, payable to the United States Treasury. The first check, in the amount of \$3,856.79, represents all unspent funds remaining in the DNCC account. The second check, in the amount of \$33,481.00, is being forwarded pursuant to the Commission's acceptance of the Audit Division's recommendation #1, partial acceptance of recommendation #2, and acceptance of recommendation #3 contained in the Final Audit Report.

Please note that since the issuance of the Final Audit Report, there have been two changes to the financial position of the DNCC. First, an \$800.00 check that was outstanding when the Final Audit Report was issued has since cleared the bank. Second, the DNCC made a payment of \$25.00 on April 12, 1994, to the District of Columbia for the DNCC's annual corporate fee. Accordingly, the repayment has been adjusted as follows:

- 1) Unspent Funds has been reduced from \$3,872.29 to \$3,847.29.
- 2) State Dated Committee Checks has been reduced from \$809.50 to \$9.50.

If you have any further questions regarding this matter, please call our office at (202) 863-7110.

Sincerely,



Joseph E. Sandler
 DNC General Counsel
 Neil P. Reiff
 DNC Deputy General Counsel



05020191000

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC.
450 SOUTH CAPITOL STREET, SE
WASHINGTON, DC 20003

NationsBank
NationsBank of DC, N.A.
Washington, DC 20006

4196

13-120
540 D01

PAY Three Thousand, Eight Hundred and Fifty Six Dollars and 79/100

3,856.79

TO THE ORDER OF
United States Treasury
Washington, D.C.

DATE 5/5/94

AMOUNT

Robert M. ...
Treasurer

Syron ...

⑆004196⑆➔⑆054001204⑆⑆230230⑆⑆⑆

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC.

DETACH AND RETAIN THIS STATEMENT
IF THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY AND RECEIPT OBTAINED

DELUXE - FORM TWCP-3 V-2

DATE	DESCRIPTION	AMOUNT
	Repayment of Unspent Funds	



25210191

DNC SERVICES CORPORATION
NON FEDERAL ACCOUNT NO. 4
430 SOUTH CAPITOL STREET, SE.
WASHINGTON, DC 20003

SOVRAN BANK
NATIONAL
MAIN OFFICE
1100 K STREET, NW
WASHINGTON, D.C. 20005

1618

May 5 19 94

15-112
500 D01

PAY TO THE ORDER OF

DOLLARS \$ 33,400.00

TO
THE
ORDER
OF

United States Treasury
Washington, D.C.

David Wilk
Lyron Hicks

⑈001618⑈ - ⑈054001204⑈ 2886147⑈

DNC SERVICES CORPORATION
NON FEDERAL ACCOUNT NO. 4

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DEEMED

DELUXE - FORM WYCP-3 V-7

Repayment fo 1992 Convention

953701214

NationsBank

Bank Statement

(3/000/399) NON-PROFIT CHECKING

PAGE

NATIONS BANK OF D.C., N.A.
101 K STREET N.W.
WASHINGTON, D.C. 20006

0-23-02306

LAST STATEMENT DATE 02-28
THIS STATEMENT DATE 03-31

1992 DEMOCRATIC NATIONAL
CONVENTION COMMITTEE INC
430 SOUTH CAPITOL ST SE
WASHINGTON DC 20003

ENCLOSURES

TE -- DEPOSITS -- CHECKS/CHGS -- CHECKING 0-23-02306 -- REFERENCE

-15		800.00	CHECK	4193		34138
-02		48,872.90	CHECK	4194		34107
	.00		TOTAL CREDITS			
		49,672.90	TOTAL DEBITS			

DAILY BALANCES (AVERAGE BALANCE 5,819)

53,554.69	02-28	4,681.79	03-02	3,881.79	03-15
BEGINNING BALANCE	53,554.69	ENDING BALANCE	3,881.79		

FEDERAL TAX ID NUMBER 52-0958906

CUSTOMER SERVICE 301-891-7400 OR 800-222-7162 DIRECT WRITTEN INQUIRIES TO
 TTY (HEARING IMPAIRED) 301-270-7081 NATIONS BANK OF D.C., N.A.
 FAX 301-270-7498 6495 NEW HAMPSHIRE AVENUE
 HYATTSVILLE, MARYLAND 2078

1992 DEMOCRATIC CONVENTION
COMMITTEE, INC.
430 SOUTH CAPITOL STREET, SE.
WASHINGTON, DC 20003

NationsBank
NationsBank of DC, N.A.
Washington, DC 20006

4193

15-120
549 D01

Attachment
Page 4 of 4

PAY *****Eight Hundred and no/100*****

020237482	004	0870	0203	25	02
	DATE		AMOUNT		
	2/1/94		\$800.00		

TO THE ORDER OF Thomas Murphy
1409 SE 46th Lane
Cape Coral, Fla. 33904

Robert H. Williams
Dilled

004193 1054001204 230230 61 0000080000

03001213



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

May 12, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

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

SUBJECT: REPAYMENT RECEIVED FROM THE 1992 DEMOCRATIC NATIONAL
CONVENTION COMMITTEE, INC.

The final audit report on the 1992 Democratic National Convention Committee, Inc. required a repayment to the U.S. Treasury in the amount of \$38,163. This consisted of \$33,481 for impermissible use of public funds, \$3,872 in unspent funds, and \$810 in stale dated checks.

The Committee was given 90 days to make the repayment (July 8, 1994) or 30 days to contest the initial repayment determination (May 9, 1994). On May 5, 1994, Committee Counsel delivered two checks totaling \$37,338. This is \$825 less than the amount specified in the initial repayment determination. The difference is \$800 for a stale dated check that has recently cleared the Committee's account and \$25 in additional winddown expenses for the renewal of the Committee's corporate charter. (A copy of the Committee's letter is at Attachment 1)

In the opinion of the Audit staff the payments received satisfy the initial repayment determination.

This memorandum is being circulated for your information. Should you have any questions, please contact Joe Stoltz at 219-3720.

cc General Counsel



03 11 21 10

1

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

(Cooper)



FEDERAL ELECTION COMMISSION

May 12 3 10 PM '94

May 12, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA / STAFF DIRECTOR

FROM: ROBERT J. COSTA / ASSISTANT STAFF DIRECTOR / AUDIT DIVISION

SUBJECT: REPAYMENT RECEIVED FROM THE 1992 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

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cc General Counsel

DEMOCRATIC ★ NATIONAL ★ COMMITTEE

David W. Belin, Chairman

May 5, 1994

Mr. Robert Costa
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Costa:

The 1992 Democratic National Convention Committee, Inc. ("DNCC") is in receipt of the Final Audit Report of the Federal Election Commission. Accordingly, enclosed please find two checks in the total amount of \$37,337.79, payable to the United States Treasury. The first check, in the amount of \$3,856.79, represents all unspent funds remaining in the DNCC account. The second check, in the amount of \$33,481.00, is being forwarded pursuant to the Commission's acceptance of the Audit Division's recommendation #1, partial acceptance of recommendation #2, and acceptance of recommendation #3 contained in the Final Audit Report.

Please note that since the issuance of the Final Audit Report, there have been two changes to the financial position of the DNCC. First, an \$800.00 check that was outstanding when the Final Audit Report was issued has since cleared the bank. Second, the DNCC made a payment of \$25.00 on April 12, 1994, to the District of Columbia for the DNCC's annual corporate fee. Accordingly, the repayment has been adjusted as follows:

- 1) Unspent Funds has been reduced from \$3,872.29 to \$3,847.29.
- 2) State Dated Committee Checks has been reduced from \$809.50 to \$9.50.

If you have any further questions regarding this matter, please call our office at (202) 863-7110.

Sincerely,



Joseph E. Sandler
DNC General Counsel
Neil P. Reiff
DNC Deputy General Counsel