



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF ROL # 2241

Date Filmed 1/9/77 Camera No. --- 2

Cameraman AS

87040423038

RAVING SLIPS; INTERNAL DOCUMENTS;
CONCILIATION ITEMS; DUPLICATES OF
DOCUMENTS PLACED IN PUBLIC FILE

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

87040523039

- | | | | |
|-------------------------------------|---|--------------------------|--|
| <input type="checkbox"/> | (1) Classified Information | <input type="checkbox"/> | (6) Personal privacy |
| <input checked="" type="checkbox"/> | (2) Internal rules and practices | <input type="checkbox"/> | (7) Investigatory files |
| <input checked="" type="checkbox"/> | (3) Exempted by other statute | <input type="checkbox"/> | (8) Banking Information |
| <input type="checkbox"/> | (4) Trade secrets and commercial or financial information | <input type="checkbox"/> | (9) Well Information (geographic or geophysical) |
| <input checked="" type="checkbox"/> | (5) Internal Documents | | |

Signed George F. Ross, Chief
 date 1-5-86

FEDERAL ELECTION COMMISSION

ROUTING SLIPS; INTERNAL DOCUMENTS;

CONCILIATION ITEMS; DUPLICATES OF

DOCUMENTS PLACED IN PUBLIC FILE

The above-described material was removed from this file pursuant to the following exemption provided in the Freedom of Information Act, 5 U.S.C. Section 552(b):

- (1) Classified Information
- (2) Internal rules and practices
- (3) Exempted by other statute
- (4) Trade secrets and commercial or financial information
- (5) Internal Documents
- (6) Personal privacy
- (7) Investigatory files
- (8) Banking Information
- (9) Well Information (geographic or geophysical)

Signed

George F. Ross, Chief

date

1-5-86

FEC 9-21-77

87040523040



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 23, 1986

Ms. Carolyn U. Oliphant
Mondale for President Committee, Inc.
2233 Wisconsin Avenue, N.W.
Suite 214
Washington, D.C. 20007

Re: MUR 2241
Mondale for President
Committee, Inc., and
Michael S. Berman, As
Treasurer

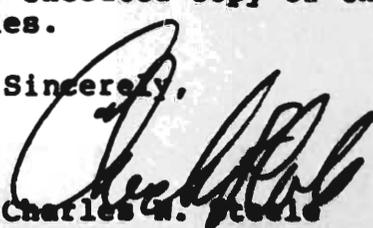
Dear Ms. Oliphant:

On December 18, 1986, the Commission accepted the conciliation agreement signed by you in settlement of violations of 2 U.S.C. §§ 434(b)(2)(I), 434(b)(3)(F), 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and § 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended; 26 U.S.C. § 9035(a), a provision of Chapter 96 of Title 26 of the U.S. Code; and 11 C.F.R. §§ 104.3(a)(3)(ix), 104.3(a)(4)(v), 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) of Commission regulations.

Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondents and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,


Charles W. Steele
General Counsel

Enclosure
Conciliation Agreement

87040523041

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Mondale for President)
Committee, Inc.,) MUR 2241
Michael S. Berman,)
As Treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer ("the Respondents") violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) by making expenditures in excess of the overall expenditure limitation and the state expenditure limitations for Iowa, Maine, and New Hampshire; 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v) for not reporting and itemizing certain refunds and rebates; and 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) for accepting contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe pursuant to 11 C.F.R. § 111.18(d), do hereby agree as follows:

R 7 0 4 0 5 2 3 0 4 2

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Respondent Mondale for President Committee, Inc., is the principal campaign committee of Walter F. Mondale, who was a candidate for nomination for election to the office of President of the United States in the 1984 election cycle.

2. The Respondent Michael S. Berman is the treasurer of the Mondale for President Committee, Inc.

3. Walter F. Mondale established his eligibility to receive matching payments pursuant to 26 U.S.C. § 9033.

4. The overall expenditure limitation for the campaign for nomination for the office of President for a candidate who established his eligibility for matching payments in the 1984 election cycle was \$20,200,000.00.

5. The state expenditure limitations for such campaign in the 1984 election cycle were \$684,537.50 for Iowa; \$404,000.00 for Maine; and \$404,000.00 for New Hampshire.

6. The examination and audit of the Respondent Committee pursuant to 26 U.S.C. § 9038(a) determined that the Committee had

87040623043

made expenditures in excess of the overall limitation in the amount of \$578,904.44 and expenditures in excess of the state limitations in the amounts of \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

7. The Respondents had not properly allocated expenditures to Iowa, Maine, and New Hampshire and had not reported such additional allocations.

8. The examination and audit determined that the Respondents did not report 42 refunds and rebates totaling \$43,859.52 and did not itemize 32 refunds and rebates totaling \$43,482.09.

9. The examination and audit determined that the Respondents had accepted contributions from 303 individuals that exceeded the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) by a total amount of \$102,853.00.

10. Section 441a(f) of Title 2 and 11 C.F.R. § 110.9(a) state that no committee shall knowingly accept any contribution or make any expenditure in violation of Section 441a.

11. Section 441a(b)(1)(A) of Title 2 and 11 C.F.R. § 110.8(a)(1) state that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. Section 441a(c) of Title 2 and 11 C.F.R. § 110.9(c)

87040623044

provide for the adjustment of these limitations based on changes in the Consumer Price Index.

12. Section 9035(a) of Title 26 and 11 C.F.R. § 9035.1(a) state that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A).

13. Section 106.2(a) of Commission regulations provides for the allocation of expenditures with respect to a particular state. Section 106.2(d) of Commission regulations provides for the reporting of such allocated expenditures.

14. Section 434(b)(2)(I) of Title 2 and 11 C.F.R. § 104.3(a)(3)(ix) provide for the reporting of the total amount of refunds, rebates, and other offsets to expenditures. Section 434(b)(3)(F) of Title 2 and 11 C.F.R. § 104.3(a)(4)(v) provide for the identification of each person who provides a refund, rebate, or other offset to operating expenditures in an aggregate amount or value in excess of \$200 in the calendar year, together with the date and amount of such receipt.

15. Section 441a(a)(1)(A) of Title 2 provides that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Section 441a(a)(6) of Title 2 states that this limitation applies separately with respect to each election except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

87040523045

V. Respondents made expenditures in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

VI. Respondents did not properly allocate and report all expenditures with respect to Iowa, Maine, and New Hampshire in violation of 11 C.F.R. §§ 106.2(a) and 106.2(d).

VII. Respondents did not report and itemize all refunds and rebates in violation of 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F), and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

VIII. Respondents accepted contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

IX. Respondents will pay a civil penalty to the Federal Election Commission in the amount of sixty-eight thousand dollars (\$68,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

87040623046

XI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matter raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:



Charles N. Steele
General Counsel

19 Dec. 1986
Date

FOR THE RESPONDENTS:



Carolyn U. Oliphant
Deputy General Counsel
Mondale for President Committee, Inc.

December 8, 1986
Date

87040623047

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Mondale for President Committee, Inc.) MUR 2241
Michael S. Berman, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 18, 1986, the Commission decided by a vote of 6-0 to take the following actions in MUR 2241:

1. Accept the signed conciliation agreement, as recommended in the General Counsel's Report signed December 16, 1986.
2. Send the proposed letter to the respondents, as recommended in the General Counsel's Report signed December 16, 1986.
3. Close the file.

Commissoiners Aikens, Elliott, Josefiak, McDonald, McGarry and Thomas voted affirmatively for this decision.

Attest:

12-18-86
Date

Cheryl A. Channing
for Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary:	Tues.,	12-16-86,	11:07
Circulated on 48 hour tally basis:	Tues.,	12-16-86,	4:00
Deadline for vote:	Thurs.,	12-18-86,	4:00

87040523048



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *Red*
 DATE: December 16, 1986
 SUBJECT: MUR 2241 - General Counsel's Report

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

CIRCULATIONS

DISTRIBUTION

48 Hour Tally Vote	<input checked="" type="checkbox"/>]	Compliance	<input checked="" type="checkbox"/>]
Sensitive	<input checked="" type="checkbox"/>]	Audit Matters	<input type="checkbox"/>]
Non-Sensitive	<input type="checkbox"/>]	Litigation	<input type="checkbox"/>]
24 Hour No Objection	<input type="checkbox"/>]	Closed MUR Letters	<input type="checkbox"/>]
Sensitive	<input type="checkbox"/>]	Status Sheets	<input type="checkbox"/>]
Non-Sensitive	<input type="checkbox"/>]	Advisory Opinions	<input type="checkbox"/>]
Information	<input type="checkbox"/>]	Other (see distribution below)	<input type="checkbox"/>]
Sensitive	<input type="checkbox"/>]		
Non-Sensitive	<input type="checkbox"/>]		
Other	<input type="checkbox"/>]		

87040623049

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
OF THE FEC
COMPTROLLER SECRETARY

In the Matter of)
Mondale for President Committee, Inc.)
Michael S. Berman, As Treasurer)

MUR 22416 All : 07

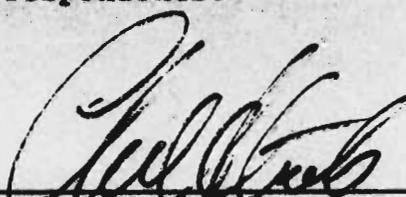
GENERAL COUNSEL'S REPORT

Attached is a conciliation agreement which has been signed by Carolyn U. Oliphant, deputy general counsel of the Mondale for President Committee, Inc.

RECOMMENDATIONS

1. Accept the signed conciliation agreement.
2. Send the proposed letter to the respondents.
3. Close the file.

16 December 1986
Date



Charles N. Steele
General Counsel

Attachments

1. Signed Conciliation Agreement
2. Proposed Letter to Respondents

87040523050

MONDALE

December 8, 1986

Charles N. Steele
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2241

Dear Mr. Steele:

Enclosed you will find a signed copy of the Conciliation Agreement proposed by the Commission in the above-referenced matter. The only change made by the Committee was the insertion of "As" before "Treasurer" in the caption of the case. Upon receipt of notification that the Commission has signed the Agreement, we will formally notify you that the Committee does not intend to dispute the initial repayment determination and that the Committee intends to withdraw its appeal in Mondale for President v. FEC, No. 85-1338 (D.C. Circuit).

It is our understanding from our discussions with your staff concerning this agreement that the Addendum to the Primary Audit Report does not contain any additional compliance referrals or repayment requests. Further, it is our understanding that the staff and Commission will make every effort to send the Addendum to the Primary Audit Report and the General Election Audit Report and Addendum to the Committee as soon as possible.

Thank you very much for your prompt response to our request for conciliation concerning these matters.

Sincerely,

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

60EC10 P1:43

TELETYPE UNIT

87040623051

ATTACHMENT 1

①

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Mondale for President)	
Committee, Inc.,)	MUR 2241
Michael S. Berman,)	
As Treasurer)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer ("the Respondents") violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) by making expenditures in excess of the overall expenditure limitation and the state expenditure limitations for Iowa, Maine, and New Hampshire; 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v) for not reporting and itemizing certain refunds and rebates; and 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) for accepting contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe pursuant to 11 C.F.R. § 111.18(d), do hereby agree as follows:

87040523052

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Respondent Mondale for President Committee, Inc., is the principal campaign committee of Walter F. Mondale, who was a candidate for nomination for election to the office of President of the United States in the 1984 election cycle.

2. The Respondent Michael S. Berman is the treasurer of the Mondale for President Committee, Inc.

3. Walter F. Mondale established his eligibility to receive matching payments pursuant to 26 U.S.C. § 9033.

4. The overall expenditure limitation for the campaign for nomination for the office of President for a candidate who established his eligibility for matching payments in the 1984 election cycle was \$20,200,000.00.

5. The state expenditure limitations for such campaign in the 1984 election cycle were \$684,537.50 for Iowa; \$404,000.00 for Maine; and \$404,000.00 for New Hampshire.

6. The examination and audit of the Respondent Committee pursuant to 26 U.S.C. § 9038(a) determined that the Committee had

87040523053

made expenditures in excess of the overall limitation in the amount of \$578,904.44 and expenditures in excess of the state limitations in the amounts of \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

7. The Respondents had not properly allocated expenditures to Iowa, Maine, and New Hampshire and had not reported such additional allocations.

8. The examination and audit determined that the Respondents did not report 42 refunds and rebates totaling \$43,859.52 and did not itemize 32 refunds and rebates totaling \$43,482.09.

9. The examination and audit determined that the Respondents had accepted contributions from 303 individuals that exceeded the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) by a total amount of \$102,853.00.

10. Section 441a(f) of Title 2 and 11 C.F.R. § 110.9(a) state that no committee shall knowingly accept any contribution or make any expenditure in violation of Section 441a.

11. Section 441a(b)(1)(A) of Title 2 and 11 C.F.R. § 110.8(a)(1) state that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. Section 441a(c) of Title 2 and 11 C.F.R. § 110.9(c)

R 7 0 4 0 5 2 3 0 5 4

provide for the adjustment of these limitations based on changes in the Consumer Price Index.

12. Section 9035(a) of Title 26 and 11 C.F.R. § 9035.1(a) state that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A).

13. Section 106.2(a) of Commission regulations provides for the allocation of expenditures with respect to a particular state. Section 106.2(d) of Commission regulations provides for the reporting of such allocated expenditures.

14. Section 434(b)(2)(I) of Title 2 and 11 C.F.R. § 104.3(a)(3)(ix) provide for the reporting of the total amount of refunds, rebates, and other offsets to expenditures. Section 434(b)(3)(F) of Title 2 and 11 C.F.R. § 104.3(a)(4)(v) provide for the identification of each person who provides a refund, rebate, or other offset to operating expenditures in an aggregate amount or value in excess of \$200 in the calendar year, together with the date and amount of such receipt.

15. Section 441a(a)(1)(A) of Title 2 provides that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Section 441a(a)(6) of Title 2 states that this limitation applies separately with respect to each election except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

87040523055

5

V. Respondents made expenditures in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

VI. Respondents did not properly allocate and report all expenditures with respect to Iowa, Maine, and New Hampshire in violation of 11 C.F.R. §§ 106.2(a) and 106.2(d).

VII. Respondents did not report and itemize all refunds and rebates in violation of 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F), and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

VIII. Respondents accepted contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

IX. Respondents will pay a civil penalty to the Federal Election Commission in the amount of sixty-eight thousand dollars (\$68,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

87040523056

(6)



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Ms. Carolyn U. Oliphant
Mondale for President Committee, Inc.
2233 Wisconsin Avenue, N.W.
Suite 214
Washington, D.C. 20007

Re: MUR 2241
Mondale for President
Committee, Inc., and
Michael S. Berman, As
Treasurer

Dear Ms. Oliphant:

On , 1986, the Commission accepted the conciliation agreement signed by you in settlement of violations of 2 U.S.C. §§ 434(b)(2)(I), 434(b)(3)(F), 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and § 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended; 26 U.S.C. § 9035(a), a provision of Chapter 96 of Title 26 of the U.S. Code; and 11 C.F.R. §§ 104.3(a)(3)(ix), 104.3(a)(4)(v), 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) of Commission regulations.

Accordingly, the file has been closed in this matter, and it will become a part of the public record within thirty days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondents and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

Enclosed you will find a fully executed copy of the final conciliation agreement for your files.

Sincerely,

Charles N. Steele
General Counsel

Enclosure
Conciliation Agreement

ATTACHMENT 2

8

87040523058



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 24, 1986

Mr. Michael S. Berman
Mondale for President Committee, Inc.
2233 Wisconsin Avenue, N.W.
Suite 214
Washington, D.C. 20007

RE: MUR 2241
Mondale for President
Committee, Inc. and
Michael S. Berman, as
treasurer

Dear Mr. Berman:

On November 18, 1986, the Federal Election Commission determined that there is reason to believe the Mondale for President Committee, Inc., and you, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I), 434(b)(3)(F), 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and § 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"); 26 U.S.C. § 9035(a), a provision of Chapter 96 of Title 26 of the U.S. Code; and 11 C.F.R. §§ 104.3(a)(3)(ix), 104.3(a)(4)(v), 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) of Commission regulations. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within fifteen days of your receipt of this letter. Statements should be submitted under oath.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

87040523059

Michael S. Berman
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act.

At your request, the Commission also determined on November 18, 1986, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions regarding this matter or any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact George Rishel, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens
Joan D. Aikens
Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement
Conciliation Agreement

87040523060

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Mondale for President
Committee, Inc.,
Michael S. Berman,
Treasurer

)
)
) MUR 2241
)
)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer ("the Respondents") violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) by making expenditures in excess of the overall expenditure limitation and the state expenditure limitations for Iowa, Maine, and New Hampshire; 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v) for not reporting and itemizing certain refunds and rebates; and 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) for accepting contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation prior to a finding of probable cause to believe pursuant to 11 C.F.R. § 111.18(d), do hereby agree as follows:

R 7 0 4 0 5 2 3 0 6 1

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Respondent Mondale for President Committee, Inc., is the principal campaign committee of Walter F. Mondale, who was a candidate for nomination for election to the office of President of the United States in the 1984 election cycle.

2. The Respondent Michael S. Berman is the treasurer of the Mondale for President Committee, Inc.

3. Walter F. Mondale established his eligibility to receive matching payments pursuant to 26 U.S.C. § 9033.

4. The overall expenditure limitation for the campaign for nomination for the office of President for a candidate who established his eligibility for matching payments in the 1984 election cycle was \$20,200,000.00.

5. The state expenditure limitations for such campaign in the 1984 election cycle were \$684,537.50 for Iowa; \$404,000.00 for Maine; and \$404,000.00 for New Hampshire.

6. The examination and audit of the Respondent Committee pursuant to 26 U.S.C. § 9038(a) determined that the Committee had

R 7 0 4 0 5 2 3 0 6 2

made expenditures in excess of the overall limitation in the amount of \$578,904.44 and expenditures in excess of the state limitations in the amounts of \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

7. The Respondents had not properly allocated expenditures to Iowa, Maine, and New Hampshire and had not reported such additional allocations.

8. The examination and audit determined that the Respondents did not report 42 refunds and rebates totaling \$43,859.52 and did not itemize 32 refunds and rebates totaling \$43,482.09.

9. The examination and audit determined that the Respondents had accepted contributions from 303 individuals that exceeded the contribution limitation of 2 U.S.C. § 441a(a) (1) (A) by a total amount of \$102,853.00.

10. Section 441a(f) of Title 2 and 11 C.F.R. § 110.9(a) state that no committee shall knowingly accept any contribution or make any expenditure in violation of Section 441a.

11. Section 441a(b) (1) (A) of Title 2 and 11 C.F.R. § 110.8(a) (1) state that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. Section 441a(c) of Title 2 and 11 C.F.R. § 110.9(c)

87040523063

provide for the adjustment of these limitations based on changes in the Consumer Price Index.

12. Section 9035(a) of Title 26 and 11 C.F.R. § 9035.1(a) state that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A).

13. Section 106.2(a) of Commission regulations provides for the allocation of expenditures with respect to a particular state. Section 106.2(d) of Commission regulations provides for the reporting of such allocated expenditures.

14. Section 434(b)(2)(I) of Title 2 and 11 C.F.R. § 104.3(a)(3)(ix) provide for the reporting of the total amount of refunds, rebates, and other offsets to expenditures. Section 434(b)(3)(F) of Title 2 and 11 C.F.R. § 104.3(a)(4)(v) provide for the identification of each person who provides a refund, rebate, or other offset to operating expenditures in an aggregate amount or value in excess of \$200 in the calendar year, together with the date and amount of such receipt.

15. Section 441a(a)(1)(A) of Title 2 provides that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. Section 441a(a)(6) of Title 2 states that this limitation applies separately with respect to each election except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

87040523064

V. Respondents made expenditures in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

VI. Respondents did not properly allocate and report all expenditures with respect to Iowa, Maine, and New Hampshire in violation of 11 C.F.R. §§ 106.2(a) and 106.2(d).

VII. Respondents did not report and itemize all refunds and rebates in violation of 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F), and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

VIII. Respondents accepted contributions in excess of the contribution limitation of 2 U.S.C. § 441a(a)(1)(A) in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

IX. Respondents will pay a civil penalty to the Federal Election Commission in the amount of sixty-eight thousand dollars (\$68,000.00), pursuant to 2 U.S.C. § 437g(a)(5)(A).

X. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

87040523065

XI. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XIII. This Conciliation Agreement constitutes the entire agreement between the parties on the matter raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be valid.

FOR THE COMMISSION:

Charles N. Steele
General Counsel

Date

FOR THE RESPONDENTS:

(Name)
(Position)

Date

87040623066

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO: 2241

STAFF MEMBER & TELE. NO.

George Fox Rishel (202) 376-5690

RESPONDENTS: Mondale for President Committee, Inc.
Michael S. Berman, as treasurer

SUMMARY OF ALLEGATIONS

I. The Mondale for President Committee, Inc., ("the Committee") made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President of the United States which exceeded the overall expenditure limitation in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

The respondent Committee made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President which exceeded the state expenditure limitations in Iowa, Maine, and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

II. The respondent Committee did not report the receipt of \$43,859.52 in refunds and rebates in violation of 2 U.S.C. § 434(b)(2)(I) and 11 C.F.R. § 104.3(a)(3)(ix) and did not itemize \$43,482.09 in refunds and rebates in violation of 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

87040523067

III. The respondent Committee accepted contributions from 303 individuals which in the aggregate exceeded the contribution limitations for such individuals by a total of \$102,853 in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

FACTUAL AND LEGAL ANALYSIS

Walter F. Mondale filed his Statement of Candidacy with the Commission on January 3, 1983, as a candidate for nomination for the office of President of the United States. He designated the Mondale for President Committee, Inc., ("the Committee") as his principal campaign committee. According to its Statement of Organization, Michael S. Berman, is the Committee's treasurer. Mr. Mondale established his eligibility for matching payments pursuant to 26 U.S.C. § 9033 on April 14, 1983. The Commission certified his eligibility for such payments on December 15, 1983.

I. Expenditure Limitations

The Federal Election Campaign Act of 1981, as amended ("the Act" or "the Campaign Act") provides that "[n]o candidate or political committee shall knowingly...make any expenditure in violation of the provisions of this section." 2 U.S.C. § 441a(f); see 11 C.F.R. § 110.9(a). The Act states that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. 2 U.S.C.

7040523068

§ 441a(b)(1)(A); see 11 C.F.R. § 110.8(a)(1). The Act directs the certification of the voting age population in each state.

2 U.S.C. § 441a(e); see 11 C.F.R. § 110.9(d). It further provides for adjustment of both the overall expenditure limitation of \$10,000,000 and the individual state expenditure limitations based on changes in the Consumer Price Index.

2 U.S.C. § 441a(c); see 11 C.F.R. § 110.9(c).^{1/} Furthermore, the Presidential Primary Matching Payment Account Act ("the Matching Payment Act") and Commission regulations provide that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A). 26 U.S.C. § 9035(a); 11 C.F.R. § 9035.1(a).

The overall expenditure limitation for 1984 presidential primary candidates who were eligible for matching payments was

^{1/} The Act further provides that the Commission shall prescribe rules for attributing expenditures by presidential candidates to particular states for purposes of the state expenditure limitations. 2 U.S.C. § 441a(g). The Commission's rules for such allocations are set out at 11 C.F.R. §§ 106.2(a), (b), and (c). These rules also require the reporting of these expenditure allocations. 11 C.F.R. § 106.2(d). They further require the authorized committees to keep records of all assumptions for these allocations. 11 C.F.R. § 106.2(e). Commission regulations under the Matching Payment Act also require candidates receiving matching funds to allocate expenditures in accordance with 11 C.F.R. § 106.2. 11 C.F.R. § 9035.1(b). The regulations further set out allocation procedures for expenditures with respect to the overall expenditure limitation. See generally, 11 C.F.R. §§ 100.8(b)(15) and (21), 106.2(c), 9034.6, 9034.7, 9034.8, and 9035.1(c).

97040623069

set at \$20,200,000. The Committee in its amended 1984 Year End Report reported total expenditures of \$20,047,673.22 as subject to the overall expenditure limitation. An examination and audit of the Committee determined that adjustments should be made to the expenditures subject to the overall limitation to bring the total allocated expenditures to \$20,778,904.44 or \$578,904.44 in excess of the overall expenditure limitation.^{2/}

The state expenditure limitations for 1984 presidential primary candidates who were eligible for matching payments were set for these states as follows:

Iowa	Maine	New Hampshire
\$684,537.50	\$404,000.00	\$404,000.00

The Committee's amended 1984 Year End Report reported the following amounts of expenditures allocated to these states:

Iowa	Maine	New Hampshire
\$679,988.94	\$389,420.59	\$470,863.17 ^{3/}

^{2/} This amount does not include expenditures made by any Mondale delegate committee. See Conciliation Agreement in MUR 1704.

^{3/} The Committee's 1986 July Quarterly Report discloses allocated expenditures to Iowa of \$687,720.05 and to New Hampshire of \$472,134.48. Furthermore, neither the figure for New Hampshire in the 1984 Year End Report nor the one in the 1986 July Quarterly Report includes amounts spent by any Mondale delegate committee. The Conciliation Agreement in MUR 1704 specified an additional amount of expenditures totaling \$92,975.73, which, for the purpose of settling that matter, was treated as applicable to New Hampshire. The Committee repaid \$29,640.00 to the U.S. Treasury with respect to these expenditures as part of its settlement of the matter.

87040523070

Thus, the Committee reported expenditures allocated to New Hampshire that exceeded the expenditure limitation for that state by at least \$66,863.17.

An examination and audit of the Committee determined that additional expenditures should also be allocated to these states. These additional allocations brought the total amount of expenditures in excess of the state limitations to \$300,980.30 or \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C.

§ 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a).

II. Reporting of Refunds and Rebates

The Act and regulations provide that each report filed by a political committee shall disclose for the reporting period and calendar year, the total amount of refunds, rebates and other offsets to expenditures. 2 U.S.C. § 434(b)(2)(I); 11 C.F.R. § 104.3(a)(3)(ix). The Act and regulations also require that each report shall disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(F); 11 C.F.R. §104.3(a)(4)(v).

87040523071

The examination and audit of the Committee determined that it had not reported 42 refunds and rebates totaling \$43,859.52 in 1983-84 and had not itemized 32 refunds and rebates totaling \$43,482.09. The Committee agreed in its November 18, 1985, response to the Interim Audit Report to amend its reports to include these items. The Committee filed these amendments nearly five months later on April 16, 1986. The reporting of these receipts was to the Committee's benefit since they reduced the amount of the Committee's expenditures subject to limitation. These unreported items do, however, include: (1) a \$28,456.13 tax refund received on December 20, 1983; (2) four insurance and parking refunds received in 1984 on January 1st and 15th and February 1st and 15th in amounts of \$2,349, \$2,276, \$2,211.50, and \$2,353 respectively; and (3) 22 refunds from 8 vendors totaling \$2,423.14, all received on August 9, 1984.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

III. Contributions in Excess of Limitation

The Act and regulations provide that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(a)(1). The Act and regulations state that this

R 7 0 4 0 5 2 3 0 7 2

limitation applies separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election. 2 U.S.C. § 441a(a)(6); 11 C.F.R. § 110.1(j)(1). The Act and regulations further provide that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a). Thus, the Committee was prohibited from knowingly accepting contributions from any individual which in the aggregate exceeded \$1,000.

The examination and audit determined that the Committee had received excessive contributions from 303 individuals, in which the excessive amount of such contributions totaled \$102,853. The Committee did not, within a reasonable time, refund or otherwise permissibly dispose of the excessive amounts of these contributions.

In a March 1984 response to a request for additional information from the Reports Analysis Division, the Committee explained its treatment of apparent excessive contributions. It noted that a refund was made if the Committee could determine that the contributor's spouse had also given the maximum allowable contribution. If this were not the case, the Committee sent a letter to the contributor requesting the attribution of the excessive amount to the contributor's spouse. An affidavit

R 7 0 4 0 6 2 3 0 7 3

for the second contributor's signature was enclosed with the letter. Where the Committee did not receive a response within a reasonable time, it followed up with either a phone call or a second letter. No refunds were sent to individuals who could not be reached by phone or who had not responded to the mailings.

After the establishment of a separate general election compliance fund, the Committee's letters to contributors who made apparent excessive contributions requested that the contributor authorize the transfer of the excessive amount to the general election legal and accounting compliance fund. The letter included an affidavit to authorize the transfer. Upon receiving a signed affidavit, the Committee withdrew the amount from its depository and deposited it into the compliance fund's account. The Committee reported the amount as a refund on its reports and as a contribution on the compliance fund's reports. If the contributor requested a refund, one was made. If no response was received to the first letter, a second letter was sent and an attempt was made to reach the individual by phone. No refunds were made if the correct individual could not be reached.

a. Refunds

Commission regulations provide that where a committee receives a contribution which appears to be illegal, it shall within 10 days either refund the contribution or deposit and report it. If deposited, the treasurer shall make a record noting the basis for the appearance of illegality, include a statement in the committee's reports noting the legality of the

87040623074

contribution is in question, and make his or her best efforts to determine the legality of the contribution. 11 C.F.R.

§ 103.3(b)(1). When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time. 11 C.F.R.

§ 103.3(b)(2).

The examination and audit determined that the Committee took an average of 144 days from the date of deposit to make 52 refunds of the excessive portions of contributions in a total amount of \$17,940. In each instance, at least 90 days elapsed between the date of deposit of the contribution and the date of the refund of the excessive amount. In these instances, the Committee did not make these 52 refunds within a reasonable time.

b. Reattributions

Commission regulations do not specifically address the reattribution of the excessive amount of a contribution to the contributor's spouse. The regulations recognize that both spouses may contribute up to \$1,000 to the same candidate for the same election even though both are from a single income family. 11 C.F.R. § 110.1(i)(1). The regulations also provide that a contribution from more than one person shall indicate on the written instrument, or on an accompanying statement signed by all contributors, the amount to be contributed to each contributor. 11 C.F.R. § 104.8(d). The regulations further state that, absent evidence to the contrary, a contribution is attributed to the last person signing the instrument prior to its delivery to the candidate or committee. 11 C.F.R. § 104.8(c). In Advisory

87040623075

Opinion 1985-25 (issued subsequent to the reattributions by the Committee), the Commission permitted a committee to obtain reattributions to spouses of the excessive portions of contributions in limited circumstances and subject to certain conditions. One of these conditions was that the committee must have a "reasonable basis" for concluding that the contribution was made by a married couple.

The examination and audit determined that the Committee took an average of 103 days from the date of deposit to obtain 3 reattributions of the excessive portions of contributions, in a total amount of \$1,100, to the contributors' spouses. In each instance, more than 90 days elapsed between the date of deposit and the date on which a reattribution was obtained. The information obtained in the audit or in the Committee's reports does not indicate whether or not the Committee had a reasonable basis for concluding that these contributions were made by married couples. Nevertheless, assuming such reattributions were permissible in these three instances, the Committee did not obtain the reattributions within a reasonable time.

c. Transfers to Compliance Fund

Commission regulations also do not address the transfer of the excessive amount of primary election contributions to the general election legal and accounting compliance fund. The regulations permit a major party presidential candidate in the general election to establish a legal and accounting compliance fund and to accept contributions to the fund if such

87040623076

contributions are received and disbursed in accordance with the regulations. 11 C.F.R. § 9003.3(a)(1)(i). Contributions to the fund are subject to the limitations and prohibitions of 11 C.F.R. Parts 110, 114, and 115. 11 C.F.R. § 9003.3(a)(1)(i)(B).

All solicitations to this fund shall clearly state that such contributions are being solicited for the fund. 11 C.F.R. § 9003.3(a)(1)(i)(A). The regulations permit the transfer to the compliance fund of those funds remaining in the primary election account which are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account. 11 C.F.R. § 9003.3(a)(1)(ii). The regulations also permit contributions made after the beginning of the expenditure report period (September 1 or the date of nomination, whichever is earlier) that are designated for the primary election to be deposited into this fund, subject to certain other qualifications. 11 C.F.R. § 9003.3(a)(1)(iii).

The Committee's transfers of the excessive portions of primary election contributions do not represent either (1) excess funds remaining in the primary election account that are not needed for matching fund repayments or (2) contributions designated for the primary election and made after September 1 or the date of Mr. Mondale's nomination. The amounts transferred, however, may be treated as funds specifically solicited for the compliance fund and appear to be in compliance with the Act's limitations and prohibitions.

R 7 0 4 0 5 2 3 0 7 7

In its response to the July 1984 request from the Reports Analysis Division, the Committee provided a sample copy of the letter sent to contributors relating to these transfers to the compliance fund. The letter specifically asked the contributor to assist the general election campaign by authorizing the transfer of the excessive amount of his or her primary election contribution to the legal and accounting compliance fund subject to a new \$1,000 limitation. The accompanying verification form provided space for the contributor to authorize the transfer specifically to the compliance fund and to complete the contributor information required for reporting purposes. As noted above, the Committee refunded the excessive amount if the contributor requested a refund.

The examination and audit determined that the Committee took an average of 158 days from the date of deposit to make 164 transfers of the excessive portions of contributions, in a total amount of \$51,034, to the compliance fund. In each instance, more than 90 days elapsed between the date of deposit and the transfer to the compliance fund. Thus, assuming the transfer of these amounts was permissible, the Committee did not make these 164 transfers within a reasonable time.

d. Outstanding Excessive Contributions

The examination and audit also determined that the Committee had received 84 contributions with excessive amounts totaling \$32,779, which remained outstanding as of December 31, 1984. Follow-up field work by the audit staff determined that

87040523078

the Committee had disposed of the excessive portions of 66 contributions and that 18 instances totaling \$9,652 remained outstanding at that time. Nevertheless, in each of these 84 instances, the Committee did not part with the excessive portions of these contributions within a reasonable time.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

87040523079

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Mondale for President Committee,) MUR 2241
Inc., and Michael S. Berman,)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of November 18, 1986, do hereby certify that the Commission took the following actions in MUR 2241:

1. Decided by a vote of 6-0 to
 - a) Find reason to believe the Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), and 26 U.S.C. § 9035(a) and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and § 9035.1(a).
 - b) Find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

(continued)

87040523080

- c) Find reason to believe the Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

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

3. Decided by a vote of 6-0 to

- a) Enter into conciliation with the Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, prior to a finding of probable cause to believe.
- b) Approve the proposed conciliation agreement attached to the General Counsel's report dated November 13, 1986, subject to the amendment noted above.

(continued)

87040623091

- c) Approve and send the letter and factual and legal analysis attached to the General Counsel's report dated November 13, 1986.

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

Attest:

11-20-86

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

87040623082



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *ld*
 DATE: November 13, 1986
 SUBJECT: MUR 2241 - Memo. to the Commission
General Counsel's Report

The attached is submitted as an Agenda document
 for the Commission Meeting of November 18, 1986

Open Session _____
 Closed Session XX

CIRCULATIONS

48 Hour Tally Vote []
 Sensitive []
 Non-Sensitive []
 24 Hour No Objection []
 Sensitive []
 Non-Sensitive []
 Information []
 Sensitive []
 Non-Sensitive []

Other [X]

DISTRIBUTION

Compliance [X]
 Audit Matters []
 Litigation []
 Closed MUR Letters []
 Status Sheets []
 Advisory Opinions []
 Other (see distribution below) []

SENSITIVE - CIRCULATE ON

BLUE PAPER on agenda 11-18-86

(submitted late)

87040523083



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

86 NOV 13 P 4: 46

November 13, 1986

EXECUTIVE SESSION

NOV 18 1986

MEMORANDUM TO: The Commission
FROM: Charles N. Steele
General Counsel
SUBJECT: General Counsel's Report
MUR 2241 (Mondale for President, Inc.)

We request that this report be placed on the agenda for Tuesday, November 18, 1986.

This report is submitted late due to the pending request for an extension of time regarding the repayment determination and its relationship to this matter.

87040523084

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION:

MUR # 2241
STAFF MEMBER:
Rishel

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENTS' NAMES: Mondale for President Committee, Inc.,
and Michael S. Berman, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(b)(2)(I)
2 U.S.C. § 434(b)(3)(F)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(6)
2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(c)
2 U.S.C. § 441a(f)
2 U.S.C. § 441a(g)
26 U.S.C. § 9035(a)
11 C.F.R. § 104.3(a)(3)(ix)
11 C.F.R. § 104.3(a)(4)(v)
11 C.F.R. § 104.8(c)
11 C.F.R. § 104.8(d)
11 C.F.R. § 106.2
11 C.F.R. § 110.1(a)(1)
11 C.F.R. § 110.1(i)(1)
11 C.F.R. § 110.1(j)(1)
11 C.F.R. § 110.8(a)(1)
11 C.F.R. § 110.9(a)
11 C.F.R. § 9003.3(a)(1)
11 C.F.R. § 9035.1(a)
Advisory Opinion 1985-25

INTERNAL REPORTS
CHECKED:

Mondale for President Committee, Inc.
Reports of Receipts & Disbursements
Final Audit Report
Conciliation Agreement, MUR 1704
MUR 2072, First General Counsel's Report
MUR 2154, First General Counsel's Report

FEDERAL AGENCIES
CHECKED:

None

GENERATION OF MATTER

Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1, the
Commission conducted an examination and audit of the qualified

87040523085

campaign expenses of the Mondale for President Committee, Inc. After this examination and audit, the Commission voted on September 9, 1986, to refer certain matters to the Office of General Counsel.

SUMMARY OF ALLEGATIONS

I. The Mondale for President Committee, Inc., ("the Committee") made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President of the United States which exceeded the overall expenditure limitation in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

The respondent Committee made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President which exceeded the state expenditure limitations in Iowa, Maine, and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

II. The respondent Committee did not report the receipt of \$43,859.52 in refunds and rebates in violation of 2 U.S.C. § 434(b)(2)(I) and 11 C.F.R. § 104.3(a)(3)(ix) and did not itemize \$43,482.09 in refunds and rebates in violation of 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

III. The respondent Committee accepted contributions from 303 individuals which in the aggregate exceeded the contribution

87040523086

limitations for such individuals by a total of \$102,853 in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

FACTUAL AND LEGAL ANALYSIS

Walter F. Mondale filed his Statement of Candidacy with the Commission on January 3, 1983, as a candidate for nomination for the office of President of the United States. He designated the Mondale for President Committee, Inc., ("the Committee") as his principal campaign committee. According to its Statement of Organization, Michael S. Berman, is the Committee's treasurer. Mr. Mondale established his eligibility for matching payments pursuant to 26 U.S.C. § 9033 on April 14, 1983. The Commission certified his eligibility for such payments on December 15, 1983.

I. Expenditure Limitations

The Federal Election Campaign Act of 1981, as amended ("the Act" or "the Campaign Act") provides that "[n]o candidate or political committee shall knowingly...make any expenditure in violation of the provisions of this section." 2 U.S.C. § 441a(f); see 11 C.F.R. § 110.9(a). The Act states that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. 2 U.S.C. § 441a(b)(1)(A); see 11 C.F.R. § 110.8(a)(1). The Act directs

87040523087

the certification of the voting age population in each state. 2 U.S.C. § 441a(e); see 11 C.F.R. § 110.9(d). It further provides for adjustment of both the overall expenditure limitation of \$10,000,000 and the individual state expenditure limitations based on changes in the Consumer Price Index.

2 U.S.C. § 441a(c); see 11 C.F.R. § 110.9(c).^{1/} Furthermore, the Presidential Primary Matching Payment Account Act ("the Matching Payment Act") and Commission regulations provide that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A). 26 U.S.C. § 9035(a); 11 C.F.R. § 9035.1(a).

The overall expenditure limitation for 1984 presidential primary candidates who were eligible for matching payments was set at \$20,200,000. The Committee in its amended 1984 Year End Report reported total expenditures of \$20,047,673.22 as subject

^{1/} The Act further provides that the Commission shall prescribe rules for attributing expenditures by presidential candidates to particular states for purposes of the state expenditure limitations. 2 U.S.C. § 441a(g). The Commission's rules for such allocations are set out at 11 C.F.R. §§ 106.2(a), (b), and (c). These rules also require the reporting of these expenditure allocations. 11 C.F.R. § 106.2(d). They further require the authorized committees to keep records of all assumptions for these allocations. 11 C.F.R. § 106.2(e). Commission regulations under the Matching Payment Act also require candidates receiving matching funds to allocate expenditures in accordance with 11 C.F.R. § 106.2. 11 C.F.R. § 9035.1(b). The regulations further set out allocation procedures for expenditures with respect to the overall expenditure limitation. See generally, 11 C.F.R. §§ 100.8(b)(15) and (21), 106.2(c), 9034.6, 9034.7, 9034.8, and 9035.1(c).

87040523098

to the overall expenditure limitation. An examination and audit of the Committee determined that adjustments should be made to the expenditures subject to the overall limitation to bring the total allocated expenditures to \$20,778,904.44 or \$578,904.44 in excess of the overall expenditure limitation.^{2/}

The state expenditure limitations for 1984 presidential primary candidates who were eligible for matching payments were set for these states as follows:

Iowa	Maine	New Hampshire
\$684,537.50	\$404,000.00	\$404,000.00

The Committee's amended 1984 Year End Report reported the following amounts of expenditures allocated to these states:

Iowa	Maine	New Hampshire
\$679,988.94	\$389,420.59	\$470,863.17 ^{3/}

Thus, the Committee reported expenditures allocated to New Hampshire that exceeded the expenditure limitation for that state by at least \$66,863.17.

^{2/} This amount does not include expenditures made by any Mondale delegate committee. See Conciliation Agreement in MUR 1704.

^{3/} The Committee's 1986 July Quarterly Report discloses allocated expenditures to Iowa of \$687,720.05 and to New Hampshire of \$472,134.48. Furthermore, neither the figure for New Hampshire in the 1984 Year End Report nor the one in the 1986 July Quarterly Report includes amounts spent by any Mondale delegate committee. The Conciliation Agreement in MUR 1704 specified an additional amount of expenditures totaling \$92,975.73, which, for the purpose of settling that matter, was treated as applicable to New Hampshire. The Committee repaid \$29,640.00 to the U.S. Treasury with respect to these expenditures as part of its settlement of the matter.

87040523089

An examination and audit of the Committee determined that additional expenditures should also be allocated to these states. These additional allocations brought the total amount of expenditures in excess of the state limitations to \$300,980.30 or \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C.

§ 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a).

II. Reporting of Refunds and Rebates

The Act and regulations provide that each report filed by a political committee shall disclose for the reporting period and calendar year, the total amount of refunds, rebates and other offsets to expenditures. 2 U.S.C. § 434(b)(2)(I); 11 C.F.R. § 104.3(a)(3)(ix). The Act and regulations also require that each report shall disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(F); 11 C.F.R. §104.3(a)(4)(v).

87040523090

The examination and audit of the Committee determined that it had not reported 42 refunds and rebates totaling \$43,859.52 in 1983-84 and had not itemized 32 refunds and rebates totaling \$43,482.09. The Committee agreed in its November 18, 1985, response to the Interim Audit Report to amend its reports to include these items. The Committee filed these amendments nearly five months later on April 16, 1986. The reporting of these receipts was to the Committee's benefit since they reduced the amount of the Committee's expenditures subject to limitation. These unreported items do, however, include: (1) a \$28,456.13 tax refund received on December 20, 1983; (2) four insurance and parking refunds received in 1984 on January 1st and 15th and February 1st and 15th in amounts of \$2,349, \$2,276, \$2,211.50, and \$2,353 respectively; and (3) 22 refunds from 8 vendors totaling \$2,423.14, all received on August 9, 1984.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

III. Contributions in Excess of Limitation

The Act and regulations provide that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R.

87040523091

§ 110.1(a)(1). The Act and regulations state that this limitation applies separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

2 U.S.C. § 441a(a)(6); 11 C.F.R. § 110.1(j)(1). The Act and regulations further provide that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. 2 U.S.C. § 441a(f); 11 C.F.R.

§ 110.9(a). Thus, the Committee was prohibited from knowingly accepting contributions from any individual which in the aggregate exceeded \$1,000.

The examination and audit determined that the Committee had received excessive contributions from 303 individuals, in which the excessive amount of such contributions totaled \$102,853. The Committee did not, within a reasonable time, refund or otherwise permissibly dispose of the excessive amounts of these contributions.^{4/}

In a March 1984 response to a request for additional information from the Reports Analysis Division, the Committee

87040523092

explained its treatment of apparent excessive contributions. It noted that a refund was made if the Committee could determine that the contributor's spouse had also given the maximum allowable contribution. If this were not the case, the Committee sent a letter to the contributor requesting the attribution of the excessive amount to the contributor's spouse. An affidavit for the second contributor's signature was enclosed with the letter. Where the Committee did not receive a response within a reasonable time, it followed up with either a phone call or a second letter. No refunds were sent to individuals who could not be reached by phone or who had not responded to the mailings. See pages 187-8 of the attachments.

After the establishment of a separate general election compliance fund, the Committee's letters to contributors who made apparent excessive contributions requested that the contributor authorize the transfer of the excessive amount to the general election legal and accounting compliance fund. The letter included an affidavit to authorize the transfer. Upon receiving a signed affidavit, the Committee withdrew the amount from its depository and deposited it into the compliance fund's account. The Committee reported the amount as a refund on its reports and as a contribution on the compliance fund's reports. If the contributor requested a refund, one was made. If no response was received to the first letter, a second letter was sent and an attempt was made to reach the individual by phone. No refunds

R 7 0 4 0 5 2 3 0 9 3

were made if the correct individual could not be reached. See page 189 of the attachments.

a. Refunds

Commission regulations provide that where a committee receives a contribution which appears to be illegal, it shall within 10 days either refund the contribution or deposit and report it. If deposited, the treasurer shall make a record noting the basis for the appearance of illegality, include a statement in the committee's reports noting the legality of the contribution is in question, and make his or her best efforts to determine the legality of the contribution. 11 C.F.R.

§ 103.3(b)(1). When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time. 11 C.F.R. § 103.3(b)(2).

The examination and audit determined that the Committee took an average of 144 days from the date of deposit to make 52 refunds of the excessive portions of contributions in a total amount of \$17,940. In each instance, at least 90 days elapsed between the date of deposit of the contribution and the date of the refund of the excessive amount. In these instances, the Committee did not make these 52 refunds within a reasonable time.

b. Reattributions

Commission regulations do not specifically address the reattribution of the excessive amount of a contribution to the contributor's spouse. The regulations recognize that both

87040523094

spouses may contribute up to \$1,000 to the same candidate for the same election even though both are from a single income family. 11 C.F.R. § 110.1(i)(1). The regulations also provide that a contribution from more than one person shall indicate on the written instrument, or on an accompanying statement signed by all contributors, the amount to be contributed to each contributor. 11 C.F.R. § 104.8(d). The regulations further state that, absent evidence to the contrary, a contribution is attributed to the last person signing the instrument prior to its delivery to the candidate or committee. 11 C.F.R. § 104.8(c). In Advisory Opinion 1985-25 (issued subsequent to the reattributions by the Committee), the Commission permitted a committee to obtain reattributions to spouses of the excessive portions of contributions in limited circumstances and subject to certain conditions. One of these conditions was that the committee must have a "reasonable basis" for concluding that the contribution was made by a married couple.

The examination and audit determined that the Committee took an average of 103 days from the date of deposit to obtain 3 reattributions of the excessive portions of contributions, in a total amount of \$1,100, to the contributors' spouses. In each instance, more than 90 days elapsed between the date of deposit and the date on which a reattribution was obtained. The information obtained in the audit or in the Committee's reports does not indicate whether or not the Committee had a reasonable

87040523095

basis for concluding that these contributions were made by married couples. Nevertheless, assuming such reattributions were permissible in these three instances, the Committee did not obtain the reattributions within a reasonable time.

c. Transfers to Compliance Fund

Commission regulations also do not address the transfer of the excessive amount of primary election contributions to the general election legal and accounting compliance fund. The regulations permit a major party presidential candidate in the general election to establish a legal and accounting compliance fund and to accept contributions to the fund if such contributions are received and disbursed in accordance with the regulations. 11 C.F.R. § 9003.3(a)(1)(i). Contributions to the fund are subject to the limitations and prohibitions of 11 C.F.R. Parts 110, 114, and 115. 11 C.F.R. § 9003.3(a)(1)(i)(B).

All solicitations to this fund shall clearly state that such contributions are being solicited for the fund. 11 C.F.R. § 9003.3(a)(1)(i)(A). The regulations permit the transfer to the compliance fund of those funds remaining in the primary election account which are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account. 11 C.F.R. § 9003.3(a)(1)(ii). The regulations also permit contributions made after the beginning of the expenditure report period (September 1 or the date of nomination, whichever is earlier) that are designated for the primary election to be

87040523096

deposited into this fund, subject to certain other qualifications. 11 C.F.R. § 9003.3(a)(1)(iii).

The Committee's transfers of the excessive portions of primary election contributions do not represent either (1) excess funds remaining in the primary election account that are not needed for matching fund repayments or (2) contributions designated for the primary election and made after September 1 or the date of Mr. Mondale's nomination. The amounts transferred, however, may be treated as funds specifically solicited for the compliance fund and appear to be in compliance with the Act's limitations and prohibitions.

In its response to the July 1984 request from the Reports Analysis Division, the Committee provided a sample copy of the letter sent to contributors relating to these transfers to the compliance fund. The letter specifically asked the contributor to assist the general election campaign by authorizing the transfer of the excessive amount of his or her primary election contribution to the legal and accounting compliance fund subject to a new \$1,000 limitation. The accompanying verification form provided space for the contributor to authorize the transfer specifically to the compliance fund and to complete the contributor information required for reporting purposes. See pages 190-1 of the attachments. As noted above, the Committee refunded the excessive amount if the contributor requested a refund.

87040523097

The examination and audit determined that the Committee took an average of 158 days from the date of deposit to make 164 transfers of the excessive portions of contributions, in a total amount of \$51,034, to the compliance fund. In each instance, more than 90 days elapsed between the date of deposit and the transfer to the compliance fund. Thus, assuming the transfer of these amounts was permissible, the Committee did not make these 164 transfers within a reasonable time.

d. Outstanding Excessive Contributions

The examination and audit also determined that the Committee had received 84 contributions with excessive amounts totaling \$32,779, which remained outstanding as of December 31, 1984. Follow-up fieldwork by the audit staff determined that the Committee had disposed of the excessive portions of 66 contributions and that 18 instances totaling \$9,652 remained outstanding at that time. Nevertheless, in each of these 84 instances, the Committee did not part with the excessive portions of these contributions within a reasonable time.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

87040523098

87040523099

87040523100

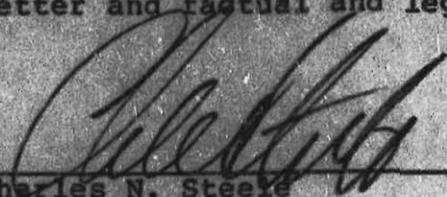
RECOMMENDATIONS

1. Find reason to believe the Mondale for President Committee, Inc. and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), and 26 U.S.C. § 9035(a) and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and § 9035.1(a).
2. Find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).
3. Find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).
4. Enter into conciliation with the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, prior to a finding of probable cause to believe.

87040523101

5. Approve the attached proposed conciliation agreement.
6. Approve and send the attached letter and factual and legal analysis.

12 Nov. 1986
Date



Charles N. Steele
General Counsel

Attachments

1. Proposed letter to Respondents
2. General Counsel's Factual and Legal Analysis
3. Proposed Conciliation Agreement
4. Referral document
5. Excerpts from committee response to RAD requests
6. Letter from Respondents

R 7 0 4 0 5 2 3 1 0 2



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Michael S. Berman
Mondale for President Committee, Inc.
2233 Wisconsin Avenue, N.W.
Suite 214
Washington, D.C. 20007

RE: MUR 2241
Mondale for President
Committee, Inc. and
Michael S. Berman, as
treasurer

Dear Mr. Berman:

On , 198 , the Federal Election Commission determined that there is reason to believe the Mondale for President Committee, Inc., and you, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I), 434(b)(3)(F), 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and § 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"); 26 U.S.C. § 9035(a), a provision of Chapter 96 of Title 26 of the U.S. Code; and 11 C.F.R. §§ 104.3(a)(3)(ix), 104.3(a)(4)(v), 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a) of Commission regulations. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the committee. You may submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Please submit any such materials within fifteen days of your receipt of this letter. Statements should be submitted under oath.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel is not authorized to give extensions beyond 20 days.

ATTACHMENT
1

①

87040523103

Michael S. Berman
Page 2

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address and telephone number of such counsel, and a statement authorizing such counsel to receive any notifications and other communications from the Commission.

The investigation now being conducted will be confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public. For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act.

At your request, the Commission also determined on , 198 , to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

If you have any questions regarding this matter or any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact George Rishel, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens
Chairman

Enclosures

General Counsel's Factual and Legal Analysis
Procedures
Designation of Counsel Statement
Conciliation Agreement

87040523104

(2)

FEDERAL ELECTION COMMISSION
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO: 2241

STAFF MEMBER & TELE. NO.

George Fox Rishel (202) 376-5690

RESPONDENT: Mondale for President Committee, Inc.
Michael S. Berman, as treasurer

SUMMARY OF ALLEGATIONS

I. The Mondale for President Committee, Inc., ("the Committee") made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President of the United States which exceeded the overall expenditure limitation in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

The respondent Committee made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President which exceeded the state expenditure limitations in Iowa, Maine, and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

II. The respondent Committee did not report the receipt of \$43,859.52 in refunds and rebates in violation of 2 U.S.C. § 434(b)(2)(I) and 11 C.F.R. § 104.3(a)(3)(ix) and did not itemize \$43,482.09 in refunds and rebates in violation of 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

87040523105

ATTACHMENT
2

3

III. The respondent Committee accepted contributions from 303 individuals which in the aggregate exceeded the contribution limitations for such individuals by a total of \$102,853 in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

FACTUAL AND LEGAL ANALYSIS

Walter F. Mondale filed his Statement of Candidacy with the Commission on January 3, 1983, as a candidate for nomination for the office of President of the United States. He designated the Mondale for President Committee, Inc., ("the Committee") as his principal campaign committee. According to its Statement of Organization, Michael S. Berman, is the Committee's treasurer. Mr. Mondale established his eligibility for matching payments pursuant to 26 U.S.C. § 9033 on April 14, 1983. The Commission certified his eligibility for such payments on December 15, 1983.

I. Expenditure Limitations

The Federal Election Campaign Act of 1981, as amended ("the Act" or "the Campaign Act") provides that "[n]o candidate or political committee shall knowingly...make any expenditure in violation of the provisions of this section." 2 U.S.C. § 441a(f); see 11 C.F.R. § 110.9(a). The Act states that no candidate for the office of President who is eligible to receive matching payments may make expenditures in excess of \$10,000,000 in the case of a campaign for nomination for election to such office, except the aggregate of expenditures in any one state shall not exceed the greater of 16 cents multiplied by the voting age population of the state or \$200,000. 2 U.S.C.

87040423106

④

§ 441a(b)(1)(A); see 11 C.F.R. § 110.8(a)(1). The Act directs the certification of the voting age population in each state. 2 U.S.C. § 441a(e); see 11 C.F.R. § 110.9(d). It further provides for adjustment of both the overall expenditure limitation of \$10,000,000 and the individual state expenditure limitations based on changes in the Consumer Price Index.

2 U.S.C. § 441a(c); see 11 C.F.R. § 110.9(c).^{1/} Furthermore, the Presidential Primary Matching Payment Account Act ("the Matching Payment Act") and Commission regulations provide that no candidate or his or her authorized committee(s) shall knowingly incur qualified campaign expenses in excess of the expenditure limitations of 2 U.S.C. § 441a(b)(1)(A). 26 U.S.C. § 9035(a); 11 C.F.R. § 9035.1(a).

The overall expenditure limitation for 1984 presidential primary candidates who were eligible for matching payments was

^{1/} The Act further provides that the Commission shall prescribe rules for attributing expenditures by presidential candidates to particular states for purposes of the state expenditure limitations. 2 U.S.C. § 441a(g). The Commission's rules for such allocations are set out at 11 C.F.R. §§ 106.2(a), (b), and (c). These rules also require the reporting of these expenditure allocations. 11 C.F.R. § 106.2(d). They further require the authorized committees to keep records of all assumptions for these allocations. 11 C.F.R. § 106.2(e). Commission regulations under the Matching Payment Act also require candidates receiving matching funds to allocate expenditures in accordance with 11 C.F.R. § 106.2. 11 C.F.R. § 9035.1(b). The regulations further set out allocation procedures for expenditures with respect to the overall expenditure limitation. See generally, 11 C.F.R. §§ 100.8(b)(15) and (21), 106.2(c), 9034.6, 9034.7, 9034.8, and 9035.1(c).

87040523107

5

set at \$20,200,000. The Committee in its amended 1984 Year End Report reported total expenditures of \$20,047,673.22 as subject to the overall expenditure limitation. An examination and audit of the Committee determined that adjustments should be made to the expenditures subject to the overall limitation to bring the total allocated expenditures to \$20,778,904.44 or \$578,904.44 in excess of the overall expenditure limitation.^{2/}

The state expenditure limitations for 1984 presidential primary candidates who were eligible for matching payments were set for these states as follows:

Iowa	Maine	New Hampshire
\$684,537.50	\$404,000.00	\$404,000.00

The Committee's amended 1984 Year End Report reported the following amounts of expenditures allocated to these states:

Iowa	Maine	New Hampshire
\$679,988.94	\$389,420.59	\$470,863.17 ^{3/}

2/ This amount does not include expenditures made by any Mondale delegate committee. See Conciliation Agreement in MUR 1704.

3/ The Committee's 1986 July Quarterly Report discloses allocated expenditures to Iowa of \$687,720.05 and to New Hampshire of \$472,134.48. Furthermore, neither the figure for New Hampshire in the 1984 Year End Report nor the one in the 1986 July Quarterly Report includes amounts spent by any Mondale delegate committee. The Conciliation Agreement in MUR 1704 specified an additional amount of expenditures totaling \$92,975.73, which, for the purpose of settling that matter, was treated as applicable to New Hampshire. The Committee repaid \$29,640.00 to the U.S. Treasury with respect to these expenditures as part of its settlement of the matter.

87040523108

Thus, the Committee reported expenditures allocated to New Hampshire that exceeded the expenditure limitation for that state by at least \$66,863.17.

An examination and audit of the Committee determined that additional expenditures should also be allocated to these states. These additional allocations brought the total amount of expenditures in excess of the state limitations to \$300,980.30 or \$147,363.82 for Iowa; \$25,283.50 for Maine; and \$128,332.98 for New Hampshire.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 106.2(a), 106.2(d), 110.8(a)(1), 110.9(a), and 9035.1(a).

II. Reporting of Refunds and Rebates

The Act and regulations provide that each report filed by a political committee shall disclose for the reporting period and calendar year, the total amount of refunds, rebates and other offsets to expenditures. 2 U.S.C. § 434(b)(2)(I); 11 C.F.R. § 104.3(a)(3)(ix). The Act and regulations also require that each report shall disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(F); 11 C.F.R. §104.3(a)(4)(v).

87040623109

②

The examination and audit of the Committee determined that it had not reported 42 refunds and rebates totaling \$43,859.52 in 1983-84 and had not itemized 32 refunds and rebates totaling \$43,482.09. The Committee agreed in its November 18, 1985, response to the Interim Audit Report to amend its reports to include these items. The Committee filed these amendments nearly five months later on April 16, 1986. The reporting of these receipts was to the Committee's benefit since they reduced the amount of the Committee's expenditures subject to limitation. These unreported items do, however, include: (1) a \$28,456.13 tax refund received on December 20, 1983; (2) four insurance and parking refunds received in 1984 on January 1st and 15th and February 1st and 15th in amounts of \$2,349, \$2,276, \$2,211.50, and \$2,353 respectively; and (3) 22 refunds from 8 vendors totaling \$2,423.14, all received on August 9, 1984.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. §§ 434(b)(2)(I) and 434(b)(3)(F) and 11 C.F.R. §§ 104.3(a)(3)(ix) and 104.3(a)(4)(v).

III. Contributions in Excess of Limitation

The Act and regulations provide that no individual shall make contributions to any candidate and his authorized committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(a)(1). The Act and regulations state that this

87040523110



limitation applies separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election. 2 U.S.C. § 441a(a)(6); 11 C.F.R. § 110.1(j)(1). The Act and regulations further provide that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a). Thus, the Committee was prohibited from knowingly accepting contributions from any individual which in the aggregate exceeded \$1,000.

The examination and audit determined that the Committee had received excessive contributions from 303 individuals, in which the excessive amount of such contributions totaled \$102,853. The Committee did not, within a reasonable time, refund or otherwise permissibly dispose of the excessive amounts of these contributions.

In a March 1984 response to a request for additional information from the Reports Analysis Division, the Committee explained its treatment of apparent excessive contributions. It noted that a refund was made if the Committee could determine that the contributor's spouse had also given the maximum allowable contribution. If this were not the case, the Committee sent a letter to the contributor requesting the attribution of the excessive amount to the contributor's spouse. An affidavit

8704052311

9

for the second contributor's signature was enclosed with the letter. Where the Committee did not receive a response within a reasonable time, it followed up with either a phone call or a second letter. No refunds were sent to individuals who could not be reached by phone or who had not responded to the mailings.

After the establishment of a separate general election compliance fund, the Committee's letters to contributors who made apparent excessive contributions requested that the contributor authorize the transfer of the excessive amount to the general election legal and accounting compliance fund. The letter included an affidavit to authorize the transfer. Upon receiving a signed affidavit, the Committee withdrew the amount from its depository and deposited it into the compliance fund's account. The Committee reported the amount as a refund on its reports and as a contribution on the compliance fund's reports. If the contributor requested a refund, one was made. If no response was received to the first letter, a second letter was sent and an attempt was made to reach the individual by phone. No refunds were made if the correct individual could not be reached.

a. Refunds

Commission regulations provide that where a committee receives a contribution which appears to be illegal, it shall within 10 days either refund the contribution or deposit and report it. If deposited, the treasurer shall make a record noting the basis for the appearance of illegality, include a statement in the committee's reports noting the legality of the

87040523112

(10)

contribution is in question, and make his or her best efforts to determine the legality of the contribution. 11 C.F.R.

§ 103.3(b)(1). When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time. 11 C.F.R.

§ 103.3(b)(2).

The examination and audit determined that the Committee took an average of 144 days from the date of deposit to make 52 refunds of the excessive portions of contributions in a total amount of \$17,940. In each instance, at least 90 days elapsed between the date of deposit of the contribution and the date of the refund of the excessive amount. In these instances, the Committee did not make these 52 refunds within a reasonable time.

b. Reattributions

Commission regulations do not specifically address the reattribution of the excessive amount of a contribution to the contributor's spouse. The regulations recognize that both spouses may contribute up to \$1,000 to the same candidate for the same election even though both are from a single income family. 11 C.F.R. § 110.1(i)(1). The regulations also provide that a contribution from more than one person shall indicate on the written instrument, or on an accompanying statement signed by all contributors, the amount to be contributed to each contributor. 11 C.F.R. § 104.8(d). The regulations further state that, absent evidence to the contrary, a contribution is attributed to the last person signing the instrument prior to its delivery to the candidate or committee. 11 C.F.R. § 104.8(c). In Advisory

R 7 0 4 0 5 2 3 1 3

Opinion 1985-25 (issued subsequent to the reattributions by the Committee), the Commission permitted a committee to obtain reattributions to spouses of the excessive portions of contributions in limited circumstances and subject to certain conditions. One of these conditions was that the committee must have a "reasonable basis" for concluding that the contribution was made by a married couple.

The examination and audit determined that the Committee took an average of 103 days from the date of deposit to obtain 3 reattributions of the excessive portions of contributions, in a total amount of \$1,100, to the contributors' spouses. In each instance, more than 90 days elapsed between the date of deposit and the date on which a reattribution was obtained. The information obtained in the audit or in the Committee's reports does not indicate whether or not the Committee had a reasonable basis for concluding that these contributions were made by married couples. Nevertheless, assuming such reattributions were permissible in these three instances, the Committee did not obtain the reattributions within a reasonable time.

c. Transfers to Compliance Fund

Commission regulations also do not address the transfer of the excessive amount of primary election contributions to the general election legal and accounting compliance fund. The regulations permit a major party presidential candidate in the general election to establish a legal and accounting compliance fund and to accept contributions to the fund if such

87040523114

12

contributions are received and disbursed in accordance with the regulations. 11 C.F.R. § 9003.3(a)(1)(i). Contributions to the fund are subject to the limitations and prohibitions of 11 C.F.R. Parts 110, 114, and 115. 11 C.F.R. § 9003.3(a)(1)(i)(B).

All solicitations to this fund shall clearly state that such contributions are being solicited for the fund. 11 C.F.R. § 9003.3(a)(1)(i)(A). The regulations permit the transfer to the compliance fund of those funds remaining in the primary election account which are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account. 11 C.F.R. § 9003.3(a)(1)(ii). The regulations also permit contributions made after the beginning of the expenditure report period (September 1 or the date of nomination, whichever is earlier) that are designated for the primary election to be deposited into this fund, subject to certain other qualifications. 11 C.F.R. § 9003.3(a)(1)(iii).

The Committee's transfers of the excessive portions of primary election contributions do not represent either (1) excess funds remaining in the primary election account that are not needed for matching fund repayments or (2) contributions designated for the primary election and made after September 1 or the date of Mr. Mondale's nomination. The amounts transferred, however, may be treated as funds specifically solicited for the compliance fund and appear to be in compliance with the Act's limitations and prohibitions.

8704062315

13

In its response to the July 1984 request from the Reports Analysis Division, the Committee provided a sample copy of the letter sent to contributors relating to these transfers to the compliance fund. The letter specifically asked the contributor to assist the general election campaign by authorizing the transfer of the excessive amount of his or her primary election contribution to the legal and accounting compliance fund subject to a new \$1,000 limitation. The accompanying verification form provided space for the contributor to authorize the transfer specifically to the compliance fund and to complete the contributor information required for reporting purposes. As noted above, the Committee refunded the excessive amount if the contributor requested a refund.

The examination and audit determined that the Committee took an average of 158 days from the date of deposit to make 164 transfers of the excessive portions of contributions, in a total amount of \$51,034, to the compliance fund. In each instance, more than 90 days elapsed between the date of deposit and the transfer to the compliance fund. Thus, assuming the transfer of these amounts was permissible, the Committee did not make these 164 transfers within a reasonable time.

d. Outstanding Excessive Contributions

The examination and audit also determined that the Committee had received 84 contributions with excessive amounts totaling \$32,779, which remained outstanding as of December 31, 1984. Follow-up field work by the audit staff determined that

87040523116

14

the Committee had disposed of the excessive portions of 66 contributions and that 18 instances totaling \$9,652 remained outstanding at that time. Nevertheless, in each of these 84 instances, the Committee did not part with the excessive portions of these contributions within a reasonable time.

Accordingly, this Office recommends that the Commission find reason to believe the Mondale for President Committee, Inc., and Michael S. Berman, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

87040623117

(15)

Candidate for President
3201 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Telephone: 202-625-1000

RECEIVED AT THE FEC
HAND DELIVERED
MONDALE

26 March 1984

Ms. Benita Adler
Reports Analysis
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Ms. Adler,

Attached you will find all the research to date regarding your RPAI for Year End and Year End Amendment Reports 10/1/83 - 12/31-83.

- 1) Regarding your request for changes to our allocations created by the amendment, no changes were made because the additional detail terms had no effect on our reported state activity.
- 2) A copy of the Schedule B for loan payments is attached.
- 3) All the work done to date on excessive contributions is documented as attached.

The number of excessive contributors appearing on our Year End Report is due to the greatly increased volume of checks received in the month of December, and the impossibility of clearing each of them against our donor file before they were deposited. However, as soon as the contributor information on excessives became available to us, we began taking the actions described below. Following this general explanation is a summary (with attachments) of the actions taken in each instance.

First, if it could be determined that the excessive contributor's spouse had also given the maximum allowable contribution, a refund was made directly. Where this was not the case, a "split" letter was sent to the excessive contributor to ask if the excessive amount could be attributed to a spouse who was a co-signer on the account. An affidavit was enclosed in order to get the signature of the

ATTACHMENT
5

187

page two

second honor. Where there was no response within a reasonable time, the letters were followed up by phone calls -- and when the contributor could not be reached by phone -- by a second letter requesting a response one way or the other from the contributor. No refund checks have been sent to those persons who could not be reached by phone or have not responded to our mailings. There are several of these cases still pending.

- 4) We are still working on the debt schedules. This D-P is prepared manually and requires a great deal of time to research and prepare. We will forward our response as soon as we can make the corrections.

Sincerely,



P. Christine Brewer
Controller
Mondale for President

9704395831019

(188)

JULY 1981

MEMORANDUM FOR PRESIDENT

Excessive Contributors

When an excessive contributor is identified either through an FEC report or a periodic printout, the following actions are taken:

1. A letter is sent to the individual asking if he/she will reattribute the excessive amount of his primary contribution to the Mondale/Ferraro Legal and Accounting Compliance Fund. (Attached is a sample letter and affidavit) When the affidavit is signed and returned, a check from the Mondale/Ferraro President depository account is drawn for the transfer amount and is deposited in the Compliance Fund account. The transferred amount is then reported as a refund on the FEC Primary campaign report and as a contribution on the FEC Compliance Fund report. The data base is also changed to reflect the status of the contribution.
2. When, in answer to our letter, an individual requests the return of his excessive contribution, a refund check is issued.
3. If no response is received, a second letter is sent and an attempt is made to reach the individual by phone. When each of these methods fails, an assumption is made that the address is no longer current or viable. No refund checks are sent unless we have assurance of reaching the correct individual.

04033044335

189

MONDINO/FERRARO
CONTRIBUTOR VERIFICATION FORM

My contribution of \$ _____ on check # _____, dated _____, should be attributed to the Mondino/Ferraro General Election "Legal and Accounting Compliance Fund."

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

OCCUPATION _____

NAME OF FIRM/EMPLOYER _____

SIGNATURE

04033044327

191



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: *MW* MARJORIE W. EMMONS/CHERYL A. FLEMING *CFH*

DATE: OCTOBER 29, 1986

SUBJECT: MUR 2241 - FIRST GENERAL COUNSEL'S REPORT
SIGNED OCTOBER 24, 1986

The above-captioned matter was received in the Office of the Secretary of the Commission Wednesday, October 24, 1986 at 12:52 P.M. and circulated to the Commission on a 24-hour no-objection basis on Monday, October 27, 1986 at 11:00 A.M.

There were no objections received in the Office of the Secretary of the Commission to the First General Counsel's Report at the time of the deadline.

87040523123



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REC'D
SECRETARY
OCT 29 1986
P 3:24

MEMORANDUM - OCTOBER 29, 1986

TO: OFFICE OF COMMISSION SECRETARY
FROM: COMMISSIONER THOMAS J. JOSEFIK
RE: NUR 2241

This is to notify you that I hereby withdraw
my objection to NUR 2241 dated October 28, 1986.

87040623124



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / CHERYL A. FLEMING *CAF*

DATE: OCTOBER 29, 1986

SUBJECT: OBJECTION TO MUR 2241 - FIRST GENERAL COUNSEL'S
SIGNED OCTOBER 24, 1986

The above-captioned document was circulated to the Commission on Monday, October 27, 1986 at 11:00 A.M.

Objections have been received from the Commissioners as indicated by the name(s) checked:

Commissioner Aikens _____
Commissioner Elliott _____
Commissioner Josefiak _____
Commissioner McDonald _____
Commissioner McGarry _____
Commissioner Thomas _____

This matter will be placed on the Executive Session agenda for Tuesday, November 4, 1986.

87040523125

24 HOUR NO-OBJECTION MATTER

SENSITIVE



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DATE & TIME OF TRANSMITTAL Monday, October 27, 1986 11:00

COMMISSIONER: AIKENS, ELLIOTT, JOSEPIAK, McDONALD, McGARRY, THOMAS

RETURN TO OFFICE OF COMMISSION SECRETARY BY Tuesday, October 27, 1986 11:00

SUBJECT: NUR 2241: First General Counsel's Report
Signed October 24, 1986

87040523126

COPIES TO SECRETARY
OCT 27 1986
FEC
SECRETARY

() I object to the attached report.

COMMENTS: _____

DATE 10-27-86

SIGNATURE Joan D. Aiken

OBJECTIONS, SIGNED AND DATED, MUST BE RECEIVED IN THE COMMISSION SECRETARY'S OFFICE NO LATER THAN THE DATE AND TIME SHOWN ABOVE OR THE MATTER WILL BE DEEMED APPROVED. PLEASE RETURN ONLY THIS SHEET TO THE COMMISSION SECRETARY.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
 FROM: Office of General Counsel *rd*
 DATE: October 24, 1986
 SUBJECT: MUR 2241 - First General Counsel's Report

The attached is submitted as an Agenda document
 for the Commission Meeting of _____
 Open Session _____
 Closed Session _____

CIRCULATIONS

48 Hour Tally Vote []
 Sensitive []
 Non-Sensitive []
 24 Hour No Objection [xk]
 Sensitive [xk]
 Non-Sensitive []
 Information []
 Sensitive []
 Non-Sensitive []
 Other []

DISTRIBUTION

Compliance [xk]
 Audit Matters []
 Litigation []
 Closed MUR Letters []
 Status Sheets []
 Advisory Opinions []
 Other (see distribution below) []

87040623127

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20460

RECEIVED
OFFICE OF THE PEC
COMMISSION SECRETARY

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION:

86 OCT 24 P12: 52
MUR # 2241
STAFF MEMBER:
Rishel

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENTS' NAMES: Mondale for President Committee, Inc.,
and Michael S. Berman, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(b) (2) (I)
2 U.S.C. § 434(b) (3) (F)
2 U.S.C. § 441a(a) (1) (A)
2 U.S.C. § 441a(a) (5)
2 U.S.C. § 441a(b) (1) (A)
2 U.S.C. § 441a(c)
2 U.S.C. § 441a(f)
2 U.S.C. § 441a(g)
26 U.S.C. § 9035(a)
11 C.F.R. § 104.3(a) (3) (ix)
11 C.F.R. § 104.3(a) (4) (v)
11 C.F.R. § 104.8(c)
11 C.F.R. § 104.8(d)
11 C.F.R. § 106.2
11 C.F.R. § 110.1(a) (1)
11 C.F.R. § 110.1(i) (1)
11 C.F.R. § 110.1(j) (1)
11 C.F.R. § 110.8(a) (1)
11 C.F.R. § 110.9(a)
11 C.F.R. § 9003.3(a) (1)
11 C.F.R. § 9035.1(a)
Advisory Opinion 1985-25

87040523128

INTERNAL REPORTS
CHECKED:

Mondale for President Committee, Inc.
Reports of Receipts & Disbursements
Final Audit Report
Conciliation Agreement, MUR 1704
MUR 2072, First General Counsel's Report
MUR 2154, First General Counsel's Report

FEDERAL AGENCIES
CHECKED:

None

GENERATION OF MATTER

Pursuant to 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1, the
Commission conducted an examination and audit of the qualified

campaign expenses of the Mondale for President Committee, Inc. After this examination and audit, the Commission voted on September 9, 1986, to refer certain matters to the Office of General Counsel.

SUMMARY OF ALLEGATIONS

I. The Mondale for President Committee, Inc., ("the Committee") made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President of the United States which exceeded the overall expenditure limitation in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), and 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

The respondent Committee made expenditures on behalf of the campaign of Walter F. Mondale for nomination for election to the office of President which exceeded the state expenditure limitations in Iowa, Maine, and New Hampshire in violation of 2 U.S.C. § 441a(b)(1)(A), as adjusted by 2 U.S.C. § 441a(c), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a), and 11 C.F.R. §§ 110.8(a)(1), 110.9(a), and 9035.1(a).

II. The respondent Committee did not report the receipt of \$43,859.52 in refunds and rebates in violation of 2 U.S.C. § 434(b)(2)(I) and 11 C.F.R. § 104.3(a)(3)(ix) and did not itemize \$43,482.09 in refunds and rebates in violation of 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

87040523129

III. The respondent Committee accepted contributions from 303 individuals which in the aggregate exceeded the contribution limitations for such individuals by a total of \$102,853 in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a).

STATUS OF MATTER

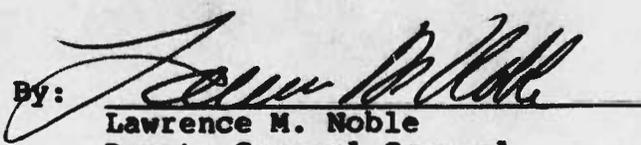
As noted in the above summary of allegations, this matter involves complex and difficult issues with respect to the state and overall expenditure limitations. These issues have raised further questions, all of which require additional research and review. This Office is presently conducting the review of these issues. Once it is completed, this Office will make a further report to the Commission.

Charles N. Steele
General Counsel

Date

10/24/81

By:


Lawrence M. Noble
Deputy General Counsel

87040523130

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Matters Referred to the Office)
of General Counsel from the) Agenda Document #X86-059
Final Audit Report - Mondale)
for President Committee, Inc.)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 9, 1986, do hereby certify that the Commission took the following actions with respect to the above-captioned matter:

1. Decided by a vote of 5-1 to reject recommendation number 1 found on pages three and four of the Agenda Document #X86-059, and that the Commission rule that the intra-state long distance telephone service is properly includable in the state office overhead.

Commissioners Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Aikens dissented.

2. Decided by a vote of 5-1 to approve recommendation number 2 found on page four of Agenda Document #X86-059.

Commissioners Aikens, Elliott, Josefiak, McDonald, and McGarry voted affirmatively for the decision; Commissioner Harris dissented.

(continued)

87040623131

Certification re. Matters Referred to
the Office of General Counsel from
the Final Audit Report - Mondale for
President Committee, Inc.

Page 2

3. Decided by a vote of 6-0 to approve the recommendation found on page 27 of Agenda Document #X86-059.

Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

4. Decided by a vote of 6-0 to approve the recommendation found on page 70 of Agenda Document #X86-059.

Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

5. Decided by a vote of 6-0 to approve the recommendation found on page 71 of Agenda Document #X86-059.

Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

6. Decided by a vote of 6-0 to approve the recommendation found on page 73 of Agenda Document #X86-059.

Commissioners Aikens, Elliott, Harris, Josefiak, McDonald, and McGarry voted affirmatively.

Attest:

9-11-86

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

87040623132

OGL Deckel



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
OFFICE OF THE FEC
COMMISSION SECRETARY

95 AUG 22 12:05

August 22, 1986

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA *Chyler*
STAFF DIRECTOR

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

SUBJECT: MATTERS REFERRED TO THE OFFICE OF
GENERAL COUNSEL FROM THE FINAL AUDIT
REPORT - MONDALE FOR PRESIDENT COMMITTEE, INC.

Attached for your consideration are the subject sections from the Mondale for President Committee, Inc. Final Audit Report (Exhibits A to D). In addition, at Attachments 1 and 2 are the relevant sections of the Legal Analysis of the Final Audit Report and the Committee's response to the Interim Audit Report.

For ease of reference, the pages in this agenda document have been numbered at the bottom, beginning with the first page of this memorandum. Also, Attachment 3 contains a Table of Contents showing the page location of each topic in the Audit Report Exhibits, the Legal Analysis and the Committee's Response to the Interim Audit Report. All page number references in this memorandum and the Table of Contents are to the bottom page numbers.

87040523133

87040623134

A. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code and Section 9035(a) of Title 26 of the United States Code provide, in part, that no candidate for the office of President of the United States who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$100,000, as adjusted by the change in the Consumer Price Index.

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

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

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

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

97040523135

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

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

1. Specific Allocation Methods

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

a. Media Expenditures

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

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

R 7 0 4 0 5 2 3 1 3 6

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

b. Intra-State Travel and Subsistence Expenditures

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

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

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

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

2/ The explanation and justification for 11 C.F.R. § 106.2(b)(2)(ii) states that for purposes of determining the length of time an individual remains in a State, the Commission will generally look to the calendar days or any portion thereof that that person was in a State rather than using 24 hour periods. (See Federal Register, Vol. 48. No.25 pg. 5225.)

R 7 0 4 0 5 2 3 1 3 7

In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to "make reallocations for errors in the amounts of \$4,808.84, \$13,850.01 and \$2,383.03 to Maine, Iowa and New Hampshire, respectively, based on the information provided by the auditors." The Committee, however, disputes Audit staff reallocations totalling \$2,369.62 in Maine, \$5,709.48 in Iowa, and \$5,206.52 in New Hampshire. These amounts represent payments to 31 individuals for which the Committee believes the supporting documentation presented by the Audit staff "does not demonstrate that the individuals in question were in the states for more than four days and therefore no state allocation is required".

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

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

c. Salaries, Employer FICA, and Consultant Fees

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

87040523138

salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

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

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

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

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

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

97040523139

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

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

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

R 7 0 4 0 5 2 3 1 4 0

8 7 0 4 0 5 2 3 1 4 1

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

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

d. Compliance and Fundraising Expenditures

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

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

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

(i) Telephone and Utilities

In addition to telephone base service charges, the Committee included intra-state long distance charges in overhead. As a result, the allocation of telephone expenses was understated by 20% (10% compliance and 10% fundraising) of the amount of the intra-state charges. Also noted was an Iowa water and sewer bill which had been coded to a headquarters' cost center. As a result of these misallocations, additional charges of \$6,498.36 to Iowa, \$1,109.55 to Maine, and \$3,606.53 to New Hampshire are required.

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

R 7 0 4 0 5 2 3 1 4 2

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

Given the Committee's response to this section of the interim audit report, no changes to the allocation have been made.

(ii) Fundraising Expenditures - 28 Day Rule

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

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

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

97040523143

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

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

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

87040523144

e. Public Opinion Polling Expenditures

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

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

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

2. Other Expenditures Requiring Allocation

As noted above, 11 C.F.R. § 106.2(a)(1) states that expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which it is incurred or paid.

a. Automobile Leasing

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

87040523145

(i) Iowa

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

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

(ii) New Hampshire

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

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

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

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

87040523146

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

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

The Committee argues as follows:

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

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

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

87040623147

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

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

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

87040523148

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

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

b. Telephone and Related Services

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

(i) Iowa

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

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

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

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

(ii) Maine

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

87040523149

(iii) New Hampshire

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

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

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

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

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

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

87040623150

c. Printing and Shipping Expenditures

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

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

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

d. Miscellaneous Expenditures

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

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

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

87040523151

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

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

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

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

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

97040523152

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

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

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

3. Debts and Obligations Requiring Allocation When Paid

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

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

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

87040623153

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

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

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

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

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

87040623154

recap of Allocable Expenditures

	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Amount allocated by the Committee on FEC Form 3P, page 3 as of December 31, 1984.5/	\$679,988.94	\$389,420.59	\$478,843.17
<u>Adjustments to above Reported Totals:</u>			
III.A.1.a. Media Expenditures	20,034.00	6,617.60	4,082.00
III.A.1.b. Intra-State Travel and Subsistence	19,589.89	7,178.48	6,945.18
III.A.1.c. Salaries, Employer FICA and Consultant Fees	18,157.29	15,441.43	13,669.87
III.A.1.d. (i) Compliance costs and Fundraising Expenditures-Telephone and Utilities	6,498.36	1,109.55	3,686.53
III.A.1.d. (ii) Fundraising Expenditures-28 day rule	16,270.49		
III.A.1.e. Public Opinion Polling Expenditures	13,500.00		12,500.00
III.A.2.a. (i) & (ii) Automobile Leasing	25,451.38		31,331.71
III.A.2.b. (i) (ii) (iii) Telephone and Related Services	8,028.60	46.89	(25,374.36)
III.A.2.c. Printing and Shipping Expenditures	15,403.58	4,690.69	3,550.40
III.A.2.d. Miscellaneous Expenditures	6,947.66	110.45	4,482.24
III.A.3. Debts and Obligations as of December 31, 1984 (Paid 1/1/ to 2/28/85)	8,501.70	5,777.99	10,312.85
Total Amount Paid With Respect To The State Expenditure Limitation As of December 31, 1985	<u>838,371.21</u>	<u>430,393.05</u>	<u>535,939.51</u>
State Spending Limitation	(684,537.50)	(404,000.00)	(404,000.00)
Total Expenditures in Excess of State Limitations	<u>\$153,833.71</u>	<u>\$ 26,393.05</u>	<u>\$131,939.51</u> 1/

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

1/ This amount does not contain expenditures made by any Mondale delegate committee. The Conciliation Agreement in NH 1704 specifies an additional amount totalling \$92,975.73 which, for the purpose of settling the NH, is treated as applicable to the New Hampshire expenditure limitation. The Conciliation Agreement also contained a repayment of \$19,640.00 as a result of exceeding this limitation. That amount was paid by the Committee on February 27, 1985.

87040523155

Recommendation

The Audit Division recommends that this matter be referred to the Office of General Counsel.

87040523156

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

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

MAINE

1. Jim Blair \$ 36.67
\$340.00

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

2. Jim Farrell \$994.66

Committee comments:

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

Audit staff comments:

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

87040523157

87040623158

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

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

Audit Adjustment: \$-0-

3. Ned McCann	\$190.00
	\$300.00

Committee comments:

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

Audit staff comments:

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

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

Audit Adjustment: \$-0-

4. Dennis O'Neil

\$ 56.39

Committee comments:

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

Audit staff comments:

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

87040523159

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

Audit Adjustment: \$-0-

5. David S. Rosenberg \$451.00

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

IOWA

6. Jonathan Blum \$172.70
\$100.00

Committee comments:

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

87040323160

Audit staff comments:

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

Audit Adjustment: \$-0-

7. Lynn Christensen \$ 50.00
\$144.88

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

8. Marthana Cowart \$493.69

Committee comments:

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

Audit staff comments:

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

87040523161

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

Audit Adjustment: \$-0-

9. Kathleen Doria \$216.12
\$ 50.00

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

10. Don Foley \$200.56
\$ 56.38

Committee comments:

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

Audit staff comments:

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

87040623162

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

Audit Adjustment: \$-0-

11. Michael Ford \$151.41

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

12. Vicki Hartman \$183.66

Committee comments:

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

Audit staff comments:

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

87040523163

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

Audit Adjustment: \$-0-

13. Larry Martinez \$353.97

Committee comments:

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

Audit staff comments:

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

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

87040523164

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

Audit Adjustment: \$-0-

14. Ellen Schneider \$ 75.00
\$192.98

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

15. Bart Chilton \$400.00
\$388.03

Committee comments:

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

Audit staff comments:

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

87040523165

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

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

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

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

87040323166

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

Audit Adjustment: \$-0-

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

Committee comments:

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

Audit staff comments:

See #15 above.

Audit Adjustment: \$-0-

17. Gary Kelleher	\$128.46
	\$289.71

Committee comments:

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

Audit staff comments:

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

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

87040523167

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

Audit Adjustment: \$-0-

18. Peter Handler \$400.00
\$511.63

Committee comments:

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

Audit staff comments:

See #15 above.

Audit Adjustment: \$-0-

19. Terry Leftgoff \$468.00

Committee comments:

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

87040523168

Audit staff comments:

The documentation consists of a check request form for the payment of two rental cars. The Audit staff notes that the cars were rented from a dealership located in Omaha, Nebraska, not Iowa. The cars were rented by Mr. Leftgoff and Ms. Shapero (see #20 below). The following were considered in the determination that these expenses were more reasonably allocable to Iowa than Nebraska: (a) the dates of the rental period in relation to the Iowa and Nebraska primary elections. The cars were rented from January 20-February 22, 1984. The Iowa primary was February 20, Nebraska's on May 15; (b) the proximity of Omaha to Iowa (Omaha is approximately 15 miles from Council Bluffs, Iowa); (c) Ms. Shapero's rental agreement lists the customer as Mondale for President, Council Bluffs, Iowa; and (d) the Committee allocated Ms. Shapero's salary for the month of February to Iowa. Also, in their response, the Committee recognizes Ms. Shapero's presence in Iowa (see #20 below).

Audit Adjustment: \$-0-

20. Elizabeth Shapero \$129.00

Committee comments:

Documents provided by the auditors establish that only 22 days are allocable to Iowa, although the auditors allocate a full 32 days. We are adjusting for ten days for which there is no evidence that Shapero was allocable to Iowa.

Audit staff comments:

The Committee disputes the allocation of \$129 of the \$412.67 allocated to Iowa pertaining to Ms. Shapero's car rental. This is presumably based on the fact that the Committee allocated Ms. Shapero's salary for February 1-29, 1984 to Iowa, but her salary for the second half of January was allocated to Washington (State). The Committee provided no evidence that the salary was properly allocable to Washington for the first ten days of the rental period (nor do they argue it was allocable to Nebraska, the state the car rental was allocated to for these same ten days). For this and the reasons mentioned in #19 above, the Audit staff feels that Ms. Shapero's car rental expenses are more reasonably allocable to Iowa than Nebraska or Washington.

Audit Adjustment: \$-0-

87040523169

NEW HAMPSHIRE

21. Bob Bosch \$612.02

Committee comments:

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

Audit staff comments:

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

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

Audit Adjustment: \$-0-

22. Walter Holton \$602.47

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

87040623170

23. Stuart Ishimara \$150.00 -

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

24. Elaine McLaughlin \$619.57

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

87040523171

25. Doug Michelman \$463.10

Committee comments:

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

Audit staff comments:

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

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

Audit Adjustment: \$-0-

26. Jim Mulhall \$636.69

Committee comments:

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

87040523172

Audit staff comments:

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

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

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

Audit Adjustment: \$238.77

27. John O'Leary \$308.09

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

87040523173

28. Kevin O'Malley

\$361.11

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

29. David Van Iderstine

\$847.79

Committee comments:

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

Audit staff comments:

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

R 7 0 4 0 5 2 3 1 7 4

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

Audit Adjustment: \$-0-

30. Kate Varney \$200.00

Committee comments:

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

Audit staff comments:

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

Audit Adjustment: \$-0-

31. Steve Werbel \$405.78

Committee comments:

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

87040623175

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

Audit staff comments:

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

Audit Adjustment: \$405.78

87040523176

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

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

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

1. John Bell \$849.84

Basis for allocation:

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

2. Lynn Cribari \$519.42

Basis for allocation:

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

3. Scott Dolley \$344.48

Basis for allocation:

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

87040623177

4. Bill Tapella \$687.50

Basis for allocation:

Mr. Tapella received a \$165 travel advance for the period July 22-31, 1983 and a travel expense reimbursement of \$1,526.26 for the period July 22-August 1, 1983, both of which the Committee allocated to Maine. Mr. Tapella's salary for this period, however, was allocated to the Field cost center. The Audit staff's adjustment reallocates the individual's salary for the period July 22-August 1, 1983 to Maine.

5. Mike Fangor \$300

Basis for allocation:

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

6. Don Lesser \$500

Basis for allocation:

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

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

8. Ned McCann \$300

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

87040523178

B. Limitation on Expenditures

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code, state, in part, that no candidate for nomination for election to the office of President of the United States who is eligible under section 9033 of Title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of \$10,000,000 as adjusted for increases in the Consumer Price Index.

Section 9035.1(a) of Title 11 of the Code of Federal Regulations, states, in part, that no candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which in the aggregate, exceed \$10,000,000 (as adjusted under 2 U.S.C. 441a(c)).

Section 100.8(b)(15) of Title 11 of the Code of Federal Regulations, states, in relevant part, that expenditures for services solely to ensure compliance with the Act made by a candidate certified to receive Primary Matching Funds under 11 C.F.R. Part 9034 do not count against such candidate's expenditure limitations under 11 C.F.R. 9035 or 11 C.F.R. 110.8.

The Audit staff's review of FEC Form 3P, page 4 for the period ending December 31, 1984 revealed that the Committee had reported Total Expenditures Subject to Limitation (Overall Limitation) of \$20,047,673.22. Based on the audit procedures performed it was determined that certain adjustments to the above total were required. Accordingly, the Interim Audit Report contained adjustments totaling \$646,752.94. (It was noted that these adjustments were comprised of both amounts paid prior to, and debts owed as of, December 31, 1984). As a result of these adjustments it was determined that the Committee had exceeded the 2 U.S.C. § 441a(b)(1)(A) spending limitation by \$494,426.16.

87040523179

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

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

1. Fundraising Expenses

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

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

97040523180

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

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

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

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

97040323181

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

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

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

R 7 0 4 0 3 2 3 1 9 2

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

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

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

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

2. Joint Fundraising Expenses

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

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

87040623193

The Committee engaged in a joint fundraising effort with the Democratic National Committee (DNC). Since the DNC acted as the fundraising representative, the Committee was not in possession of the records for the fundraising activity. Further, the Committee reports contained only the required memo Schedules A-P for its share of the gross contributions and a Schedule A-P for amounts transferred in from the DNC. The Committee was requested to obtain an expense figure from the DNC for use in determining the Committee's compliance with the overall limitation. The Committee declined to make such a request but suggested that by netting the amounts received from the DNC against the amounts shown on the memo Schedules A-P, an expense figure could be calculated. It was further stated that all proceeds from the joint fundraising had been received and reported by December 31, 1984. Employing this method, a figure of \$136,884.36 was derived by the Audit staff as the Committee's share of the joint fundraising expenses. 2/

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

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

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

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

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

87040623184

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

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

97040623185

Committee Reported Amount applicable to the overall spending limitation January 1 to September 30, 1985	\$405,796.75
1985 Disbursements Not Reported	1,493.39
Voided Checks Reported by the Committee	(530.58)
Disbursements Reported as exempt compliance which should be applied to the overall spending limitation	4,778.43
Headquarters and State Overhead exemptions calculated on disbursements not properly included in Overhead	5,275.50
Corrections to Fundraising Payroll Calculations (Payroll charged at net rather than gross, employer FICA, and non-payroll items included in the Fundraising payroll compliance exemption)	1,572.67
Operating Expenditures from the Committee's First Quarter 1986 Report	469.49
	<hr/>
Adjusted Amount Applicable to the Overall Spending Limitation	<u>\$418,855.67</u>

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

R 7 0 4 0 6 2 3 1 8 6

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

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

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

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

970405231R7

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

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

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

870405231A8

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

5. Refunds/Rebates

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

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

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

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

6. Accounts Receivable

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

87040523189

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

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

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

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

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

87040523190

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

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

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

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

87040523191

1983-84 Press Collections	\$1,574,030.03	
1983-84 Secret Service Billings	423,787.87	
Prepaid Items to be Refunded	(30,810.95)	
Adjusted Accounts Receivable, 12/31/84	<u>185,775.21</u>	
Adjusted Billings		\$2,152,782.16
Divide by: Cost Factor		<u>1109</u>
Derived Cost		\$1,957,074.69
Less:		
Press Collections		(1,574,030.03)
Secret Service Collections		(345,750.13)
Prepaid Adjustment		<u>30,810.95</u>
Uncollected Cost		<u>\$ 68,105.48</u>

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

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

87040523192

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

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

R 7 0 4 0 3 2 3 1 9 3

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

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

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

87040523194

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

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

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

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

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

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

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

87040523195

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

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

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

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

87040523196

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

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

Recommendation

The Audit staff recommends that the Commission reject the Committee's reallocation of \$507,526.43 from fundraising to exempt legal and accounting.

8. Expenditures Subject to Overall Limitation - Recap

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

87040523197

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

27198
2
40
4
0
12/

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

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

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

Recommendation

The Audit Division recommends that this matter be referred to the Office of General Counsel.

87040523199

Failure to Report Refunds/Rebates

Sections 434(b) (2) (I) and (3) (F) of Title 2 of the United States Code state, in part, that each report shall disclose for the reporting period and the calendar year, the total amount of all rebates, refunds, and other offsets to operating expenditures. In addition, each report shall disclose the identification of each person who provides a rebate, refund or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of such receipt.

During the Audit staff's review of the Committee's refund and rebate records, it was noted that the Committee received 1,156 refunds/rebates which totalled \$2,319,857.88. Further, it was determined that 780 of these items totalling \$2,296,064.70 required itemization.

Our tests for Committee disclosure of its refunds/rebates indicated that 42 items totalling \$43,859.52 were not reported on the Committee's Reports of Receipts and Disbursements. In addition, one item was reported but was not itemized on Schedule A-P of the Committee's reports. Of the above 43 items, the Audit staff determined that 32, with a dollar value of \$43,482.09, required itemization.

It should be noted that the omission of the \$43,859.52 requires a reduction of the Committee's expenditures subject to limitation. See III.B. in the Final Audit Report.

Committee officials stated that it was their policy to itemize all refunds and that this omission was an oversight attributable to the volume of transactions. They indicated that they would research the matter and file an amendment which would properly disclose the required information. The Committee was provided a schedule of the unreported refunds.

In the Interim Audit Report it was recommended that the Committee review the 43 items and amend its reports accordingly, within 30 days from the receipt of the report.

In their November 18, 1985 response to the Interim Audit Report, the Committee agreed to amend their reports to include the 43 items omitted in error from previous reports. Although untimely, on April 16, 1986, the Committee filed amended reports which detailed the 43 items that were previously omitted.

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel.

87040523200

Contributions in Excess of Limitation ^{a/}

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

Section 103.3(b)(2) of Title 11 of the Code of Federal Regulations states, in part, that when a contribution cannot be determined to be legal, refunds shall be made within a reasonable time.

In its Reports of Receipts and Disbursements filed with the Commission, the Committee disclosed 497 contributors whose aggregate contributions exceeded \$1,000. Of that total, 195 were corrected in a timely manner through refunds, reattributions, or transfers to the Candidate's General Election Compliance Fund. A description of those items not timely corrected is contained in 1. through 4. below.

1. The Committee made 52 refunds of excessive amounts totalling \$17,940.00. However, on the average, 144 days elapsed from the date(s) of deposit until the date the excessive portions were refunded.

2. Contributors authorized 3 reattributions of excessive amounts totalling \$1,100.00. On the average, it took the Committee 103 days from the date of deposit to secure the reattribution authorizations.

3. Contributors authorized 164 transfers of excessive amounts totalling \$51,034.00 to the Candidate's General Election Compliance Fund. It took an average of 158 days from the date of deposit until the excessive portions were deposited (transferred) into the Compliance Fund's depository.

a/ No contributions received by any Mondale delegate committee which, if aggregated with contributions of the Mondale For President Committee, would be in excess of the limitations contained in 2 U.S.C. § 441a(a)(1)(A) are included in this finding. Those contributions are addressed in the Conciliation Agreement for MUR 1704. Pursuant to that agreement, the Committee paid \$350,000.00 (\$50,000.00 on December 17, 1984 and \$300,000 on February 27, 1985) to the U.S. Treasury in lieu of refunding the contributions.

87040523201

4. As of December 31, 1984, 84 excessive contributions totalling \$32,779.00 remained outstanding. The Committee has been attempting to resolve these outstanding excessive contributions through contacts with the contributors.

In the Interim Audit Report, the Audit staff recommended that, within 30 days of receipt of the report, the Committee submit evidence demonstrating that the contributions noted above were not in excess of the limitation, or, within the 30 day period, refund the excessive portions and present evidence of the refunds (front and back of the refund checks) to the Audit staff.

In the response to the Interim Audit Report, the Committee stated that since December 31, 1984, the Committee "refunded or re-allocated all excessive contributions identified by the auditors in the work papers they submitted to the Committee, with the exception of those contributions for which there is no deliverable mailing address. Efforts to return or reallocate the contributions listed on the Schedule on p. 61 [of the Committee's response to the Interim Audit Report] were unsuccessful in that the post office returned the mail. We propose to donate these contributions to a charitable foundation. All of the other excessive contributions have been reported as refunded in the First and Second Quarters, 1985 3-P reports filed by the Committee. The auditors may inspect the checks at their convenience."

Other than the list of contributors who the Committee could not reach, no documentation supporting the Committee's action was submitted.

During the course of the follow-up fieldwork, the Audit staff determined that the Committee had resolved, although untimely, 66 of the 84 outstanding excessive contributions noted as of December 31, 1984. The remaining 18 excessive contributions total \$9,652.

Recommendation

The Audit staff recommends that this matter be referred to the Office of General Counsel.

87040523202



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
COMMUNICATIONS SECTION
86 AUG 7 4:56

August 7, 1986

RECEIVED

AUG 07 1986

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Comments on Proposed Final Audit Report - Mondale for
President Committee, Inc. (AR 86-3/LRA 158)

[Handwritten signatures and initials over the TO, THROUGH, and FROM fields]

DATE

87040523203

The Office of General Counsel has reviewed the Proposed Final Audit Report on the Mondale for President Committee, Inc. (the "Committee" or "MPC") and the memorandum dated May 15, 1986 that contains updated information based upon additional fieldwork. Our comments, pursuant to §V.B.5. of the Audit Program, are set forth below. Parenthetical references are to the proposed report.

I. COVERAGE DATES (I.A.)

The Office of General Counsel understands that the proposed audit report, as updated per your May 15 memo, will comprehensively cover the period from the Committee's inception, November 2, 1982 through March 31, 1986. We suggest that this be made explicit in the proposed report that goes to the Commission.

1/ The Audit Division notes that the Committee first began raising funds and making disbursements on November 2, 1982, of an exploratory nature. The Committee registered as Walter Mondale's principal campaign committee on January 3, 1983. The first report of receipts and disbursements filed after registration included all receipts and disbursements made from November 2, 1982. The date of August 31, 1985 signifies the close of books for the most recent report of receipts and disbursements filed at the time of the audit.

II. FINDINGS AND RECOMMENDATIONS

A. Allocation of Expenditures to States (III. A.)

The audit report notes that the Committee has reported allocating the following amounts to three states in which the Committee apparently exceeded the limitations set forth in 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c). In Iowa, the Committee allocated \$676,344.28 against the limitation in that state of \$684,537.50. Expenditures totaling \$388,164.53 were allocated to the Maine limitation of \$404,000. Finally, the Committee allocated a total of \$469,699.61 to the New Hampshire limitation of \$404,000.

In addition to disbursements made, the Committee's record-keeping system identified payables allocable to the three states totaling \$4,548.40 for Iowa, \$5,777.99 to Maine and \$10,062.75 to New Hampshire. The Audit Division recommends, and this Office agrees, that such payables when paid be considered when calculating repayment for expenditures subject to the state spending limits. This approach is consistent with the Commission's handling of the Cranston and Glenn repayments. Based on the Audit Division's May 15 memo regarding follow-up fieldwork, the "payables" noted in the proposed report have all been paid at this juncture. We understand that the draft report prepared for the Commission will fully detail the change.

1. Specific Allocation Methods

In its discussion of the allocation of expenditures to states as set forth in 11 C.F.R. § 106.2(a), the Audit Division has identified other expenditures which it considers subject to allocation under 11 C.F.R. § 106.2(b)(2). These latter expenditures were not allocated by the Committee against the Iowa, Maine, and New Hampshire spending limits, and were included in the Commission's interim report. The Office of General Counsel's comments on the Audit Division's recommendation to allocate under 11 C.F.R. § 106.2(b)(2) are set forth below. We assume that because only three states are mentioned here, no other allocation issues arose in other states that would result in excessive expenditures.

a. Media Expenditures (III.A.1.a.)

Section 106.2(b)(2)(i)(B) of Title 11 of the Code of Federal Regulations requires that expenditures for broadcast advertisements purchased in a particular media market covering

87040523204

more than one state shall be allocated to each state in proportion to the estimated audience. The Audit Division interim review of the Committee's allocation of these expenditures revealed that they were understated by \$20,034.00 in Iowa, \$6,617.00 in Maine, and \$4,052.00 in New Hampshire. In its response to the interim report, the Committee agreed to make the above media allocations.

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

At the outset, this Office would like to suggest that this section of the proposed report include a brief explanation of the cost centers utilized by NPC to which repeated references are made in the finding and in the related attachment. In addition, we recommend that the proposed report's language be more qualified in certain places, such as the parenthetical on the Michelman discussion on page 16 of Attachment I.

Section 106.2(a)(1) Title 11, C.F.R. states that:

"Except for expenditures exempted under 11 C.F.R. 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the Office of President with respect to a particular State shall be allocated to that State.

Therefore, unless exempted, expenditures incurred to influence the presidential nomination in a particular state must be allocated to that state. In this instance, specific allocation rules only require allocation of travel and subsistence expenses of individuals working in a state for 5 days or more, effectively creating an exemption for such expenses incurred by individuals working in a given state for less than 5 consecutive days. See 11 C.F.R. § 106.2(b)(2)(ii). Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states that "travel and subsistence expenditures for persons working in a state for five consecutive days or more shall be allocated to that state in proportion to the amount of time spent in each state during a payroll period." Under 11 C.F.R. 106.2(e), committees are required to keep adequate records to support calculations involving state allocations.

The Audit Division argues that expenditures totaling \$7,178.46, \$19,589.89 and \$6,945.10 should be allocated to the Maine, Iowa, and New Hampshire expenditure totals, respectively. The Committee agreed to make reallocations for errors totaling \$4,808.84 to Maine, \$13,880.01 to Iowa, and \$2,383.03 to New Hampshire. However, it disputed the balance of reallocations

R 7 0 4 0 5 2 3 2 0 5

recommended in the interim audit report. (The interim report set a \$7,589.65 figure for reallocations to the New Hampshire total. However, in the final report the Audit Division concedes that \$644.55 of the original New Hampshire reallocation total need not be added to that state's total.)

In response to the interim report, the Committee submitted to the Commission a document which went over every disputed finding made by the Audit Division over payments made to 31 individuals. The Audit Division states that what little documentation exists seems to indicate that these individuals were in one of the three states for five consecutive days or more. The Committee disputes this finding stating that the documentation the Audit Division used to support its recommendations "does not demonstrate that the individuals in question were in the states for more than four days and therefore no state allocation is required."

As we indicated above, the Audit Division has proposed minor adjustments based upon arguments put forth by MPC in its response to the interim report. For 30 of the 31 individuals, however, this Office agrees that the evidence set forth in the Audit Report is sufficient to support the inference that the expenditures should be allocated to the 3 states indicated. Given the sufficiency of these threshold findings, the Committee must demonstrate that the expenditures should not have been so allocated.

The candidate and the Committee have assumed the burden of proving the campaign's disbursements are qualified campaign expenses. 11 C.F.R. §§ 9033.1(b)(1), 9033.11(a). This allocation of the burden of proof comports with "the traditional approach that this burden normally falls on the party having knowledge of the facts involved." Environmental Defense Fund v. EPA, 548 F.2d 998, 1004 (D.C. Cir. 1976), aff'd on rehearing, 548 F.2d 1012 (D.C. Cir. 1977). The Committee also has the burden of proving that it has allocated in a reasonable way. As we have noted in previous audits, the committee has the burden of proving it has reasonably allocated its disbursements among the states so as not to exceed the state spending limits, since disbursements allocable to a state beyond the state's spending limit are non-qualified campaign expenses. OGC Comments to the Cranston Final Audit Report, July 5, 1985, at 6; OGC Comments to the Reagan-Bush '84 (Primary) Final Audit Report, January 13, 1986, at 9-10; OGC Comments to the Americans With Hart Final Audit Report, April 4, 1986 at 6. We note that the Commission has approved audit reports and repayments such as John Glenn's that use check and per diem requests, car rental records and hotel bill checks as evidence that a particular campaign staff person was in a state for the requisite number of days. This is a reasonable method of

97040623206

making a threshold finding that a person was working in a state for the requisite number of days to require allocation of travel and subsistence.

Another aspect of this finding is the method of calculating the 5-day period. Several of the individual trips appear to have involved a person's working in a state for at least a portion of the fifth consecutive day. It is our understanding that where a campaign staff person stayed in a state for four consecutive nights, the Audit Division counted the checkout day, making the stay five "days" long--even if the campaign worker may have subsequently left the state that morning. For example, if a staff person stayed in Iowa on Monday, Tuesday, Wednesday, and Thursday nights, and checked out on Friday, under the regulations, he would have been in the state for part of Friday, and thus for five consecutive days.

The Audit Division uses as its support for this position the following language from the Explanation and Justification of Section 106.2: "[f]or the purpose of determining the length of time an individual remains in a state, the Commission will generally look at the calendar days or any portion thereof that that person was in state rather than using 24-hour periods." 48 Fed. Reg. 5225 (1983) (emphasis added). The Committee has generally acknowledged that the staff persons in question (in instances where the supporting documentation consisted of hotel stubs or per diem requests) were in the state for four nights. After applying the checkout test, this admission by the Committee would serve to prove that the staff persons were in the states for the requisite number of days and state allocation of those disbursements would be necessary.

The Committee argues that these documents do not, on their face prove that the individuals were in a given state for five consecutive days. However, once the Commission demonstrates a reasonable factual basis for challenging the Committee's allocations to a particular state, we believe that the Commission can put the burden on the Committee to negate the inference that the staff persons were there. In the absence of any evidence produced by the Committee to the contrary, it is reasonable to conclude that the five day rule was satisfied, and allocation of the disbursements for the trip is appropriate.

The Office of General Counsel generally agrees, therefore, with the Audit Division's recommendation that travel and subsistence expenditures totaling \$7,178.46 should be allocated to Maine, \$19,589.89 to Iowa, and \$6,945.10 to New Hampshire. Additionally, the Office of General Counsel suggests that the report include language that more clearly joins the discussion of the probative value and use of per diem requests, car rental receipts, and hotel bills as proof of presence. It should make reference to the Explanation and Justification which supports the

87040523207

"checkout test." Finally, we recommend that the proposed report describe the reasons that the Audit Division recommends a partial acceptance of MPC's arguments involving Item II 26 on pages 16 and 17 of Attachment I.

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

As part of the Audit Division's recommended findings in Section III. A. 1. b., supra, the Committee's records were reviewed to determine whether appropriate allocations were made for salaries and FICA or consultant fees paid for those persons working in a particular state for more than four consecutive days.

Section 106.2(b)(2)(ii) of Title 11, Code of Federal Regulations states that, except for expenditures relating to compliance costs and fundraising, salaries paid to persons working in a particular state for five consecutive days or more shall be allocated to each state in proportion to the amount of time spent in that State during a payroll period. According to the Explanation and Justification of this section, this would include salaries of "advance staff" who remained in the state for five consecutive days or more, such as those discussed above. 48 Fed. Reg. 5225 (1983).

The same criteria that require allocation of travel and subsistence expenses to a State also are applied to determine whether state allocation of salaries is appropriate. Therefore, if the Commission concurs with the Audit Division's approach in Finding III.A.1.b. of the report, discussed above, it should also concur with the Audit Division's recommendation for reallocation of the salaries, FICA and consultant fees of seven individuals to the Iowa, Maine, and New Hampshire expenditure totals. (See Attachments I and II of the proposed report.)

In addition to challenging the reallocations involving the above-mentioned staff, the Committee objected to the reallocation of \$6,525 to Iowa, \$10,500 to Maine, and \$4,725 to New Hampshire in the Interim Report. These sums represented 30 percent of the salaries of the Committee's State Coordinators that, the Committee argues, represent work on national campaign strategy, which is exempted from state allocation by 11 C.F.R. § 106.2(c). The Explanation and Justification to this rule reads as follows:

While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a State for five days or more to work on national campaign strategy. Although the Commission expects such exemptions to be the exception rather

R 7 0 4 0 3 2 3 2 0 8

The question presented to the Commission is, accordingly, whether it considers intra-state telephone charges to be overhead expenses. The regulations require allocation of intra-state calls to the particular state in which they are made. The Audit recommendation is premised on the conclusion that the Commission, in specifying "base charges" meant thereby to exclude any other charges from telephone expenses, despite the "include, but are not limited to" language of the regulation. Second, the regulations specifically deal with charges for telephone calls, exempting inter-state calls made by a committee, and requiring allocation of intra-state calls to the particular state in which they are made. 11 C.F.R. § 106.2(b)(2)(v)(A).

In the General Counsel's view, the telephone calls necessary to coordinate a state campaign can properly be viewed as overhead. Such charges are a fundamental part of coordinating a state-wide campaign at least as much as any local use of telephones which could be subsumed in base billing charges. Attempts to distinguish long distance charges as somehow less part of the overhead for the activity than included local use would seem to draw highly technical distinctions, which might vary from campaign to campaign, depending on what kind of service contract was provided. The General Counsel does not believe that the Commission, by specifying that intrastate long distance calls must be allocated to the state, and specifying telephone base charges, intended to preclude itself from concluding that such charges were part of overhead. Accordingly, the General Counsel disagrees with the Audit recommendation.

(ii) Fundraising--28 Day Rule

The allocation exemption provided by 11 C.F.R. § 106.2(c)(5) does not apply "within 28 calendar days of the primary election as specified in 11 C.F.R. 110.8(c)(2)." The Committee held the "largest grass roots fundraiser in history" within 28 days of the first Iowa caucus. The Audit Division's review of this fundraiser revealed that \$16,270.49 in related expenses should be allocated to Iowa.

R 7 0 4 0 5 2 3 2 1 0

The Committee, in response, argued against allocation and cites Advisory Opinion 1979-71 as stating that the Iowa caucus is not an "election" as defined by the Federal Election Campaign Act. Therefore, the Committee argues, the 28-Day Rule does not apply to the Iowa caucus. The Committee also argues that 11 C.F.R. § 110.8(c)(2) establishes only a rebuttable presumption that such expenditures are not for fundraising.

The Committee's interpretation of AO 1979-71 has taken its application far beyond the narrowly drawn scope for which it was written. The opinion was limited to the issue of whether the regulations required the filing of pre and post-election disclosure reports in connection with the Iowa caucus. The opinion stated that it was not necessary to file these reports.

In the view of this Office, the situation at issue here is not "indistinguishable in all its material aspects" to that mentioned in the opinion. 11 C.F.R. § 112.5.

Secondly, the opinion states that a caucus is still an election with regard to the campaign expenditure limitations. As the Committee concedes, the opinion even quotes language from 11 C.F.R. § 110.8(c)(1). The Committee's argument is that since the opinion did not specifically mention § 110.8(c)(2), which governs the 28-Day Rule in 11 C.F.R. § 106.2(c)(5), that the caucus opinion in AO 79-71 applied. However, this interpretation expands the scope of the opinion.

The Opinion states:

In addition, the conclusion that the Iowa caucuses and conventions are not elections as defined in the Act has no effect on the application of the contribution limits of the Act. See 2 U.S.C. § 441a(a)(6). Nor does this conclusion change the application of the expenditure limits to Presidential candidates eligible for matching Federal payments.

AO 1979-71 p.5. The 28-Day Rule is a part of the Commission's regulations that implement the statutory limits and was not specifically addressed by the Commission by this opinion. No issue was presented as to the fundraising exemption, since the requestor was not a publicly-funded presidential candidate or agent thereof.

As previously stated, the Committee also argued that 11 C.F.R. § 110.8(c)(2) establishes only a rebuttable

8704062311

presumption that such expenditures are not for fundraising. Although the 1977 Explanation and Justification states that this regulation focuses on "fundraising expenditures which may in fact be campaign expenditures," it sheds no other light on the rebuttable nature of the presumption nor on what type and degree of evidence would rebut. See also 11 C.F.R. § 100.8(b)(21)(iii).

The Office of General Counsel thus agrees with the Committee that the presumption is rebuttable, but concurs with the Audit Division in the recommendation to require the Committee to document the national nature of the fundraiser held within 28 days of the Iowa caucus pursuant to 11 C.F.R. § 106.2(c)(5). We do, however, have two suggestions. First, we recommend that the final report eliminate the language on the rebuttable presumption, such as that contained in the second full paragraph on page 12. Second, although the Committee's response offered no factual evidence as to the scope of its fundraising activities nationwide and in Iowa within 28 days of the state's caucuses, the point raised is a valid one. This Office understands that prior to this audit, the meaning and scope of "targeted" fundraising expenditures have never been presented to the Commission for resolution. Given the Committee's adumbration of the issue, but its failure to set forth a factual basis for its position, we recommend that the report invite the Committee to set forth its legal position in more detail and to provide the factual basis underlying its argument.

e. Public Opinion Polling Expenditures
(III. A.1.e.)

The interim audit report revealed that a local Washington, D.C. polling firm statement identified two separate surveys taken in Iowa and New Hampshire. The costs for these surveys had been allocated to the headquarters' cost center rather than to the appropriate state. The interim report required allocations of \$13,500 to Iowa and \$12,500 to New Hampshire. In response to the interim report, the Committee agreed to make the above-mentioned reallocations.

2. Other Expenditures Requiring Allocation (III.A.2.)

In addition to the above, certain other expenditures were identified in the interim report that the Audit Division believes should be allocated to the three states' spending limits, although the expenditures may not have been incurred or paid within that state. See 11 C.F.R. § 106.2(a)(1). Again, we assume that because only three states are mentioned here, no other allocation issues arose in other states that would result in excessive expenditures.

87040523212

a. Automobile Leasing (III.A.2.a.)

The interim report identified a number of instances in which cars were leased in Minnesota or Massachusetts, but used in Iowa or New Hampshire, respectively. The Committee allocated the costs associated with those leases to Minnesota and Massachusetts. The report finally asserts that those auto leasing costs, totaling \$25,451.38 and \$31,331.71 should be reallocated to the Iowa and New Hampshire state limits, respectively.

In response to the interim report, the Committee argued that the documentation the Audit Division used to formulate its conclusion did not establish that the cars were in Iowa or New Hampshire for more than four consecutive days. Therefore, the Committee argued, the Audit Division had not offered enough evidence to justify state allocation. The Audit Division asserts that the cars were leased specifically for use in Iowa and New Hampshire. Among the factors considered by the auditors were the dates of the lease agreements and the dates of the caucuses or primary elections in the four states involved. Five Minnesota vendors leased cars to the Committee between the period February 22, 1984 and March 2, 1984. Since the Iowa caucus was held on February 20, 1984 and the Minnesota precinct caucuses were on March 28, 1984, it is reasonable to assume that these cars were used to influence the Iowa caucus. The Committee admits in its response that cars were used to transport "Fritz Blitzers" from Minnesota to neighboring Iowa to influence that state's caucus (i.e., not for purposes of national campaign strategy).

The Committee also leased 20 automobiles in Massachusetts between November and December, 1983 and returned them between the end of February and early March, 1984. The New Hampshire primary was on February 28, and the Maine Caucus was on March 4, 1984, while the Massachusetts primary was not until March 13, 1984. (Because the dates of these elections are relatively close, the use of an exact date on the return of the rental cars, as we saw in the Iowa comparison, would be more useful and persuasive than the estimation used for New Hampshire.) The Committee, in its response, admitted also that the cars were used to transport "Fritz Blitzers" from Massachusetts to neighboring New Hampshire to influence that state's election.

R 7 0 4 0 5 2 3 2 1 3

As the proposed report states, 11 C.F.R. § 106.2(a)(1) states that expenditures incurred by the Committee for the purpose of influencing votes in a particular state shall be allocated to that state regardless of where the debt was incurred. The Committee's argument that the costs should automatically be exempted from allocation as interstate travel under 11 C.F.R. § 106.2(c)(4) is not persuasive. We suggest that the proposed report be revised to include a quote from the Explanation and Justification on that section so that the Committee can address the central part of the Audit Report's argument that it has not shown a basis for an allocation contrary to the Audit Division's.

In conclusion, we agree with the Audit Division's recommendation that \$25,451.38 be allocated to Iowa and \$31,331.71 be allocated to New Hampshire.

b. Telephone and Related Services (III.A.2.b.)

The interim report identified disbursements by the Committee to two labor organizations and two vendors that were not allocated to the Iowa state limitation despite the fact that documentation for the disbursements, according to the Audit Division, indicates the expenditures should have been allocated. In response to the interim report, the Committee agreed to reallocate \$3,955 to Iowa and \$4,856.62 to New Hampshire as recommended by the Audit Division.

c. Printing and Shipping Expenditures (III.A.2.c.)

According to the Audit Division, invoices prepared by one Maryland and two Maine vendors for preparation of campaign materials contain notations mentioning a specific state although the expenditure was attributed to a headquarters cost center. Based upon this review, the Audit Division recommends that the additional amounts of \$15,403.50, \$4,690.69 and \$3,550.40 be allocated to the expenditure limitations of Iowa, Maine and New Hampshire, respectively. In response to this recommendation in the interim report, the Committee agreed to the reallocations.

d. Miscellaneous Expenditures (III.A.2.d.)

Documentation for additional miscellaneous expenditures (related to computer charges, auto accident claims, clean-up charges and restaurant charges for a rally) reviewed by the Audit Division indicates, in the auditors' opinion, they should have been allocated to a state despite their allocation as headquarters expenditures. The Audit Division also notes that the Committee posted an incorrect total to its worksheets for allocation to Iowa and New Hampshire on its February, 1984

87040523214

Monthly FEC Report. As the result, the Audit Division now recommends additional allocations of \$6,472.66 to Iowa and \$4,482.24 to New Hampshire.

In its response, the Committee agreed to reallocate all of the above amounts except \$121.00 for New Hampshire and \$250.00 for Iowa. The Committee argues that the Audit Division recommends those reallocations without sufficient evidence.

The \$121.00 according to the Committee represents reimbursement to advance staff for lunch. However, the Audit Division's review reveals that this amount is the balance due a restaurant for catering a Mondale rally. The rest of the bill was allocated by the Committee to the New Hampshire expenditure limit. The Audit Division argues that, although the \$121.00 was paid by the advance staff, it was for the rally and not for personal subsistence. Therefore, the Audit Division argues, the payment is not exempt from state allocation under 11 C.F.R. § 106.2(b)(2)(iii). We agree with that reasoning, and with the Audit Division's recommendation to reallocate \$4,482.24 to New Hampshire.

The \$250 payment was to a real estate firm for clean-up after a Mondale Victory rally. As the Audit Division argues, this activity does not fit the definition of an expense related to interstate travel under 11 C.F.R. § 106.2(c)(4). Therefore, we agree with the Audit Division's recommendation to reallocate \$6,472.66 to Iowa.

e. Debts Requiring Allocation When Paid
(III.A.2.e.)

The interim report concluded that, in addition to the amounts above, the Committee should also allocate to Iowa, Maine and New Hampshire, debts owed for services apparently rendered for those states as of December 31, 1984. While the Committee did not deny that the amounts were payable, MPC stated that it could not tell whether the Audit Division was agreeing with the Committee's figures or contesting the Committee's allocations. Therefore, the Committee said in its response to the interim report: "in the absence of sufficient information, we are disputing [the Commission's] allocation of \$8,548.40 to Iowa, \$5,777.99 to Maine, and \$10,062.72 to New Hampshire."

The Audit Division states that it provided the Committee with a schedule detailing the creditors' names, the Committee voucher numbers and amounts of payables. This information was provided to the Committee before the Committee received the interim audit report, according to the Audit Division.

It would appear that the Committee is contesting the allocations only because its staff does not understand them or

87040623215

cannot locate the documentation in MPC's files. The Committee has not said, directly, that these amounts are not owing, nor has MPC produced any evidence to satisfy their burden of proving that the amounts are not owing. Since payables incurred with respect to activity in the states may be allocated to the state limitations in the same manner as expenditures, we agree that these amount should be allocated when paid. We recommend, however, that the report be more explicit as to what underlying materials were submitted to the Committee that supported these findings. Note, however, that these payables should not, in the calculation of the state limitations, be a basis for determining repayment for non-qualified campaign expenses under 11 C.F.R. § 9038(b)(2). Comments of the General Counsel to the Proposed Final Audit Report on the John Glenn for President Committee. See also, Comments of the General Counsel to the Proposed Interim Audit Report on the Mondale for President Committee, Inc. pp. 10-11. Based on the Audit Division's May 15 memo to the General Counsel we understand that the paid/payable distinction no longer exists as the Committee has now paid its bills. We also understand that some errors will result in some minor changes to the amounts allocated to Iowa and New Hampshire.

f. Suggested Table of Contents

The Office of General Counsel suggests that the proposed audit report be revised to include a table of contents, since this report is of such length and complexity. This will help both the Commission and the Committee to locate different subjects, refer to the recap table on page 20 of the report, and to the proposed initial repayment determination. This would be especially useful in this case, since the proposed report will likely have so many attachments and exhibits. Moreover, since the Committee's responses are keyed to the sections in the Interim Report, some cross reference would make finding relevant materials easier.

g. Conclusion--Allocation of Expenditures to States

Finally, the May 15 memo notes several other payments not heretofore seen that the Audit Division allocated to Maine, New Hampshire and Iowa, as well as a \$38,753.70 reduction to the limit for New Hampshire with which the Committee apparently agrees. Based on these and other adjustments, we understand that the Audit Division has concluded that the Committee exceeded the state limits by a total of \$311,736.14, a reduction of approximately \$26,000 from the proposed report, and that the Committee will have an opportunity to respond to these allocations and adjustments after the final audit report is issued.

87040523216

B. Allocation of Expenditures to the National/Overall Limitation (III.B.)

The interim audit report found that \$646,752.94 should be added to the Committee's reported total of \$20,047,673.22 subject to the overall limitation. The overall limitation, adjusted for the Consumer Price Index pursuant to 2 U.S.C. § 441a(c), is \$20.2 million. Therefore, according to the interim report, the Committee exceeded the overall limitation by \$499,426.16. Note, however, that this amount includes payables as of December 31, 1984. The proposed final report concluded, on the basis of updated information, that the Committee had exceeded the overall expenditure limitation by \$523,234.98. Further revisions, based upon additional Audit review as reflected in the May 15 memo, will result in an amount of \$578,904.44 in excess.

The interim report concluded that the Committee should amend its disclosure reports to reflect the proper total of expenditures subject to the limitation, or produce evidence to prove that it had not exceeded the limitation. In its response to the interim report, the Committee first stated that it had not exceeded the limit, and then proceeded to reallocate some fundraising expenditures to compliance, which is exempt from inclusion in the overall limitation. (See Finding III.B.7.) The Committee then concludes that only \$19,781,370.04 in expenditures are subject to the limitation, and that they are \$418,629.96 under the overall limitation of \$20.2 million.

1. Fundraising Expenses (III.B.1.)

Costs incurred by a publicly-financed candidate associated with the solicitation of contributions do not count against the overall limitation except to the extent that those costs exceed 20 percent of the spending limit. See 11 C.F.R. § 100.8(b) (21)(i). Costs associated with insuring compliance with the Act, however, are totally exempt from the limitation.

Commission regulations at 11 C.F.R. § 9035.1(c) provide for an across-the-board compliance exemption of 10% for personnel costs and overhead, and an additional 10% for fundraising (subject to the 20% limitation on the fundraising exclusion). A committee may take these 10% exemptions without being required to show that an actual 10% went to each of these categories. In addition to the regulatory exemption for compliance, the Commission's Control and Compliance Manual sets forth alternative methods for exempting certain costs from application to the limits of 2 U.S.C. § 441a(b). Included as integral parts of these alternative methods are certain assumptions.

87040523217

The Financial Control and Compliance Manual provides an "Alternative Allocation of National Campaign Office Payroll and Payroll Taxes" (page I-20) that allows a committee to exempt 85% of the cost of the operations of the accounting office from the overall limitation as compliance costs. The Manual defines the accounting office as the cost center responsible for, inter alia, contribution processing, expenditure processing and payroll, but excludes costs associated with the preparation of matching fund submissions. The Committee claims to have selected this option for allocating expenses to compliance.

The Committee, however, did not utilize the method set forth in the Manual, but rather sought to use selected portions of it. The Manual specifically excludes the cost of preparation of matching fund submissions from compliance costs. See Compliance Manual page I-15. However, the review by the Audit Division revealed that the Committee had included some of these costs, in the exempted 85 percent compliance pool. The Committee argues that matching fund preparation expenses are actually compliance costs, mandated by the statutory scheme. The Office of General Counsel agrees that matching fund preparation costs can be allocated, at least in part, to compliance, and should not be viewed as "costs incurred in connection with the solicitation of contributions" since matching funds are by definition not contributions.

Even if the Commission concurs that costs of matching fund submissions should be viewed as compliance related, however, a second issue remains. The Audit Division argues that the Commission, in adopting the Financial Control and Compliance Manual, concluded that the Committee could utilize the 85% exemption of the accounting cost centers only if it simultaneously agreed to deem the cost of getting matching funds as equivalent to the cost of raising contributions, attributable to overall limits or to fundraising expenses. While the General Counsel does not believe that the Commission should and did not by the Manual exclude from the definition of compliance costs the costs of raising matching funds, he concurs with the recommendation that the amounts in question should be reallocated in the report. The Committee will then be required to demonstrate why the Commission should not require it to allocate the matching fund submission costs to fundraising, while still utilizing an across-the-board computation device.

The Commission's interim audit report required reallocation of the \$152,339.57 in fundraising costs attributed to the preparation of matching fund submissions. The Committee, in its response, offered no new arguments on this point, nor have the Audit Division's arguments changed. As in the interim report, the Audit Division still recommends reallocation of the above-

87040523218

mentioned expenditures, and since the Committee has already used its 20 percent fundraising exemption, these expenditures would be added to the overall total.

The Commission has not previously ruled on this issue; the regulations provide only that the 10% exception includes salaries (and overhead expenditures) of the national headquarters office. While the General Counsel is inclined to agree that some portion of the costs of fundraising, which are properly placed in the accounting costs center, are part of the base on which the compliance exemption is computed, the Committee's argument does not completely set forth what costs they intend to reallocate. Inasmuch as the issue was raised only in passing in the interim report, and should be fully addressed by the Committee, the General Counsel concurs with the Audit Division on this finding.

2. Joint Fundraising Expenses (III.B.2.)

The proposed report notes that the Committee participated in a joint fundraising event with the Democratic National Committee (DNC). Because the DNC was the main sponsor of the event, the Committee did not have the records describing its involvement. Therefore, the extent of the Committee's financial involvement went unaudited until the Audit of the DNC was commenced. After cross-referencing the DNC Schedule A, the Audit Division has determined that the Committee contributed \$136,884.36 to the joint fundraising event.

Because the Committee has exhausted its 20 percent fundraising exemption, this amount would be allocated to the overall limitation. The Committee, in its response, agreed to the above allocation.

3. Debts and Obligations to be Applied to the Overall Limitation (III.B.3.)

This section of the proposed report will be changed to reflect additional fieldwork conducted through the end of March. As we understand your May 15 memo, changes are being made as a result of subsequent reports filed by the Committee that have been verified by the Audit Division during its latest round of fieldwork. The report that goes to the Commission will contain the updated figures. It is our understanding that the proposed report will fully detail the changes, which reduce the amounts allocable to the overall limit by approximately \$20,000.

The interim report found that an additional \$445,658.68 in Committee debts outstanding as of December 31, 1984 should be allocated to the overall spending limit. In its response to the interim report, the Committee agreed to allocate \$414,633.48 in debts and obligations to the overall limit. The Committee

87040523219

attributed the difference between the two above figures to "duplicate and invalid invoices" which inflated the Commission's figure by \$31,025.20.

After receiving the Committee's response, the Audit Division again reviewed the Committee's disclosure reports from January 1 through September 30, 1985. The Committee stated that its figure of \$414,633.48 was based on actual subsequent payments through that date. The Audit Division found that the Committee had disclosed in its disclosure reports \$405,796.75 in operating and fundraising disbursements allocable to the overall spending limit made through September 30, 1985, and allocated \$8,836.73 to "exempt legal and accounting" costs.

The auditor's review, as set forth in the proposed report submitted for review, revealed that the Committee did not include in its list of obligations amounts owed to news organizations for unused prepayments and overpayments. The Audit Division had argued that these amounts, totaling \$30,810.95, should now be treated as accounts payable, and subject to the overall limitation, because they were reported as refunds to offset expenditures when they were received. We agree with the Audit Division's conclusion.

The \$30,810.95 was carried by the Committee at the interim stage as "negative accounts receivable." However, the 1985 disclosure reports through September, according to the Audit Division, indicate that the Committee reported these payables as \$33,894.83 in press refunds.^{2/} We agree that these payables should be added to the operating expenditures total inasmuch as they fit the definition of a "qualified campaign expense" under 11 C.F.R. § 9032.9.

4. Apparent Primary Election Campaign Expenses Paid by the General Election Committee (III.B.4.)

The Office of General Counsel has not previously commented upon this subject as this section was added before the interim audit report was sent to the Committee, but after this Office had made its comments.

The Audit Division, during the audit of the general election committee, the Mondale/Ferraro Committee, identified \$28,928.02 in expenditures made by the general committee that appeared to be related to the primary. The interim audit report apparently treated this amount as a debt that the primary committee owed to the general committee.

In its response, the Committee agreed that a \$209.27 utility bill and \$2,261.00 in travel and subsistence expenses should be

^{2/} The May 15 memo reports that this figure will be changed to \$35,091.93 as a result of an unreported payment of \$1,350.00 and a voided payment of \$153.60.

87040523220

reallocated to the primary. However, the Committee objected to reallocation of the remaining \$26,457.75. The Committee argues that these expenses were incurred by Mr. Bert Lance, the eventual Chairman of Mondale's general election campaign, and his staff, and were related to the general campaign. Under 11 C.F.R. § 9003.4(a), expenses incurred by the candidate before the general election expenditure period as defined under 11 C.F.R. § 9002.12 may be allocated to the general election committee if the expenditures are for services to be used in connection with the general election campaign. It is questionable, however, that the expenses at issue here would be considered qualified campaign expenses for the general election, given the general proscription against expenditures incurred prior to the nomination. See 26 U.S.C. § 9002(11)(B); 11 C.F.R. § 9003.4(a)(1).

The Audit Division, in the proposed final report, concedes that \$24,768.29 in travel and subsistence could reasonably have been related to the general election. However, as to \$3,950.46 in similar expenses, the Audit Division recommends allocation because they were incurred before the date of the last primary election.

While the timing of the expenditures is not necessarily determinative, a point seemingly conceded by the Audit Division at page 29 of the proposed report, it is a legitimate factor to take into consideration. Here, the dates involved provided the Audit Division with a reasoned basis for concluding that the amounts in question were primary-related. Given this basis for the Audit Division's threshold finding that the amounts in question should be considered a debt owed by the primary committee to the general committee, and so subject to the expenditure limitation, the Committee has the burden of showing that the amounts need not be so allocated. The Committee's response merely concludes that all of Lance's expenses were general-election related, on the basis that by late June, the activity necessary to secure Mondale's nomination had basically been completed. While the Audit Division accepts the argument with regard to most expenditures, they contend that the \$1689 should be reallocated, for the activity which occurred before the last primary. In the General Counsel's view, if the Commission views the activity in question as general election activity it should not use a cut off date not otherwise established. Although an argument could be made that such a conclusory statement does not meet the Committee's burden, we feel that the \$1,689 still at issue need not be reallocated to the primary election, and should not count against the Committee's primary election limitation.

5. Refunds/Rebates
(III.B.5.)

The interim report noted that the Committee failed to report \$43,859.52 in refunds and rebates. Such refunds/rebates must be reported as assets and deducted from the Committee's overall

87040523221

expenditures under 11 C.F.R. § 9034.5(a)(2)(iii). In its response to the interim report, the Committee agreed to the above reallocation.

6. Accounts Receivable
(III.B.6.)

The interim report contained a finding that the Committee received \$1,919,780.16 as of 12/31/84 in actual reimbursements for secret service and press transportation as permitted under 11 C.F.R. § 9034.6. That regulation clearly states that "reimbursements received" may be offset against total expenditures subject to the overall limitation. 11 C.F.R. § 9034.6(b). The Committee's first argument is that it should be able to offset total press receivables whether or not they were actually collected. The proposed final report reaches the conclusion that the regulation used the term "received" intentionally to prohibit committees from claiming that unreimbursed expenditures were not limited, even where, as here, the lack of reimbursement was patently no fault of the committee's. The reimbursements must be actually received in order to be offset against the expenditure limit. The Office of General Counsel agrees with the Audit Division's resolution of that issue, and notes that it is consistent with the Commission's treatment of UPI receivables involving the Reagan-Bush General Election Audit.

The Committee's second argument in its response to the interim report involves the Audit Division's figure on the actual cost of press and secret service transportation. The interim report and the proposed final find the actual cost to be \$1,957,074.69. The Committee billed \$2,152,782.16 for transportation (which is equal to 110 percent of \$1,957,074.69), and argues that this figure is the "actual cost" of transportation. Only reimbursements received for actual, or direct costs of transportation and related services to the press may be offset. 11 C.F.R. § 9034.6(b). The Committee argues that actual cost should include the administrative cost of providing these services to the press.

While we acknowledge that administrative costs related to the provision of transportation may be included as part of the actual costs for which reimbursement may be legitimately sought, we are in general agreement with the Audit Division that the Committee failed to provide adequate documentation to identify such costs. However, as pointed out in the proposed report, the Committee has not recovered its costs (even without the inclusion of the disputed administrative costs). Therefore, the administrative costs issue is effectively subsumed by the larger issue of deducting from the limitations only amounts received.

87040523222

The Committee did not break even from its transportation program using either figure (The Committee's \$2,152,782 or the Audit Division's \$1,957,075). Reimbursements received can be offset against the limitation only to the extent they do not exceed actual costs. 11 C.F.R. § 9034.6(b). In its response to the interim report, the Committee states that it has written off the remaining \$62,627.98 in identified costs as uncollectable. Therefore, as of 12/31/84, only \$8,561.38 was forthcoming, or receivable, and the Committee can offset only that amount, as stated in the proposed report.^{3/}

The Office of General Counsel agrees, therefore, with the Audit Division's recommendations on accounts receivable. However, we suggest that the cover letter to the report sent to the Committee note the updated figures in this section in particular.

7. Committee Adjustment to Expenditures Subject to the Overall Expenditure Limitation
(III.B.7.)

The interim report at footnote 10 took note of a reduction the Committee made to its overall expenditure limit. This issue was not further addressed in the interim report; however the Committee discussed it in its response.

The Committee contends that the Commission should agree that costs attributable to fundraising for compliance purposes are part of its compliance costs. It proposes to calculate these costs so that only the cost of raising private funds spent on compliance are reallocated. No Commission regulations deal with what costs in the primary can be allocated to compliance, nor do any provide for treating fundraising costs either as attributable or not attributable to compliance.

To the extent that the Committee supports its argument, it does so by comparison to the general election scheme, arguing without further elaboration, that the general election's section 9004.4(b)(5) should be read as permitting a primary committee to exempt as compliance costs those costs of solicitations yielding private monies spent on compliance.

^{3/} The May 15 memo notes that the Committee's revised reports indicate actual collections of \$8,848.15. We understand that the proposed report will be changed to include this latter figure.

87040523223

Section 9004.4(b)(5) must be read in conjunction with section 9003.3 that permits 100% publicly-funded general election candidates to establish a legal and accounting fund. Section 9004.4(b)(5) provides that such solicitation costs for the legal and accounting compliance fund are not qualified campaign expenses and cannot be defrayed with public monies. For section 9004.4(b)(5) to apply, a publicly-funded candidate in the general election must have established a legal and accounting compliance fund. What the Committee seems to argue is that had the Committee had a legal and accounting fund for the primary election, then § 9004.4(b)(5) would have permitted (required?) the Committee to only use private funds for solicitation, and those costs would not be qualified and therefore not subject to the limits. The Office of General Counsel agrees with the Audit Division's recommendation that the Commission reject the Committee's reallocation of \$507,526.43 from fundraising to exempt legal and accounting and seek repayment for that amount.

87040523224

**RESPONSE OF THE
MONDALE FOR PRESIDENT COMMITTEE TO FEC -
INTERIM AUDIT REPORT**

This document with attachments and the Supplemental Response of the Mondale for President Committee to the Federal Election Commission Interim Audit Report constitute the response of The Mondale for President Committee, Inc. ("MPC" or the "Committee") to the Federal Election Commission ("FEC" or the "Commission") Interim Audit Report ("Report") dated August 19, 1985. Part I of this document briefly outlines MPC's major objections to the methodology used in preparing the Interim Audit Report to inflate both the amount of the recommended repayment and the amount of MPC's expenditures in excess of the state and overall limits. As to the specific findings and recommendations contained in the Report, MPC objects to some and concurs with others. This point-by-point response is set forth in Part II. In Part III, MPC summarizes the proper method and correct figures which MPC contends should constitute the basis for a Commission repayment determination.

87040523225

**RESPONSE OF THE
MONDALE FOR PRESIDENT COMMITTEE TO FEC
INTERIM AUDIT REPORT**

This document with attachments and the Supplemental Response of the Mondale for President Committee to the Federal Election Commission Interim Audit Report constitute the response of The Mondale for President Committee, Inc. ("MPC" or the "Committee") to the Federal Election Commission ("FEC" or the "Commission") Interim Audit Report ("Report") dated August 19, 1985. Part I of this document briefly outlines MPC's major objections to the methodology used in preparing the Interim Audit Report to inflate both the amount of the recommended repayment and the amount of MPC's expenditures in excess of the state and overall limits. As to the specific findings and recommendations contained in the Report, MPC objects to some and concurs with others. This point-by-point response is set forth in Part II. In Part III, MPC summarizes the proper method and correct figures which MPC contends should constitute the basis for a Commission repayment determination.

87040523226

Part I. The Methodology Used In The Interim Audit Report Improperly Inflates The Amount Of Recommended Repayment And The Amount Of MPC's Expenditures In Excess Of The Limits.

8 7 0 4 0 6 2 3 2 2 7

The Interim Audit Report employs various means of inflating the repayment demand to the Committee by more than ten times the amount of a legitimate repayment request. To achieve this end, the Report inflates both the amount of MPC's expenditures in excess of the limits and devises a means of requesting a 133 percent repayment for these inflated expenditures. In the course of so doing, the Report complicates a process that should be clear and straightforward. The Report obscures its untenable result -- a repayment greater than 100 percent, while repeatedly asserting that the financial manipulations and distortions used to achieve such an end are required by standard accounting practices. In fact, the methodology used in the Report is totally contrary to sound legal and accounting principles.

The format and lack of clarity in the Report further obscure the legal issues underlying many of the audit assumptions. One of the most confusing aspects of the Report is the use of the NOCO Statement to manipulate and distort MPC's financial picture. The NOCO statement as revised by the Report totally fictionalizes MPC's financial position by pretending that the Committee possesses assets which it does not have and by imagining that bills which the Committee has

paid were not liabilities. Such an approach makes it extremely difficult for the Committee to respond to the specific findings in the Report and to frame the issues clearly for Commission reconsideration.

MPC urges the Commission to focus on the following basic concepts which are directly contrary to the statute and which result in gross inflation of the initial repayment demand.

1. Entitlement: The Report reduces MPC's entitlement by 100 percent of the amount of expenditures which were paid after the date of ineligibility, and were allegedly in excess of expenditure limits, resulting in a repayment demand of \$294,609.36. This 100 percent repayment demand is in direct conflict with the holding in Kennedy v. FEC, 734 F.2d 1558 (D.C. Cir. 1984) ("Kennedy") where the United States Court of Appeals ruled that the Commission may obtain only a ratio repayment for nonqualified expenses based on the percentage of public funds in a Committee's campaign coffers. In MPC's case, the ratio of public funds is 32.9853% or roughly 33%. (See p. 68-76 below).

2. 133% Repayment: On top of the 100 percent repayment demand for excessive expenditures paid after the date of ineligibility, the Report demands the additional 33 percent ratio repayment permitted under Kennedy for those very same expenditures. Thus, despite the Kennedy ruling that the

statute permits only a 33 percent repayment, the Report demands a 133 percent repayment. Not only does a 133 repayment demand fly in the face of the Kennedy decision, but it is manifestly unfair to demand a 100 percent reduction of entitlement for specific expenditures and then demand in addition a ratio repayment for those very same expenditures. (See p. 78-81 below).

3. Artwork: The Report concludes that MPC has \$244,000.00 in artwork assets when in reality, the Committee has no such assets. Various artists volunteered their services to create proofs from which prints were produced at MPC's expense. MPC used these prints as a fundraising device, giving them in return for contributions, but was unable to dispose of all of them. When it became obvious that no further contributions could be raised on the basis of the prints, MPC gave the remaining prints away to previous contributors and staff. The Report views MPC as still possessing the prints and values them at the maximum value ever reflected on the NOCO for the total number of prints — \$244,000. This has the effect of diminishing MPC's entitlement and therefore increasing MPC's repayment by \$244,000.00. Since MPC no longer possesses the art prints and MPC's disposal of them was in complete accord with all statutory and regulatory provisions, the Report incorrectly attributes this asset to the Committee. (See p. 64-67 below).

87040623229

4. Costs of Preparing Matching Fund Submissions: The Report concludes that costs incurred by MPC for computer services to prepare matching funds submissions are not exempt compliance costs and therefore are expenditures which count against the overall limitation. The effect is to increase MPC's limit spending by \$152,339.57. The costs incurred for preparing matching fund submissions clearly fall within the compliance cost exemption since they arise only to comply with Title 2 and Title 26 requirements. The Report, in concluding that such costs are "fundraising costs", treats them in the same way that costs incurred in raising private contributions are treated. Treatment of these costs as "fundraising costs" is contrary to the statutory language of the fundraising exemption which clearly does not apply to costs for preparing submissions necessary to obtain public funds. (See p. 41-44)

87040623230

Part II. Response To Interim Audit Findings And Recommendations.

The following narrative and supporting schedules respond to the specific findings and recommendations contained in the interim audit report by reference to the auditors' numerical findings.

	<u>Page</u>
II. Findings and Recommendations Related To Title 2 of the United States Code	8
II.A. Failure to Report Refunds/Rebates	9
II.B. Allocation of Expenditures to States	10
II.B.1. Specific Allocation Methods	10
II.B.1.a. Media Expenditures	10
II.B.1.b. Intra-State Travel and Subsistence Expenditures	11
II.B.1.c. Salaries, Employer FICA, and Consultant Fees	22
II.B.1.d. Compliance and Fundraising Expenditures ...	27
II.B.1.d(i) Telephone and Utilities	27
II.B.1.d(ii) Fundraising Expenditures - 28-Day Rule	30
II.B.1.e Public Opinion Polling Expenditures	32
II.B.2. Other Expenditures Requiring Allocation ...	33
II.B.2.a. Automobile Leasing	33
II.B.2.b. Telephone and Related Services	35
II.B.2.c. Printing and Shipping Expenditures	36
II.B.2.d. Miscellaneous Expenditures	37

87040523231

87040523232

		<u>Page</u>
II.B.3.	Debts and Obligations Requiring Allocation When Paid	38
	Summary of Committee Adjustments	38
	Recap of Allocable Expenditures	40
II.C.	Limitation on Expenditures	41
II.C.1.	Fundraising Expenses	41
II.C.2.	Joint Fundraising Expenses	45
II.C.3.	Debts and Obligations to be Applied to the Overall Limitation	46
II.C.4.	Apparent Primary Election Campaign Expenses Paid by the General Election Committee	47
II.C.5.	Refunds/Rebates	48
II.C.6.	Accounts Receivable	49
	MPC Has Not Exceeded the Overall Expenditure Limitation	56
	Compliance Adjustment	58
	Expenditures Subject to The Limitation	59
II.D.	Contributions in Excess of Limitation	60
III.	Findings and Recommendations Related to Title 26 of the United States Code	62
III.A.	Determination of Net Outstanding Campaign Obligations	63
III.A.1.	Valuation of Committee Artwork	64
III.A.2.	Accounts Payable for Qualified Campaign Expenses	68
III.B.	Statement of Net Outstanding Campaign Obligations	72

	<u>Page</u>
III.C. Matching Fund Payments in Excess of Entitlement	74
III.D. Apparent Non-Qualified Campaign Expenses ..	78

87040623233

II. FINDINGS AND RECOMMENDATIONS
RELATED TO TITLE 2 OF THE UNITED STATES CODE

MPC attempted in good faith to comply with all applicable statutory and regulatory requirements. In every instance, the Committee exercised best efforts to comply with the provisions of Title 2. As demonstrated by the Interim Audit Report and this response, any misallocations or errors by the Committee were inadvertent and represented an insignificant percentage of Committee transactions.

• 8 7 0 4 0 5 2 3 3 2 2 3 4

II.A.
FAILURE TO REPORT REFUND/REBATES

The Committee agrees to amend its reported refunds to include the 43 items totalling \$44,069.52 omitted by error in previous reports.

870405232235

II.B. ALLOCATION OF EXPENDITURES TO STATES

II.B.1. SPECIFIC ALLOCATION METHODS

**II.B.1.a
MEDIA EXPENDITURES**

The Committee agrees to adjust its accounting records to correct errors in media allocations to Iowa, Maine and New Hampshire of \$20,034.00, \$6,617.00 and \$4,052.00, respectively.

87040523236

II.B.1.b. - INTRA-STATE TRAVEL AND SUBSISTENCE

Under 11 C.F.R. Section 106.2(b)(2)(iii), travel and subsistence expenditures for persons working in a state need not be allocated to that state unless a person works in the state for five consecutive days. MPC agrees to make reallocations for errors in the amounts of \$4,808.84, \$13,880.01, and \$2,383.03 to Maine, Iowa and New Hampshire, respectively, based on the information provided by the auditors. However, the Committee disputes the following allocations on the grounds that the auditors' supporting documentation does not demonstrate that the individuals in question were in the states for more than four days and therefore no state allocation is required:

MAINE

- 8 7 0 4 0 5 2 3 2 3 7
- | | | |
|----|-----------|----------|
| 1. | Jim Blair | \$ 36.67 |
| | | \$340.00 |

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

- | | | |
|----|-------------|----------|
| 2. | Jim Farrell | \$994.66 |
|----|-------------|----------|

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

3. Ned McCann \$190.00
\$300.00

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

4. Dennis O'Neil \$ 56.39

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

5. David S. Rosenberg \$451.00

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

87040523238

IOWA

1. Jonathan Blum \$172.70
\$100.00

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

2. Lynn Christensen \$ 50.00
\$144.68

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

3. Marthana Cowart \$493.69

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

4. Kathleen Dona \$216.12
\$ 50.00

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

5. Dan Foley \$200.56
\$ 56.38

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

6. Michael Ford \$151.41

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

7. Vicki Hartman \$183.66

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

87040523239

R 7 0 4 0 5 2 3 2 4 0

8. Larry Martinez \$353.97

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

9. Ellen Schneider \$ 75.00
\$182.98

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

10. Bart Chilton \$400.00
\$388.03

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

11. Cynthia Alkane \$485.60
\$ 43.20
\$ 34.50

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

12. Gary Kelleher \$128.46
\$289.71

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

13. Peter Handler \$400.00
\$511.63

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

14. Barry Leftgoff

\$468.00

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

15. Elizabeth Shapero

\$129.00

Documents provided by the auditors establish that only 22 days are allocable to Iowa, although the auditors allocate a full 32 days. We are adjusting for ten days for which there is no evidence that Shapero was allocable to Iowa.

87040523241

NEW HAMPSHIRE

1. Bob Bosch \$612.02

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

2. Walter Holton \$602.47

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

3. Stuart Ishimara \$150.00

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

4. Elaine McLaughlin \$619.57

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

5. Doug Michelman \$463.10

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

87040523242

6. Jim Mulhall \$636.69

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

7. John O'Leary \$308.09

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

8. Kevin O'Malley \$361.11

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

9. David Van Iderstine \$847.79

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

87040523243

10. Kate Varney

\$200.00

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

11. Steve Werbel

\$405.78

The evidence presented by the auditors consists of a check request for advance salary for a Massachusetts trip on January 8 and 9, and New Hampshire on January 10 through 13, 1984, copies of drafts written for per diem for January 12 and January 13, a copy of a check request for expense reimbursement for January 13, and a copy of a check request for four days per diem on January 8 through 11 in connection with a Mondale trip to New Hampshire on January 12-13. The last per diem request is for the same period as the advance salary request which was clearly described as part Massachusetts and part New Hampshire. There is no evidence that Werbel was in New Hampshire more than four days.

87040623244

SUMMARY SCHEDULE: MAINE

Per Audit - Maine \$ 7,178.46

Committee Adjustments: \$ 36.67
340.00
994.66
190.00
300.00
56.39
451.90

Total Committee Adjustments: \$ -2,369.62

ADJUSTED TOTAL \$ 4,808.84

87040623245

SUMMARY SCHEDULE: IOWA

Per Audit

\$19,589.89

Committee Adjustments

1.	\$ 172.70
2.	100.00
3.	50.00
4.	144.88
5.	493.69
6.	216.12
7.	50.00
8.	200.56
9.	56.38
10.	151.41
11.	183.86
12.	353.97
13.	75.00
14.	182.98
15.	788.03
	543.30
	128.46
	289.71
	911.63
	468.00
	<u>129.00</u>

TOTAL ADJUSTMENTS:

- 5,709.48

ADJUSTED BALANCE:

\$13,880.41

8704032246

SUMMARY SCHEDULE: NEW HAMPSHIRE

Per Audit \$ 7,589.65

Committee Adjustments:

- 1. (\$612.02)
- 2. (602.47)
- 3. (150.00)
- 4. (619.57)
- 5. (463.10)
- 6. (636.69)
- 7. (308.09)
- 8. (361.11)
- 9. (847.79)
- 10. (200.00)
- 11. (405.78)

TOTAL ADJUSTMENTS \$-5,206.62

ADJUSTED BALANCE: \$2,383.03

87040623247

II.B.1.c. - SALARIES, EMPLOYER FICA AND
CONSULTING FEES

The Committee agrees to make reallocations of \$9,215.45, \$2,931.81, and \$6,055.48 to Iowa, Maine and New Hampshire, respectively. The Committee disputes the following allocations on the grounds (1) that the auditors' documentation does not demonstrate that the individuals listed were in the state more than four days and (2) that the key state personnel in these states played an essential national policy role justifying a 30 percent allocation of their salaries to headquarters operating expenditures not subject to state allocation.

1. Iowa Documentation cited by auditors failed to establish that the following individuals were in the state for the period allocated.

Jonathan Blum	\$ 600.00
Lynn Christensen	300.00
Michael Ford	652.80
Taxes-FICA	108.70
Bart Chilton	1,220.00
P. Handler	971.42
Elizabeth Shapero	400.00
Taxes-FICA	<u>181.40</u>
	<u>\$4,434.32</u>

87040623248

Maine

Auditors did not provide any evidence as a basis for their allocation.

John Bell	\$ 849.84
Lynn Cribari	519.42
Scott Dolley	344.48
Bill Tapella	687.90
Mike Fangor	300.00
Don Lesser	500.00
FICA Tax	224.09
Ned McCann	<u>300.00</u>

\$3,725.33

New Hampshire:

Documentation provided by auditors in finding II.B.1.b. did not establish that the following individuals were in the state for the period allocated.

Bob Bosch	\$ 525.00
Walter Holton	800.00
Stuart Ishimara	360.00
Elaine McLaughlin	300.00
Jim Mulhall	180.00
John O'Leary	972.16
David Iderstine	300.00
FICA Tax	240.60
Jim Mulhall	540.00
Kate Varney	400.00
Steve Werber	<u>360.00</u>

TOTAL

\$4,977.76

87040523249

87040623250

2. Under 11 C.F.R. Section 106.2(c), expenditures for national campaign operating expenses, including staff, need not be allocated to any state. In 11 C.F.R. Section 106.2(b)(2), the Commission has also acknowledged that many campaign staff perform an essentially national campaign role, travelling frequently to many states. Under this section, salaries and travel expenses for staff need not be allocated to a specific state unless those staff are in the state for five or more consecutive days. In the Explanation and Justification accompanying this section, the Commission further acknowledges that there may be staff, meetings, etc. which perform a "national strategy" function and therefore need not be allocated to any state.

"While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a state for five days or more to work on national campaign strategy."

48 Fed. Reg. 5225 (1983). MPC contends that 30 percent of the salaries of the state directors in Iowa, Maine and New Hampshire, are directly attributable to national strategy and campaign planning and are thus, under this principle, allocable to national operating expenditures and not to the three states, respectively.

These states with the earliest primaries of the campaign were critical in terms of overall national campaign planning. Key personnel in these states played a primary

political role in planning strategy which transcended their specific states. They were regularly in contact with national campaign political staff and fundraisers in planning strategy on the national level and in devising and assisting polling and media strategy on a nationwide basis. This function falls squarely within the development of national campaign strategy which the Commission has acknowledged in its regulations. Therefore, NPC objects to the reallocation of salaries in the amounts of \$6,525.00, \$10,500.00 and \$4,725.50 in Iowa, Maine and New Hampshire, respectively.

87040523251

SUMMARY SCHEDULE

	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Per Audit	\$ 20,174.77	\$ 17,157.14	\$ 15,788.74
Adjustment	\$- 4,434.32	\$- 3,725.33	\$- 4,977.76
Adjustment	<u>\$- 6,525.00</u>	<u>\$-10,500.00</u>	<u>\$- 4,725.50</u>
ADJUSTED TOTAL	<u>\$ 9,215.45</u>	<u>\$ 2,931.81</u>	<u>\$ 6,085.48</u>

87040523252

II.B.1.d. COMPLIANCE AND FUNDRAISING EXPENDITURES

II.B.1.d(1) TELEPHONE AND UTILITIES

MPC objects to the reallocation of \$6,498.36 to Iowa, \$1,109.55 to Maine, and \$3,606.53 to New Hampshire.

Commission regulations at 11 C.F.R. Section 106.2(b)(2)(iv) require that overhead expenditures for a state office be allocated to the expenditure limitation for that particular state. This regulation then lists examples of overhead expenditures, but specifically states that overhead expenditures are not limited to the examples given. One example given in the regulation is "telephone service base charges." Commission regulations at 11 C.F.R. Section 106.2(c)(5) then provides that 20 percent of overhead expenditures will not be charged to state limits, but will instead be treated as exempt compliance costs (10 percent) and exempt fundraising costs (10 percent).

MPC, in allocating expenditures to the limits for Iowa, Maine and New Hampshire, included intra-state long distance telephone charges in overhead costs. MPC acknowledges that intra-state phone charges should be treated as an expenditure counted against the appropriate state limit. By the same token, the 20 percent exemption for compliance and fundraising must also apply to those charges. In fact, a

87040623253

certain percentage of intra-state long distance charges are related to compliance and fundraising. 1/

The audit report erroneously concludes that the 20 percent exemption for compliance and fundraising does not apply to intra-state long distance charges. This conclusion is apparently based on the fact that the regulation listing examples of overhead expenditures does not include intra-state long distance charges. The report thus ignores the fact that the regulation itself states that the list of examples of overhead is not all inclusive -- overhead expenditures "include, but are not limited to" the items listed. 11 C.F.R. Section 106.2(b)(2)(iv).

This erroneous conclusion is also contrary to the underlying rationale of the regulations's allocation of the base service charges to compliance and fundraising. That allocation is based on the presumption that 10 percent of the phone use in the state is related to compliance and 10 percent is related to fundraising. That presumption is therefore based logically on the assumption that 10 percent of the phone calls themselves are related to compliance and 10 percent to fundraising.

1/ MPC has elected to take the flat percentage for compliance and fundraising as provided for in the regulations.

87040623254

The treatment of these phone charges in the audit report is also inconsistent with the auditor's treatment of national headquarters telephone charges. The Committee allocated 10 percent of basic service charges and long distance charges at the national offices to compliance and 10 percent to fundraising pursuant to 11 C.F.R. Section 9035.1(c). Consistent with prior audit practice, the audit report does not challenge this headquarters allocation under the identical regulatory language. There is, therefore, no basis for taking a contrary position as to the state allocations as set forth in the Report.

87040623255

II.B.1.d(11) FUNDRAISING EXPENDITURES - 28 DAY RULE

MPC treated \$16,270.44 in expenses incurred in Iowa as fundraising expenditures exempt from the state limitation. The Report reallocates these expenditures to the Iowa limit on the basis that they were incurred within 28 days of the Iowa caucus. MPC objects to this reallocation of \$16,270.49 to the Iowa limit.

11 C.F.R. 110.8(c)(2) provides that costs incurred within 28 days of a State primary, convention or caucus shall be presumed to count against the expenditure limit for that state and not to fall within the fundraising exemption. However, in A.O. 1979-71, the Commission held that the January 1980 Iowa caucuses were not elections under the Act. The Advisory Opinion does state that the expenditure limits nevertheless remain in force for Iowa and specifically quotes 11 C.F.R. Section 110.8(c)(1). However, the opinion does not state that the 28-day rule at Section 110.8(c)(2) remains in effect.

Moreover, Section 110.8(c)(2) which establishes the 28-day rule merely creates a rebuttable presumption that expenditures made within that time frame are not for fundraising. In this instance, MPC held the largest grass roots fundraiser -- America for Mondale -- in history within 28 days of the Iowa caucus. This was a nationwide fundraiser

87040523256

organized at the local level in every state. This fully rebuts
the presumption created in the regulation that the \$16,270.49
was not a genuine fundraising expenditure.

87040523257

II.B.1.e. PUBLIC OPINION POLLING EXPENDITURES

The Committee agrees to reallocate account coding errors of \$13,500.00 to Iowa and \$12,500.00 to New Hampshire.

87040523258

II.B.2. OTHER EXPENDITURES REQUIRING ALLOCATION

II.B.2.a. AUTOMOBILE LEASING

MPC agrees to reallocate \$5,279.87 to New Hampshire and objects to the reallocation of \$25,451.38 to Iowa and an additional \$26,032.84 to New Hampshire.

The Audit Report concludes (1) that certain cars rented in Minnesota and charged to that State's limit were actually chargeable to the Iowa limit; and (2) that certain cars rented in Massachusetts and charged to that limit were actually chargeable to New Hampshire. These conclusions are based on "notations" found by the auditors suggesting that the cars were in Iowa and New Hampshire.

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

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

Moreover, under the regulations, it is entirely legitimate for these cars to be leased and used for interstate

87040523259

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

	<u>Iowa</u>	<u>New Hampshire</u>
Per Audit Amount	\$ 25,451.38	\$31,331.71
Adjustment	<u>-25,451.38</u>	<u>26,052.84</u>
Adjusted By		
Committee	\$ -0-	\$ 5,278.87

87040523260

II.B.2.b. TELEPHONE AND RELATED SERVICES

The Committee agrees to reallocate \$3,955.00 to Iowa
and \$4,856.62 to New Hampshire.

87040523261

II.B.2.c. PRINTING AND SHIPPING EXPENDITURES

The Committee agrees to reallocate \$15,403.50 to Iowa, \$4,690.62 to Maine, and \$3,550.40 to New Hampshire.

87040523262

II.B.2.d. MISCELLANEOUS EXPENDITURES

The Committee agrees to reallocate \$6,222.66 to Iowa and \$4,361.24 to New Hampshire, but objects to reallocation of the following expenditures which were reallocated in the Report without sufficient evidence.

New Hampshire: Chateau Restaurant - \$121.00 — Lunch paid for by Advance Staff not in state for more than four days.

Iowa: Draper & Kramer - \$250.00 — Clean-up of a Mondale stop related to interstate travel.

	<u>Iowa</u>	<u>New Hampshire</u>
Per Audit Amount	\$ 6,472.66	\$ 4,482.24
Adjustment	- 250.00	- 121.00
Adjusted By		
Committee	<u>\$ 6,222.66</u>	<u>\$ 4,361.24</u>

87040523263

**II.B.3. DEBTS AND OBLIGATIONS REQUIRING
ALLOCATION WHEN PAID**

The auditors did not provide MPC with any documentation to substantiate their allocation. We are unable to determine whether their allocation is consistent with our own, or if they are contesting our allocation. In the absence of sufficient information, we are disputing their allocations of \$8,548.40 to Iowa, \$5,777.99 to Maine, and \$10,062.75 to New Hampshire.

	<u>Iowa</u>	<u>Maine</u>	<u>New Hampshire</u>
Amount Per Audit	\$ 8,548.40	\$5,777.99	\$10,062.75
Committee Adjustment	<u>- 8,548.80</u>	<u>-5,777.99</u>	<u>-10,062.75</u>
ADJUSTED AMOUNT	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>

SUMMARY - FINDING II.B.

The following is a summary of Committee adjustments to the Interim Report (p. 39) and a recap of allocable expenditures to the states on the basis of MPC's responses to Finding II.B. (p. 40) of the Report. This recap should be compared to the recap on p. 12 of the Report. On the basis of this response, MPC's total expenditures in excess of state limits amount to \$185,997.92.

87040523264

**ALLOCABLE STATE EXPENDITURES
SUMMARY OF COMMITTEE ADJUSTMENTS**

		<u>MAINE</u>	<u>MAINE</u>	<u>NEW HAMPSHIRE</u>
II.B.1.a.	Per Audit Committee Adjustment Per Committee	\$20,034.00 0.00 <u>\$20,034.00</u>	\$ 6,617.00 0.00 <u>\$ 6,617.00</u>	\$ 4,052.00 0.00 <u>\$ 4,052.00</u>
II.B.1.b.	Per Audit Committee Adjustment Per Committee	\$19,589.09 - 5,709.48 <u>\$13,879.61</u>	\$ 7,179.46 - 2,369.62 <u>\$ 4,809.84</u>	\$ 7,589.66 - 5,206.62 <u>\$ 2,383.04</u>
II.B.1.c.	Per Audit Committee Adjustment Per Committee	\$20,174.77 -10,959.32 <u>\$ 9,215.45</u>	\$17,157.14 -14,226.32 <u>\$ 2,930.82</u>	\$15,788.74 - 9,703.26 <u>\$ 6,085.48</u>
II.B.1.d.(1)	Per Audit Committee Adjustment Per Committee	\$ 6,498.36 - 6,498.36 <u>\$ 0.00</u>	\$ 1,389.35 - 1,389.35 <u>\$ 0.00</u>	\$ 3,606.83 - 3,606.83 <u>\$ 0.00</u>
II.B.1.d.(11)	Per Audit Committee Adjustment Per Committee	\$16,279.49 -16,279.49 <u>0.00</u>	N/A	N/A
II.B.1.e.	Per Audit Committee Adjustment Per Committee	\$13,500.00 0.00 <u>\$13,500.00</u>	N/A	\$12,500.00 0.00 <u>\$12,500.00</u>
II.B.2.(a)(1) and (11)	Per Audit Committee Adjustment Per Committee	\$25,451.38 -25,451.38 <u>\$ 0.00</u>	N/A	\$31,331.75 -26,062.84 <u>\$ 5,278.91</u>
II.B.2.(b)(1) and (11)	Per Audit Committee Adjustment Per Committee	\$ 3,955.00 0.00 <u>\$ 3,955.00</u>	N/A	\$ 4,856.62 0.00 <u>\$ 4,856.62</u>
II.B.2.c.	Per Audit Committee Adjustment Per Committee	\$15,483.80 0.00 <u>\$15,483.80</u>	\$ 4,690.69 0.00 <u>\$ 4,690.69</u>	\$ 3,550.40 0.00 <u>\$ 3,550.40</u>
II.B.2.d.	Per Audit Committee Adjustment Per Committee	\$ 6,472.66 - 259.00 <u>\$ 6,213.66</u>	N/A	\$ 4,482.24 - 121.00 <u>\$ 4,361.24</u>
II.B.3	Per Audit Committee Adjustment Per Committee	\$ 8,548.40 - 8,548.40 <u>\$ 0.00</u>	\$ 5,777.99 - 5,777.99 <u>\$ 0.00</u>	\$10,062.75 -10,062.75 <u>\$ 0.00</u>

87040623265

Recap of Allocable Expenditures

	<u>IOBH</u>	<u>MAINE</u>	<u>NEW HAMPSHIRE</u>
Amount allocated by the Committee on FEC Form 3P, page 3 as of December 31, 1996	\$676,344.28	\$388,164.53	\$469,699.41
<u>Adjustments in Above Reported Total Reflecting MPC Position On Each Finding</u>			
II.B.1.a. - Media Expenditures	20,034.00	6,617.00	4,852.00
II.B.1.b. - Intra-State Travel and Subsistence	13,689.41	4,809.84	2,383.02
II.B.1.c. - Salaries, Employer FICA and Consultant Fees	9,218.45	2,931.81	6,085.48
II.B.1.d.(1) - Compliance Costs and Fundraising Expenditures- Telephone and Utilities	0.00	0.00	0.00
II.B.1.d.(11) - Fundraising Expenditures-28-day Rule	0.00	0.00	0.00
II.B.1.e. - Public Opinion Polling Expenditures	13,500.00	0.00	12,500.00
II.B.2.a(1) and (11) - Automobile Leasing	0.00	0.00	5,278.87
II.B.2.b.(1) and (11) - Telephone and Related Services	3,955.00	0.00	4,856.62
II.B.2.c. - Printing and Shipping Expenditures	15,483.10	4,696.69	3,550.40
II.B.2.d. - Miscellaneous Expenditures	6,222.66	0.00	4,361.24
II.B.3. - Debts and Obligations (To Be Allocated When Paid)	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL	\$758,855.30	\$407,212.87	\$512,767.25
Less 2 U.S.C. §441a State Spending Limitation	<u>688,537.50</u>	<u>404,000.00</u>	<u>404,000.00</u>
Total Expenditures in Excess of State Limitations	\$ 74,817.80	\$ 3,212.87	\$108,767.25
GRAND TOTAL	\$185,097.92		

87040523266

II.C. LIMITATION ON EXPENDITURES

II.C.1. FUNDRAISING EXPENSES -
ALLOCATION TO FUNDRAISING OF COSTS OF
PREPARATION OF MATCHING FUND SUBMISSION

MPC objects to the reallocation of \$152,339.57 to fundraising.

The Report (pp. 14-16) inflates MPC's expenditures in excess of the overall limit by a reallocation of certain exempt compliance costs to costs subject to limitation. 2/ The Report recommends that the Commission consider the entire amount of cost incurred by MPC in connection with preparation and submission of its requests for matching funds as "fundraising" costs, and not as "compliance" costs. The result of this recommendation is to increase MPC's limit spending by \$152,339.57.

This recommendation is erroneous for the following reasons: (A) the costs incurred to prepare a matching fund submission arise only because of the requirements of Title 2 and the Fund Act and therefore fall within the compliance exemption; (B) the costs of preparation of matching fund submissions do not fall within the fundraising exemption; and (C) the costs of preparation of matching fund submissions are

2/ Since MPC has exhausted its 20 percent fundraising exemption, this entire amount would be charged against the overall expenditure limitation.

87040523267

properly allocable to the accounting cost center for which the Committee elected to utilize the standard 85 percent compliance — 15 percent non-exempt formula and therefore the Commission must accept this allocation.

A. Under 2 U.S.C. Section 431(9)(B)(vii)(II) legal and accounting expenses incurred solely for the purpose of ensuring compliance with the FECA or with Chapters 95 or 96 of Title 26 are not considered expenditures and are not subject to the expenditure limit of 2 U.S.C. § 441(b). The payments in question were those made by the Committee to CDSI (and related MPC salary costs) for the purpose of preparing MPC's matching fund submissions consistent with the FEC regulations and Title 26. Were it not for the statutory and regulatory requirements regarding documentation for, and submission of, matchable contributions, these costs would not have been incurred by the Committee at all. Thus, these costs fall squarely within the definition of exempt legal and accounting expenses solely for ensuring compliance with Title 26.

B. The auditors rely on no statutory or regulatory provision for disallowance of these costs as compliance expenses. Rather, they rely only on the Commission's Financial Control and Compliance Manual which states that such costs should be considered fundraising costs subject to the 20 percent exemption. This manual does not have the force of a regulation and moreover, is incorrect that such costs fall

87040623268

within the fundraising exemption. Considering such costs as fundraising would be directly contrary to the statutory definitions of the fundraising exemption and the definition of "contribution" in Title 26.

2 U.S.C. Section 431(9)(B)(vi) excludes from the definition of "expenditure" "any costs incurred . . . in connection with the solicitation of contributions" up to 20 percent of the overall expenditure limit. The Report apparently contends that the costs of preparing the matching fund submission are costs incurred in connection with solicitation of "contributions." However, 26 U.S.C. Section 9032(4)(E)(ii) specifically excludes matching fund payments from the definition of "contribution" for Title 26 purposes. Thus, it is incorrect under the statute to consider the costs of preparing the matching fund submission as costs incurred in connection with the solicitation of contributions.

C. MPC elected to follow the Commission's guideline allocation for its accounting cost center. There is no dispute that the costs of preparing the matching fund submissions are properly included within the accounting cost center. MPC allocated only 85 percent of this cost center to compliance. Therefore, the Commission should consider the \$152,339.57 to fall within the 15 percent of accounting costs allocated to general operating accounts and not compliance. Under this allocation method, MPC allocated \$240,794.07 of its accounting

87040523269

costs as general operating expenditures subject to the limit.
The \$152,339.57 should be deemed part of this \$240,794.07 and
thus already allocated to operating expenditures.

87040623270

II.C.2. JOINT FUNDRAISING EXPENSES

The Committee agrees that \$136,884.36 for joint fundraising expenses is allocable to the overall limitation.

87040623.271

II.C.3. DEBTS AND OBLIGATIONS TO BE
APPLIED TO THE OVERALL LIMITATION

The Committee agrees that \$414,633.48 in debts and obligations at December 31, 1984 are allocable to the overall limitation. MPC's allocation is based on actual subsequent payments made by the Committee through September 1985. The Report bases its allocation on the audit review of committee files which contained some duplicate and invalid invoices, thereby inflating the debts and obligations by \$31,025.20. The actual amount of allocable debt, as determined by subsequent payment, was \$414,633.48 at December 31, 1984.

87040623272

**II.C.4. APPARENT PRIMARY ELECTION CAMPAIGN
EXPENSES PAID BY THE GENERAL ELECTION COMMITTEE**

The Committee concurs with the reallocation from the general election to the primary of \$209.27 for a utility bill and \$2,261.00 for travel and subsistence by campaign personnel. However, MPC objects to reallocation of \$26,457.75 as a primary election expense.

The \$26,457.75 represents costs incurred by Mr. Bert Lance and his staff after all primaries were over for travel, hotel and meals related to the general election campaign. Under 11 C.F.R. § 9003.4(a) expenses incurred prior to the date of ineligibility for the primary are payable from the general election account if they are for "services . . . to be used in connection with [the] general election campaign. . . ."

All of the expenses incurred for Mr. Lance and his staff were general election campaign expenses because the ultimate outcome of the trips was that Mr. Lance assumed the role of general election campaign Chairman on July 14. Moreover, Mr. Lance's role was clearly intended to relate to the general election campaign only, and not to the primary campaign. Since the primary campaign came to a close on July 18, only four days after July 14 when Mr. Lance became Chairman of the campaign, it is clear that he could not have played a role as Chairman in the primary campaign. Moreover, as of the time when the expenses were incurred (late June and early July), the activity necessary to secure Mr. Mondale's nomination had been basically completed.

87040523273

II.C.5. REFUNDS/REBATES

The Committee agrees that the \$43,859.52 in refunds and rebates inadvertently omitted from its reports should be deducted from the overall spending limitation figure.

87040523274

II.C.6. - ACCOUNTS RECEIVABLE - PRESS RECEIVABLES

The Committee objects to the treatment of Press Receivables in the Report. MPC contends that it should be able to deduct \$263,812.97 in billed press receivables (whether or not collected) from the overall expenditure limit. The auditors contend that this figure should be only \$68,105.48. The refusal to allow deduction of the full \$263,812.97 results in inflation of MPC's expenditures in excess of the limit by approximately \$200,000.

11 C.F.R. § 9034.6(b) permits a committee to obtain reimbursement from media entities for transportation and services made available to their personnel. A committee may charge the pro rata share, or a reasonable estimate thereof, for each individual travelling; however, the total reimbursements received for one individual may not exceed by more than 10 percent the actual pro rata cost of the services made available to that individual. These reimbursements are then deducted from a committee's expenditures subject to limitation to the extent that the reimbursements do not exceed the amount actually paid by the committee for the services.

During the primary campaign, the Committee incurred expenses for air transportation, ground transportation, press rooms, telephones, refreshments, and other incidentals for members of the press and the Secret Service. The Committee

87040623275

billed the press and Secret Service for the pro rata cost of direct expenditures, plus 10 percent for the administrative cost to the campaign.

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

The custom of providing for the national press and Secret Service while the candidate travels imposes an enormous administrative burden on the campaign. Providing for the press, sometimes numbering with the Secret Service up to 75 people, involved the coordination of campaign personnel in five different headquarter departments plus advance and field staff all over the country.

Headquarters press office personnel were required to determine for each trip and each leg of the trip how many extra seats would be needed for the press and Secret Service and identify them on detailed preliminary manifests. This information was consolidated with information from Scheduling and Advance planners for each leg of the trip from a block

R 7 0 4 0 5 2 3 2 7 6

87040623277

schedule. Schedulers would then begin chartering planes and sending out instructions to advance staff for ground transportation, hotels, etc. Since the candidate's travel schedule for each trip changed constantly up to the date of departure, the press office and Scheduling and Advance personnel were constantly making necessary adjustments for each leg of the trip, including the press arrangements. Every time the schedule changed, the press rooms, phones, vans, cars and other incidentals had to be changed.

In addition to the Headquarters staff, Advance and Field personnel at each stop had to make arrangements for press rooms and sleeping accommodations, erect special structures for the press at public appearance sites, spend time overseeing the installation of press phones ordered by special press-phone staff at National Headquarters, and arrange for extensive ground transportation, including finding drivers. Advance and Field personnel were also required to keep track of and document all press related expenditures and forward them to designated staff at the National Headquarters' Scheduling and Advance office who identified these costs for billing. Scheduling and Advance office staff gave identified expenditure information from the Advance and Field staff to the billing personnel in accounting who were responsible for preparing and tracking the billing.

While on the road, Headquarters press staff who travelled with the candidate kept manifests up to date for each leg, and tracked other incidental costs which they incurred in the air and on the ground. This documentation was also channelled to accounting via the Travel officer.

The Travel officer at Headquarters reviewed manifests and expense documents, plus he and his staff broke out the cost of each charter by leg. Accounting personnel further refined press costs by scheduling all costs per person, per leg, for each trip. This was a lengthy procedure since some trips had more than 30 stops. Since there was a time lag between billing for air transport and billing for other costs because of the time required to consolidate all other costs, several different billings had to be prepared for each person for each trip. The first bills were for air fare, and subsequent bills would be for "incidentals" such as ground transportation, press rooms, press phones, food, press boxes, etc. None of the personnel time required to do all of this billing was included when calculating the pro rata share of cost. Instead, this cost was reflected in the 10 percent.

Phones were especially costly to administer and several people at Headquarters were fully employed doing press phones. Press phone costs had to be documented, identified by stop and trip, and sent to accounting for inclusion into bills.

87040623278

Thus, the 10 percent charge added to the direct costs of transportation and services was for the actual cost to the campaign of arranging, tracking and billing for the travel service. As part of the cost incurred for the press, it should, when reimbursed to the Committee, be applied as a reduction of expenditures subject to the limit.

8 7 0 4 0 6 2 3 2 7 9

The Report also questions the amount of press accounts receivable written off by the Committee. After extensive efforts to collect, the decision was made in January to consider such debts as uncollectible. The Committee's NOCO Statement (p. 87) includes an actual figure for accounts receivables collected. The Committee objects to the auditor's inclusion of \$143,089.85 on the NOCO as an adjusted figure for press receivables. The total correct figure for all accounts receivable actually collected through the third quarter of 1985 is \$121,548.60. This actual figure proves that the Committee's estimates of uncollectible press bills were accurate.

Finally, since MPC has made every effort possible to collect in full from the press for travel expenses, and since MPC never intended to defray any of these expenses from its funds, MPC should be able to deduct from its limit spending in

full (\$263,812.97) the amounts billed to the press, whether or not they are collected. 3/ Any other result would be gravely unfair to the Committee.

A 7 0 4 0 5 2 3 2 8 0

3/ For this reason, we have included \$183,775.23, the amount billed to the press, in calculating the amount of press receivables which may be deducted from MPC's limit spending.

87040523281

1963-64 Press Collections	\$1,574,838.03	
1963-64 Secret Service Billings	423,787.87	
Prepaid Items To Be Refunded	(30,810.95)	
Adjusted Accounts Receivable, 12/31/64	<u>185,775.23</u>	
Adjusted Billings		\$ 2,152,789.18
Divide by: Cost Factor		
Derived Cost		
Less:		
Press Collections		\$(1,574,838.03)
Secret Service Collections		(348,788.13)
Prepaid Adjustment		<u>30,810.95</u>
Uncollected Cost		\$ <u>202,812.07</u>

MPC HAS NOT EXCEEDED THE OVERALL EXPENDITURE LIMITATION

The machinations of the Report designed to inflate MPC's spending in excess of the overall limit are to no avail, because even assuming the validity of all of the Report's figures, MPC has not exceeded the overall limit.

MPC has reduced its limit spending as of December 31, 1984, by \$507,526.43, by allocating that portion of fundraising costs attributable to compliance costs to compliance. The FEC regulations do not state how these costs are to be allocated in the primary, and this allocation is consistent with treatment of compliance fundraising costs in the general election which must be allocated to compliance. 11 C.F.R. Section 9004.4(b)(5). The chart on the following page demonstrates the calculation of the amount reallocated. The calculation method used insures that only the costs of raising private contributions spent on compliance are reallocated, since MPC's mixed pool of public funds and private contributions were used to defray these costs. However, it should be noted that over \$7,000,000 of MPC's private contributions were never submitted for matching funds. This \$7,000,000 is substantially in excess of the entire \$2,518,741.57 spent on compliance. Thus, MPC could have defrayed all compliance costs with private contributions that were never matched had these been segregated.

87040623282

Thus, even if all of the auditors' limit spending figures were correct, MPC is in fact \$13,100.27 under the overall expenditure limit. On the basis of the correct limit spending figures as set forth on pp. 59, 89 , MPC is in fact \$418,629.96 under the overall spending limitation of \$20,042,580.53.

87040623283

COMPLIANCE ADJUSTMENT
CALCULATED AT 12/31/84

1. CALCULATION OF COST PERCENTAGE AT 12/31/84

A.	Total Contributions	\$17,276,633.50	
B.	Total Net Fundraising Costs	\$5,438,420.15	
C.	Cost of Raising Contributions	\$ 5,438,420.15	= .3
		<u>\$17,276,633.50</u>	

2. CALCULATION OF CONTRIBUTIONS SHARE OF COMPLIANCE FUNDS

A.	Compliance Costs through First Quarter 1985	\$ 2,518,741.57	
B.	Contributions Percentage of Compliance Funds =		
	Contributions	x Compliance Costs	
	<u>Contributions plus Matching Funds</u>		
	\$17,294,663.33	x \$2,518,741.57	= \$1,637,182.02
	<u>\$26,789,584.26</u>		

3. CALCULATION OF COST OF RAISING COMPLIANCE FUNDS

\$1,637,182.02 x .31 = \$507,526.43

87040523284

87040523285

Expenditures subject to the limitation at December 31, 1984		\$20,042,580.53
Add:	II.C.1. Fundraising Expenses	
	II.C.2. Joint Fundraising Expenses	136,884.36
	II.C.3. Debts and Obligations	414,633.46
	II.C.4. Apparent Primary-Related Expenses Paid By The General Election Committee	2,470.27
Subtract:	II.C.5. Refunds/Rebates	(43,859.52)
	II.C.6. Press Accounts Receivable	(263,812.95)
Less:	2 U.S.C. §441a(b)(1) Spending Limitation	(20,200,000.00)
Total Expenditures in Excess of Limitation		\$ 68,296.17
Less:	Cost of raising compliance funds	(502,525.12)
Balance remaining within overall limit at 12/31/84		\$(418,679.96)

II.D.
CONTRIBUTIONS IN EXCESS OF LIMITATION -

The Committee has, since December 31, 1984, refunded or re-allocated all excessive contributions identified by the auditors in the work papers they submitted to the Committee, with the exception of those contributions for which there is no deliverable mailing address. Efforts to return or reallocate the contributions listed on the Schedule on p. 61 were unsuccessful in that the post office returned the mail. We propose to donate these contributions to a charitable foundation. All of the other excessive contributions have been reported as refunded in the First and Second Quarters, 1985 3-P reports filed by the Committee. The auditors may inspect the checks at their convenience.

87040523286

II.D.
CONTRIBUTIONS IN EXCESS OF LIMITATION -

Contributions Committee Has Been Unable To Refund

<u>CONTRIBUTOR</u>	<u>AMOUNT</u>
Sherman Squire	\$ 500.00
Adolph Schuman	\$1,000.00
Roberta Weiner	\$1,000.00
Patricia Eames	\$ 50.00
Imogene Monk	\$ 100.00
Carl Hansen	<u>\$1,100.00</u>
TOTAL	<u>\$3,750.00</u>

Our efforts to contact these contributors by mail or by phone have been unsuccessful. These contributions will be donated to charity at the close of the Committee.

87040523287

TABLE OF CONTENTS
Exhibits A-D

	<u>Audit Report</u>	<u>Page Numbers</u> <u>Legal Analysis</u>	<u>Committee's Response</u>
Exhibit A			
Allocation of Expenditures to States	5-7	75	111
Specific Allocation Methods	7	75	111
Media Expenditures	7-8	75-76	111
Intra-State Travel and Subsistence Expenditures	8-9	76-79	112-122
Salaries, Employer FICA, and Consultant Fees	9-12	79-80	123-127
Compliance and Fundraising Expenditures	13	80	128
Telephone and Utilities	13-14	80-81	128-130
Fundraising Expenditures - 28 Day Rule	14-15	81-83	131-132
Public Opinion Polling Expenditures	16	83	133
Other Expenditures Requiring Allocation - Automobile Leasing	16	84-85	134-135
Telephone and Related Services for Iowa, Maine and New Hampshire	20-21	85	136
Printing and Shipping Expenditures	22	85	137
Miscellaneous Expenditures	22-24	85-86	138

8
7
0
4
0
5
2
3
2
9
8

TABLE OF CONTENTS
Exhibits A-D

	<u>Audit Report</u>	<u>Page Numbers</u> <u>Legal Analysis</u>	<u>Committee's Response</u>
<u>Exhibit A</u> (continued)			
Debts and Obligations Requiring Allocation When Paid	24-25	86-87	139
Recap of Allocable Expenditures	26-27	87, 96	140-141
<u>Audit Report - Attachment I</u>			
Intra-State Travel and Subsistence			
Maine	28-31		112-113, 120
Iowa	31-40		114-116, 121
New Hampshire	41-47		117-119, 122
<u>Audit Report - Attachment II</u>			
Salaries, Employer FICA and Consultant Fees	48-49		123-127
<u>Exhibit B</u>			
Limitation on Expenditures	50-51	88	142
Fundraising Expenses	51-54	88-90	142-145
Joint Fundraising Expenses	54-55	90	146
Debts and Obligations to be Applied to the Overall Limitation	55-58	90-91	147
Apparent Primary Election Campaign Expenses Paid by the General Election Committee	58-60	91-92	148
Refunds/Rebates	60	92-93	110, 149
Accounts Receivable	60-66	93-94	150-156

TABLE OF CONTENTS
Exhibits A-D

	<u>Audit Report</u>	<u>Page Numbers</u> <u>Legal Analysis</u>	<u>Committee's Response</u>
<u>Exhibit B</u> (continued)			
Committee Adjustment to Expenditures Subject to the Overall Expenditure Limitation	66-68	94-95	157-159
Expenditures Subject to Overall Limitation-Recap	68-70	96-97	160
<u>Exhibit C</u>			
Failure to Report Refunds/Rebates	71	97	110
<u>Exhibit D</u>			
Contributions in Excess of Limitation	72-73	97-98	161-162

9
2
3
2
5
0
4
0
5
8



FEDERAL ELECTION COMMISSION

1125 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2241

Date Filmed 1/2/87 Camera No. --- 2

Cameraman AS

87040623291



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2/13/87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 3241.

97040640017

2233 Mondale for President
2201 Wisconsin Avenue, N.W. Suite 214
Washington, D.C. 20007
Telephone: 202-625-1600 333-4591

CCC# 2237
MONDALE

December 8, 1986

Charles N. Steele
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2241

Dear Mr. Steele:

Enclosed you will find a signed copy of the Conciliation Agreement proposed by the Commission in the above-referenced matter. The only change made by the Committee was the insertion of "As" before "Treasurer" in the caption of the case. Upon receipt of notification that the Commission has signed the Agreement, we will formally notify you that the Committee does not intend to dispute the initial repayment determination and that the Committee intends to withdraw its appeal in Mondale for President v. FEC, No. 85-1338 (D.C. Circuit).

It is our understanding from our discussions with your staff concerning this agreement that the Addendum to the Primary Audit Report does not contain any additional compliance referrals or repayment requests. Further, it is our understanding that the staff and Commission will make every effort to send the Addendum to the Primary Audit Report and the General Election Audit Report and Addendum to the Committee as soon as possible.

Thank you very much for your prompt response to our request for conciliation concerning these matters.

Sincerely,

Carolyn U. Oliphant
Carolyn U. Oliphant
Deputy General Counsel

REC'D 10 P 1:43

37110541248



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

23.5.87

THE FOLLOWING MATERIAL IS BEING ADDED TO THE
PUBLIC FILE OF CLOSED MUR 2241 .

37110343075

C00H2584

Mondale for President
2201 Wisconsin Avenue, N.W.
Washington, D.C. 20007
Telephone: 202-625-1600

MONDALE

January 20, 1987

Charles N. Steele
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2241

Dear Mr. Steele:

Enclosed is a check in the amount of \$68,000.00 in payment of the civil penalty in the above-referenced matter.

Sincerely,

Carolyn U. Oliphant

Carolyn U. Oliphant
Deputy General Counsel

37040643075

1 1 1 1 4 0 7 7

MONDALE

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
999 'E' Street, N.W.
WASHINGTON, D.C. 20463

ATTN: CHARLES N. STEELE, ESQ.

VIA APPLE COURIER