



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

THIS IS THE BEGINNING OF MUR # 3467

DATE FILMED 5-11-94 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 10, 1992

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REFERRALS TO THE OFFICE OF GENERAL COUNSEL-
GEORGE BUSH FOR PRESIDENT COMMITTEE, INC.

On January 7, 1992 the Commission voted to refer to your office Exhibits A through D resulting from the audit of the George Bush for President Committee, Inc. On Attachment 1 of Exhibit B, we have designated which candidates paid for their trips and make up the \$5,854.00 mentioned in the text on page 5 of Exhibit B. These items not being identified appeared to cause some confusion during the Commissions consideration of the matter.

Should you have any questions please contact Joe Stoltz or Russ Bruner at 219-3720.

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Apparent Excessive Contributions

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed \$1,000.00.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.00.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the Treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contributions are deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. §110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee

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until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contribution in violation of any limitation on contributions.

1. Apparent Excessive Contributions from Individuals

During the review of contributions from individuals, the Audit staff determined that the Committee had accepted 242 contributions from individuals which were in excess of the 2 U.S.C. §441a(a)(1)(A) limit and had not been refunded or redesignated within the time specified at 11 C.F.R. §110.1(k). The excessive portions of these contributions totaled \$192,370.00.

Of these 242 contributions, 192 for which the excessive amounts totaled \$163,850.00, were not refunded in a timely manner.^{1/} The average number of days from the Committee's date of deposit to the date of refund was 104.

An additional 50 contributions for which the excessive amounts totaled \$28,520.00 were transferred to George Bush for President Compliance Fund (Compliance Fund). Forty-one of the 50 contributions, the excessive portion of which totaled \$21,835, had been redesignated to the Compliance Fund by the contributor, but not in a timely manner. For these forty-one contributions, the copies of letters for redesignation to the Compliance Fund provided by the Committee contained the contributor's signature. However, the letters prepared by the Committee provided no line which requested or encouraged the contributor to enter a date, and no other evidence of the date the redesignations were received was retained by the Committee. Other than the date of the transfer to the Compliance Fund, none of the dates maintained in the Committee records indicated that the contributions were redesignated in a timely manner. This problem existed in the early part of the campaign. Later in the campaign, the Committee used letters requesting that contributors enter response dates, and in some instances, maintained the postmarked envelopes in which the redesignations had been received. Records furnished for the audit did not include any redesignation letters

^{1/} Section 103.3(b) of Title 11 of the Code of Federal Regulations was amended effective April 8, 1987. However, it is the opinion of the Audit staff that these contribution refunds were not made within a reasonable time as required by the previous regulation.

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for the remaining 9 transfers which totaled \$6,685. The average number of days from the Committee's date of deposit to the date of transfer was 82.

Although the Committee did not establish a separate account for the deposit of contributions which were possibly excessive or prohibited, there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds.

The Audit staff provided the Committee a schedule of the untimely refunds and redesignations at the exit conference.

2. Excessive Contributions from Political Committees

During the review of contributions from political committees, the Audit staff noted 5 contributions for which the excessive portions totaling \$11,000 were not refunded in a timely manner. The average number of days from the Committee's date of deposit to the date of refund was 121.

As noted above, a separate account was not established by the Committee for possible illegal contributions, however, there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds.

The Committee was provided with a schedule of the excessive political committee contributions at the exit conference.

In the Interim Audit Report, the Audit staff recommended that the Committee provide the following: (1) evidence that the contributions discussed above were refunded in a timely manner; (2) and for the 9 contributions from individuals for which no redesignations were found, provide evidence that the contributions were properly redesignated or that the contributions were refunded including copies of the front and back of the negotiated refund checks.

Based on additional work done by the Audit staff after the Committee's response to the interim audit report, it was determined that the Committee had accepted 244 contributions from individuals in excess of the 441a(a)(1)(A) limit, and 194 contributions, totaling \$163,725.00, were not refunded in a timely manner. The average number of days from the Committee's date of deposit to the date of refund was 112.

In its response to the Interim Audit Report, the Committee stated, that a majority of the contributions occurred early in 1987. The regulation that existed during that time period only required a refund or redesignation be made within a reasonable time. Of the excessive contributions that were not timely refunded, 74 were deposited prior to April 8, 1987, the

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effective date of the change to Section 103.3(b). Of the 74 contributions, none were refunded prior to April 8, 1987. The average number days from the Committee's date of deposit to the date of refund was 150. The Audit staff does not believe that the average of 150 days meets the reasonable time standard in the previous regulation.

Concerning the other 50 contributions, the Committee stated that we should not have relied on the "action date" as the date upon which the redesignation occurred or as the date the transfer of funds took place. The "action date" was the date the the Committee used to update the files. To support this position, the Committee submitted 5 of the 9 redesignations that the Audit staff could not locate during fieldwork. The dates on these 5 letters support the timely redesignation of the contributions. The "action date" for these five contributions was much later than the date provided by the contributor on the redesignation letters. The Committee did not provide any other documentation concerning the remaining 4 transfers, totaling \$2,635.00.

The Committee did not provide any other explanation concerning the 5 contributions from political committees that were not refunded in a timely manner.

The Committee's response takes exception to the use of the "action date" in the records to judge the timeliness of reattribution and redesignations. The Audit staff acknowledges the "action date" is not the date of the reattribution or redesignation. However, since the Committee's records for these contributions contain no other date to indicate when the reattribution or redesignation occurred, and the action dates tested by the Audit staff were after the reattribution date, using the "action date" is in the Committee's best interest. The alternative would be to treat all undated reattributions and redesignations as untimely. The five letters submitted with the response do not prove that all reattributions and redesignations were timely.

Recommendation #1

The Audit staff recommends that pursuant to the Commission approved Materiality Thresholds, this matter be referred to the Commission's Office of General Counsel.

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Air Force II

Section 9034.7(b)(2) of Title 11 of the Code of Federal Regulations states, in part, a trip that includes campaign-related and non campaign related stops, that portion of the cost of the trip allocable to campaign activity, shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin.

Section 9034.7(b)(3) of Title 11 of the Code of Federal Regulations states, in part, for each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

Section 9034.7(b)(4) of Title 11 of the Code of Federal Regulations states, in part, for trips by government conveyance, a list of all passengers, along with a designation of which passengers are and which are not campaign related, shall be made available to the Commission.

Section 9034.7(b)(5) of Title 11 of the Code of Federal Regulations states, in part, if government conveyance is used for campaign-related travel, the candidates authorized committee shall pay the government an amount equal to the first class commercial airfare plus the cost of other services, or the commercial charter rate plus the cost of other services.

Section 9003.4(a)(1) of Title 11 of the Code of Federal Regulations states, in part, a candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 C.F.R. 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with the general election campaign and which are for use during the expenditure report period. Examples include but are not limited to expenditures for establishing financial accounting systems, organizational planning and expenditures for polling.

The candidate used Air Force II for campaign travel. The Office of the Vice-President would bill the Committee for the campaign related portion of the trip at first class airfare plus one dollar. Each billing included a manifest showing the people that traveled on Air Force II and whether they were traveling on official or unofficial business. The unofficial portion of the manifest generally represented people that traveled for political reasons. Beginning in the later part of March, 1988, the Audit staff noted persons who traveled on Air Force II for unofficial reasons but whose airfare was not billed to the Committee by the Office of the Vice-President. Since, the Committee was not billed, they did not pay for these airfares, though the people involved appeared to be traveling for political reasons.

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Many of the individuals on the manifests were political figures. According to Committee officials, these political figures or their political committees were probably billed by the Office of the Vice-President for their portion of the trip, and traveled for reasons of their own and not for Committee purposes. However, on a number of the flights people traveling for unofficial or political reasons were either employees or volunteers associated with the Committee, including the candidate.

The Committee was provided the names of the individuals and asked to provide additional information as to who was billed for this airfare, and why the Committee wasn't liable for these people traveling on Air Force II. According to Committee records, the costs for people traveling on Air Force II from March 24, 1988 through August 16, 1988, for unofficial reasons, not paid by the Committee, totaled \$69,814.00.

Accompanying the billings for Air Force II, the Office of the Vice President would also bill for White House Communications Agency costs. These bills include what percentage or portion of a trip was political. The billings also indicated if another political organization was liable for a portion of the expenses. The invoices indicating other political organizations were billed for part or all the communication costs, totaled \$21,168.98. The Committee paid \$6,506.56 of this amount. There were additional billings not paid by the Committee which indicated 100% political use. These totaled \$16,595, and there was no record of payment by the Committee or any other organization in Committee files. These amounts and the cities the candidate traveled to were provided to the Committee at the close of fieldwork.

Starting on August 2, 1988 through August 9, 1988 the candidate made a number of trips which were paid for by the general election campaign (Bush-Quayle '88), even though the trips were made prior to the party's convention. These trips, including the White House Communications costs, totaled \$30,101.26. In the Audit staff's opinion these expenditures did not meet the requirements of 11 C.F.R. 9003.4(a)(1). Therefore, in the Interim Audit Report, this amount was added to expenditures subject to the overall spending limitation, and included in accounts payable on the Statement of Net Outstanding Campaign Obligations as a liability to Bush-Quayle '88.

In the Interim Audit Report, the Audit staff requested the following information:

a) Additional information about individuals that traveled on Air Force II for unofficial reasons but were not billed to or paid for by the Committee, including:

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- i) why the travel was not related to the primary campaign;
- ii) the name of the organization that paid for the trip; and
- iii) the amount paid by the other organization for each trip.

b) The Committee should provide additional information about White House communication costs, to include why on certain political trips billed by the Office of Vice President, the Committee only paid for a portion of the costs. The Committee should also explain why on other trips they paid for none of the costs. If another organization paid the charges, the Committee should supply information about the organization to include:

- i) why they paid these costs;
- ii) what they paid for; and
- iii) the amount paid.

c) The Committee should also supply additional information as to why it is not liable for the Air Force II and White House Communication costs for the trips in August, 1988, paid for by Bush-Quayle '88.

In the Committee's response to the Interim Audit Report, the Treasurer states that "the Campaign did, however, serve as a clearinghouse for 'political' travel on Air Force II (including non-campaign related political travel)." Also included is the following explanation by David Nummy, Comptroller of the Bush Committee:

"...the Campaign would receive requests from candidates, committees, and federal, state, and local officeholders requesting the opportunity to travel on Air Force II.... Such requests for political travel on Air Force II were accommodated by the campaign for the benefit of such other candidates, committees, or federal, state and local officeholders whenever possible, to the extent that there were seats available once the campaign's own travel requirements were met. The travel of these individuals was always contingent, however, on the approval of the Office of the Vice President....In these instances of non-Bush campaign travel by officeholders and others, the cost of these segments was billed directly by the Office of the Vice President to these individuals because their travel was not related to the George Bush For President Committee."

The Treasurer adds that "even if an individual on the plane was a 'politician,' there is no reason to assume that that

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individual was not on the plane to further his or her own political objectives, as opposed to the Bush campaign's" and:

"...even if an individual was on the plane for 'unofficial' (non-governmental) business, this does not mean that he or she was necessarily on the plane for 'Bush campaign' business. Members of the Vice President's family, and personal friends, travelled on Air Force II for reasons related to neither government nor campaign business. If the Vice President had travelled by commercial plane, such costs would have been paid directly by other non-public sources. However, the Vice President of the United States travels as a matter of course on Air Force II, so that all personal guests are handled through the United States Government. Moreover, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the transportation of the individuals in question, unless that information is publicly available."

The Treasurer continues, "as was the case in the general election Audit Report, several of the federal candidates or office holders identified on Attachment 2 to the Interim Report paid for their transportation as reflected on their FEC disclosure reports on file with the Commission. As to several of the remaining trips identified on Attachment 2 to the Audit Report, the Commission has already been notified that these were not campaign related trips". The Committee provided no additional additional information as to which office holders paid for their transportation expenses.

The Committee goes on to state that several individuals were incorrectly identified as Committee staff on Attachment 2 of the Interim Audit Report. According to the Treasurer, "Every Bush staffer or individual authorized to travel on behalf of George Bush for President was paid for by the Bush Committee." Again, as noted by the Audit staff in the Interim Audit Report, the information relied on by the staff was from the billings to the Committee by the Office of Vice President.

With respect to White House communication costs, the Treasurer explains that, as in the case of the Air Force II costs, "when the Vice-President travelled on non-campaign business, the campaign was not charged for WHCA costs. As can be seen when comparing Attachments 2 and 3 to the Interim Audit Report, for each trip which previously was identified as non-campaign related, no WHCA costs were assessed to the campaign. Again therefore, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the WHCA costs in question, unless that information is publicly available."

The Audit staff researched the Federal Election Commission disclosure reports and identified 18 individuals who were members of or candidates for Congress, whose air travel

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between March 24 and August 9, 1988, was paid for by their own committees. This included a three spouses of candidates who traveled on Air Force II for unofficial reasons. Of \$18,525.00 billed for these individuals, \$5,854.00 was paid by the candidate committees. Another \$5,992.00 pertained to travel that the Commission determined be the General Election Committee's activity in August, 1988. An explanation of that activity is presented below. Of the original \$69,814.00 detailed in the interim audit report, \$57,968.00 remains unaccounted for as to which organization paid for this travel. In the Audit staff's opinion, the previously mentioned \$57,968.00 in transportation costs and the White House Communication Agency costs of \$31,257.42 not paid by the Committee should be considered contributions in-kind.

In the next issue addressed, the Treasurer states "the travel in the week of August 2 through 9 were appropriately charged to the General Election Committee." The Treasurer reasons that "by summer, 1988 all of the presidential primaries had been completed, and Vice President Bush was assured of his party's nomination. Thus, the campaign properly undertook to determine whether Vice President Bush's travel during this post-primary period was nomination or general election related. Expenses were paid by either George Bush for President or Bush-Quayle 88 in accordance with this determination." The Treasurer states further, that "the Commission has previously permitted general election committees to pay expenses attributable to the general election which are incurred prior to the general election period", and the Treasurer refers to Reagan-Bush Audit of 1984 as support for this statement.

The Audit staff does not dispute that by August of 1988, all primaries were over or that the Candidate appeared to be assured the nomination. In the Bush-Quayle 88 audit report, the Commission determined that the travel costs discussed above did not meet the definition of permissible pre-expenditure report period expenses and therefore were considered non-qualified campaign expenses on the Bush-Quayle 88 audit report. The Audit staff is of the opinion that no further action, with respect to the Committee, is necessary with regard to the \$30,101.26.

Interim Audit Report Attachments 2 and 3, referred to in the Committee's response, are included as Attachments 1 and 2 to this document.

Recommendation #2

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

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PEOPLE TRAVELING ON AIR FORCE II
FOR UNOFFICIAL REASONS,
NOT PAID BY COMMITTEE

| <u>DATE(S) OF TRIP</u> | <u>NAME OF PERSON</u> | <u>POSITION</u> | <u>AMOUNT OF TRIP PER MANIFEST</u> | <u>TOTAL PER TRIP</u> |
|------------------------|-----------------------|---|------------------------------------|-----------------------|
| 3/24/88 | Weicker | Senator-Conn. | \$291.00 | |
| " | Johnson | Rep.-Conn. | " | |
| " | Rowland | " " | 582.00 * | |
| " | Shays | " " | " * | |
| " | Snyder | Press Sect'y to Sntr. Weicker | 291.00 | \$2,037.00 |
| 3/25/88 | Hetley | Rep.-Ca. | 639.00 | |
| " | Dornon | " " | 111.00 | |
| " | Mrs. Dornon | Unknown | " | |
| " | Drier | Rep.-Ca. | " * | 972.00 |
| 4/8 - 4/9/88 | Mack | Rep.-Fla. | 102.00 | |
| " | Martinez | Gov.-Fla. | " | |
| " | Smith | Sect'y of State Florida | " | |
| " | Semble | GBFP-Fla. | " | |
| " | Zappola | " " | " | 510.00 |
| 4/11 - 4/13/88 | Molinari | Rep.-N.Y. | 1,532.00 | |
| " | Boehlert | " " | 365.00 * | |
| " | Goodman | State Sntr. N.Y. | 877.00 | |
| " | Barclay | " " " | 474.00 | |
| " | Emery | Executive Dir. St. Lawrence Seaway Oms. | 306.00 | 3,554.00 |
| 4/18/88 | Latta | Rep.-Ohio | 532.00 ** | |
| " | Regula | " " | 311.00 * | |
| " | Mrs. Regula | Unknown | " | |
| " | McNamara | GBFP | 221.00 | 1,375.00 |
| 4/19/88 | Clinger | Rep.-Pa. | 287.00 * | |
| " | Goodling | " " | 187.00 | |
| " | Coughlin | " " | 274.00 * | |
| " | Hillman | GBFP | 287.00 | |
| " | Judge | " " | 287.00 | |
| " | Anstine | " " | 100.00 | 1,422.00 |

* - Amount paid by candidate's committee.

** - \$201 partial payment made.

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PEOPLE TRAVELING ON AIR FORCE II
FOR UNOFFICIAL REASONS,
NOT PAID BY COMMITTEE
(continued)

| <u>DATE(S) OF TRIP</u> | <u>NAME OF PERSON</u> | <u>POSITION</u> | <u>AMOUNT OF TRIP PER MANIFEST</u> | <u>TOTAL PER TRIP</u> |
|------------------------|-----------------------|-------------------|------------------------------------|-----------------------|
| 4/25/88 | Spector | Senator-PA | 408.00 | |
| " | Ridge | Rep.-PA | 286.00 | |
| " | Woodrow | Assis. to Spector | 550.00 | 1,244.0 |

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PEOPLE TRAVELING ON AIR FORCE II
FOR UNOFFICIAL REASONS,
NOT PAID BY COMMITTEE

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| <u>NAME OF DATE(S) OF TRIP</u> | <u>AMOUNT OF TRIP PERSON</u> | <u>TOTAL PER POSITION</u> | <u>PER MANIFEST</u> | <u>TRIP</u> |
|--------------------------------|------------------------------|------------------------------------|---------------------|-------------|
| 4/26/88 | Oxley | Rep.-Ohio | 273.00 | |
| " | Orr | Governor-Indiana | 363.00 | |
| " | Nathanson | GBFP | " | 999.00 |
| 4/29/88 | Durnil | " " | 146.00 | |
| " | Lowry | " " | " | 292.00 |
| 4/30/88 | McNamara | " " | 417.00 | |
| " | Mifsud | " " | " | |
| " | Bennett | GOP | " | 1,251.00 |
| 5/2/88 | Bennett | " " | 105.00 | 105.00 |
| 5/4-5/6/88 | McClure | Sntr.-Id. | 496.00 * | |
| | Mrs. McClure | Unknown | 40.00 * | |
| | Syms | Sntr.-Id. | " * | |
| | Bereuter | Rep.-Ne. | 531.00 * | |
| | Risch | GBFP | 40.00 | |
| | Tews | " " | 531.00 | 1,678.00 |
| 5/12-5/18/88 | Dorman | Rep.-Ca | 1,271.00 | |
| " | Gallegly | " " | 1,179.00 | |
| " | Smith | " -Or. | 553.00 * | |
| " | Pashayan | " -Ca. | 116.00 * | |
| " | Mrs. Pashayan | Unknown | 116.00 * | |
| " | Campbell | State Sntr.-Ca. | 92.00 | |
| " | McMillan | GBFP | 713.00 | 4,040.00 |
| 5/25/88 | R.Teeter | " " | 168.00 | |
| " | J. Sullivan | " " | " | |
| " | J. Rocco | " " | " | |
| " | G. Buchwald | " " | " | |
| " | G. Williams | Guest | " | |
| " | C. Fuller | Chief of Staff | " | |
| " | C. Boyden Gray | Counsel to the VP | " | |
| " | John Keller | Dep. Assis. for Advance | " | |
| " | Stephen Hart | Acting Press Sect'y | " | |
| " | D. Terpeluk | Assis. Chief of Staff | " | |
| " | B.R. Detchon | Assis. to Communic. | " | 1,848.00 |
| 6/18/88 | Haskert | Rep.-Il. | 567.00 | |
| | Bolton | Sect'y Lyng | " | |
| | Fred Bush | Press Sect'y Presidential Trust | 459.00 | 1,539.00 |

PEOPLE TRAVELING ON AIR FORCE II
FOR UNOFFICIAL REASONS,
NOT PAID BY COMMITTEE

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| <u>DATE(S) OF TRIP</u> | <u>NAME OF PERSON</u> | <u>POSITION</u> | <u>AMOUNT OF TRIP PER MANIFEST</u> | <u>TOTAL PER TRIP</u> |
|------------------------|-----------------------|--|------------------------------------|-----------------------|
| 6/22/88 | Rogers | Rep.-Ky. | 738.00 | 738.00 |
| 6/24/88 | Gradison | Rep.-Oh | 566.00 * | 1,132.00 |
| " | D. Pope | Dir.-U.S. Mint | " | |
| 6/26/88 | Zacks | Co-Chairman, VP's Middle East Advisory Committee | 318.00 | 318.00 |
| 6/28-6/29/88 | G. Bush | Candidate | 1,902.00 | 8,150.00 |
| " | Gov. T. Thompson | Gov.-Wi. | 421.00 | |
| " | Ausman | Dep. Sect'y of Agricul. | " | |
| " | Fridel | Guest | " | |
| " | C. Fuller | Chief of Staff | 1,902.00 | |
| " | B. Zanca | Advance | 1,181.00 | |
| " | J. Keller | " " | <u>1,902.00</u> | |
| 6/30/88 | G. Bush | Candidate | 602.00 | |
| " | Mrs. Bush | Wife | " | |
| " | Bruce Zanca | Advance | " | |
| " | Casey Healey | Personal Assist. to Mrs. Bush | " | |
| " | John Keller | Dep. Assis. for Communic. | " | |
| " | B.R. Detchon | Assis. for Communic. | " | |
| " | Frederick Bush | Presidential Trust | 301.00 | 4,214.00 |
| " | T. Demery | Presidential Trust | " | |
| 7/7/88 | G. Bush | Candidate | 1,260.00 | |
| " | Mrs. Bush | Wife | 630.00 | |
| " | M. Bilirakis | Rep.-Fla. | 1,260.00 | |
| " | Mrs. E. Bilirakis | Unknown | " | |
| " | A. Courtelis | GBFP | 630.00 | |
| " | C. Healey | Personal Assist. to Mrs. Bush | " | |
| " | J. Keller | Dep. Assis. for Advance | 1,260.00 | |

PEOPLE TRAVELING ON AIR FORCE II
FOR UNOFFICIAL REASONS,
NOT PAID BY COMMITTEE

| <u>DATE(S) OF TRIP</u> | <u>NAME OF PERSON</u> | <u>POSITION</u> | <u>AMOUNT OF TRIP PER MANIFEST</u> | <u>TOTAL PER TRIP</u> |
|------------------------|-----------------------|---------------------------------|------------------------------------|-----------------------|
| " | B.R. Detchon | Assis. for Communications | 1,260.00 | |
| " | R. Kaufman | GBFP | 630.00 | |
| " | B. Zanca | Advance | " | 9,450.00 |
| 7/8/88 | Sundquist | Rep.-TN. | 409.00 * | 409.00 |
| 7/20/88 | G. Bush | Candidate | 376.00 | |
| " | K. Chumachenko | Public Liason White House | 752.00 | |
| " | C. Fuller | Chief of Staff | 752.00 | |
| " | B. Zanca | Advance | 376.00 | |
| " | J. Keller | " " | 376.00 | 2,632.00 |
| 7/21/88 | G. Bush | Candidate | 879.00 | |
| " | S. Thurmond | Sntr.-S.C. | 455.00 | |
| " | C. Fuller | Chief of Staff | 879.00 | |
| " | B. Zanca | Advance | 455.00 | |
| " | J. Swift | " " | 879.00 | |
| " | K. White | Congressional Candidate-S.C. | 182.00 | |
| " | V. Adams | RNC Victory '88 | 182.00 | 3,911.00 |
| 7/22/88 | G. Bush | Candidate | 981.00 | |
| " | J. Casper | Domestic Policy | " | |
| " | C. Fuller | Chief of Staff | " | |
| " | J. Keller | Deputy Assis. for Advance | " | |
| " | B. Zanca | Advance | 95.00 | 4,019.00 |
| 7/23/88 | G. Bush | Candidate | 933.00 | |
| " | R.C. Hackett | Mayor of Memphis | 497.00 | |
| " | C. Fuller | Chief of Staff | 933.00 | |
| " | J. Keller | Dep. Assis. for Advance | " | |
| " | S. Peake | Assistant to the VP | " | 4,229.00 |
| 7/24/88 | P. Domenici | Sntr.-N.M. | 713.00 | |
| " | M. Lujan | Rep.- " | " | 1,426.00 |
| 8/4/88 | C. Fuller | Chief of Staff | 646.00 | |
| " | J. Keller | Dep. Assis. for Advance | 646.00 | 1,292.00 |

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PEOPLE TRAVELING ON AIR FORCE II
 FOR UNOFFICIAL REASONS,
 NOT PAID BY COMMITTEE

9
4
0
3
0
9
7
3
2
9
3

| <u>DATE(S) OF TRIP</u> | <u>NAME OF PERSON</u> | <u>POSITION</u> | <u>AMOUNT OF TRIP PER MANIFEST</u> | <u>TOTAL PER TRIP</u> |
|------------------------|-----------------------------|---------------------------|------------------------------------|-----------------------|
| 8/9/88 | G. Bush | Candidate | 808.00 | |
| " | A. Spector | Sntr.-PA | " | |
| " | R. Castille | U.S. Dist. Attorney PA | 534.00 | |
| " | R. Zimmerman | State Attorn. Gen.-PA | " | |
| " | J. Keller | Dep. Assis. for Advance | 808.00 | |
| " | B.R. Detchon | Assis. for Communications | " | |
| " | B. Clinger | Rep.-PA. | 63.00 | |
| " | T. Ridge | " " | " | |
| " | L. Goughlin | " " | 274.00 * | |
| " | P. Terpeluk | PA. Victory '88 Finance | " | \$ 4,974.00 |
| | Total Not Paid By Committee | | | \$ 69,814.00 |

* - Candidate paid for this trip.

WHITE HOUSE COMMUNICATIONS COSTS

| <u>CITY</u> | <u>DATE</u> | <u>INVOICE AMOUNT</u> | <u>AMOUNT PAID BY COMMITTEE</u> | <u>COMMENTS-AMOUNTS BILLED TO OTHER ORGANIZATIONS</u> |
|----------------------|-------------|---------------------------|-------------------------------------|--|
| Morgantown, WV | 5/3/88 | Invoice Missing | \$ 298.56 <u>1/</u> | Unknown <u>2/</u> |
| LA/Orange County, CA | 6/5/88 | \$ 1,919.40 | 441.46 | Balance of \$1,477.94 Billed to Presidential Trust-RNC |
| Ontario, CA | 6/6/88 | 896.58 | -0- | Billed to San Bernadino County GOP |
| Denver, CO. | 6/10/88 | 1,758.00 | 544.98 | Balance of \$1,213.02 Billed to CO Victory '88 |
| Danville, VA | 6/12/88 | 1,758.00 | -0- | \$1,459.14 Billed to Linda Arey for Congress and \$298.86 Billed to VA Victory '88 |
| Richmond, VA | 6/16/88 | 1,758.00 | 1,529.46 | Balance of \$228.54 Billed to VA Victory '88 |
| Chicago, IL | 6/18/88 | 1,758.00 | -0- | \$1,758 Billed to Presidential Trust-RNC |
| Cincinnati, OH | 6/24/88 | 1,758.00 | 826.26 | Balance of \$931.74 Billed to Victory '88 |
| San Francisco, CA | 6/28/88 | 2,531.00 | -0- | Unknown |
| Appleton, WI | 6/29/88 | 1,758.00 | -0- | " " |
| New York, NY | 6/30/88 | 1,758.00 | -0- | " " |
| Dallas, TX | 7/06/88 | 1,758.00 | 1,476.72 | Balance of \$281.28 Billed to President Trust |
| Boston, MA | 7/07/88 | 1,758.00 | -0- | Unknown |
| Atlanta, GA | 7/08/88 | 1,758.00 | 703.20 | Balance of \$1,054.80 Billed to Atlanta Victory '88 |

1/ Not included in Column total

2/ Nothing in Committee records indicates amount
paid by other organizations

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WHITE HOUSE COMMUNICATIONS COSTS

| <u>CITY</u> | <u>DATE</u> | <u>INVOICE AMOUNT</u> | <u>AMOUNT PAID BY COMMITTEE</u> | <u>COMMENTS-AMOUNTS BILLED TO OTHER ORGANIZATIONS</u> |
|-----------------|-------------|---------------------------|-------------------------------------|---|
| Detroit, MI | 7/20/88 | 1,758.00 | -0- | \$1,758.00 Billed to Michigan Victory '88 |
| Charlotte, NC | 7/21/88 | 1,758.00 | -0- | Unknown |
| Greenville, SC | 7/21/88 | 1,758.00 | -0- | " |
| Milwaukee, WI | 7/22/88 | 1,758.00 | -0- | " |
| Bayhead, NJ | 7/22/88 | 1,758.00 | -0- | " |
| Memphis, TN | 7/23/88 | 1,758.00 | -0- | \$1,758 Billed to Tennessee Victory '88 |
| Tampa, FL | 7/23/88 | 2,531.00 | -0- | \$2,531 Billed to Florida Victory '88 |
| Albuquerque, NM | 7/24/88 | <u>1,758.00</u> | <u>984.48</u> | \$773.52 Billed to New Mexico |
| TOTAL | | <u>\$37,763.98</u> | <u>\$6,506.56</u> | |

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Allocation of Expenditures to States

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that 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. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. Further, 11 C.F.R. §106.2(c) describes the various types of activities that are exempted from State allocation.

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

Section 106.2(b)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

For the 1988 election, the expenditure limitation for the State of Iowa was \$775,217.60 and for the State of New Hampshire was \$461,000.00. Through the Committee's March 31, 1990 report on its FEC Form 3P, Page 3, the Committee's expenditures allocated to Iowa totalled \$775,041.95 and expenditures allocated to New Hampshire totalled \$481,332.45.

The Committee provided the Audit staff a computerized file containing all their expenditures from inception through December 31, 1988. The Committee also provided the Audit staff with allocation worksheets. The Committee's allocation methods were reviewed.

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Copies of workpapers and supporting documentation for the Audit staff's allocations were provided to the Committee at the end of fieldwork. In the Interim Audit Report was a recap of allocable costs to Iowa and New Hampshire.

1. Adjustments to Committee's Allocations

On their report covering April, 1988, the Committee included a downward adjustment of their Iowa expenditures subject to the spending limitation. The support for this adjustment was a recalculation of Iowa allocable amounts from inception to April 30, 1988. In reviewing this recalculation, it was noted that refunds which had been previously considered in the Iowa allocations were excluded from the revised amount. In addition, a portion of the refunds received after April 30, 1988 were not considered in the Committee's subsequent allocations. These refunds result in a \$3,091.62 reduction in reported allocations.

It was also noted that the Committee's revised Iowa allocations apparently neglected to calculate a 10% compliance and 10% fundraising exemption on all salary expenses charged to the State. The Audit staff calculated a corrected exemption which resulted in a \$9,354.36 reduction to the reported allocation. The Audit staff also corrected an apparent error in the allocation of equipment purchases charged to Iowa. This correction resulted in a \$2,004.00 allocation reduction.

Finally, a number of other miscellaneous adjustments were made that require a net increase of \$459.45.

The net effect of these adjustments was a \$13,990.53 reduction in the reported allocation.

For New Hampshire, the Audit staff made a \$5,559.93 adjustment to decrease expenditures subject to the limitation, because the Committee did not calculate a fundraising exemption for payroll and overhead in the fourth quarter 1987. Also, the Committee did not provide any workpapers to support their allocations to New Hampshire for the first quarter, 1987 report. The Audit staff recalculated the amount to be allocated from the automated disbursement file tape and included telephone installation charges which the Committee had apparently not allocated. These two adjustments cause a \$2,830.36 increase in the allocated amount. There were also miscellaneous adjustments that reduced Committee expenditures subject to the limit by \$1,479.18. Altogether, these adjustments decreased the expenditures subject to the New Hampshire limit by \$4,208.75.

In response to the Interim Audit Report, the Committee agreed with the Audit staff's downward adjustment of the Iowa allocations by \$13,990.53 and the New Hampshire allocations by \$4,208.75.

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2. Individuals' Travel and Salary

Section 106.2(b)(2)(ii) of Title 11 of the Code of Federal Regulations states that 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.

Section 106.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, 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. For purposes of this section "subsistence" includes only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

Also, the Explanation and Justification for the above regulations in the Federal Register, Volume 48, No. 25 page 5225, states, in part, 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. 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 the person was in a State rather than using 24-hour periods. If an individual works in a State for five consecutive days or more, that individuals salary must be allocated to that State from the date of his or her arrival.

Further, Chapter 1, page 32 of the Financial Control and Compliance Manual, states, "When determining whether a campaign staff person worked in a State for more than 4 consecutive days, the Commission will generally look to calendar days or any portion thereof, rather than 24 hour periods."

Finally, the Explanation and Justification for 11 CFR 106.2(c)(4) (Federal Register, Volume 48, No. 25, Page 5226) states, "Travel across State lines that is occasioned by transportation or lodging facilities will not be deemed exempt interstate travel. For example, a candidate or persons campaigning on a candidate's behalf in a particular State may have lodging accommodations in a contiguous State. In such cases, travel across State lines to campaign in a contiguous state would not be considered exempt interstate travel."

The Audit staff reviewed the vendor files related to Committee staff travel in Iowa and New Hampshire to identify travel and salary costs which although allocable were not allocated to these states by the Committee. In most cases, costs of lodging, air travel and vehicle rental were paid from headquarters rather than by the traveler. Further, no receipts for meals were apparently required for per diem paid to travelers.

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As a result, in order to determine an individual's length of travel and location, it was necessary to create a travel itinerary for such individuals from these various sources.

This review revealed that expenditures for intra-state travel and subsistence had been incurred by staff persons in Iowa and New Hampshire who were in these states on five or more consecutive days, or were Iowa and New Hampshire residents, but were not allocated to the states by the Committee. The related payroll costs for these staff persons was also calculated and included as expenses allocable to these states. The payroll was calculated for the period of time in which these persons were documented as being in these states and was adjusted for the compliance and fundraising exemptions as appropriate.

During the Audit staff's review we noted the Committee on a number of occasions would have a Committee staff person traveling in Iowa or New Hampshire, stay overnight in those states for three consecutive nights, then spend the fourth night in a border state; and return to Iowa or New Hampshire the next day and were therefore in the state on consecutive days. The Committee, did not allocate these travel disbursements, including an employee or consultant's salary, to the Iowa or New Hampshire state limits.

Also, while reviewing the vendor files we noted the candidate and a number of Committee staff stayed at a hotel, in White River Junction, Vermont, from January 13, 1988 to January 17, 1988. The hotel and related costs totaled \$15,804.89. During this period the candidate participated in the debate at Dartmouth College in Hanover, New Hampshire.

According to the candidate's itinerary, Air Force II landed in New Hampshire on January 13. He participated in events in New Hampshire on each day starting January 14, through his departure on January 17, 1988. The Committee paid the hotel bills for 28 people. Of the 28, 22 people stayed 5 days or longer, and six stayed 4 days or less. Of the 22 people, 3 can be placed in New Hampshire 5 consecutive days, including the candidate. During this time period, the Committee rented five passenger vans and chartered several bus trips, one of which occurred January 16, 1988 from White River Junction to Hanover and return. The purpose of the bus trip was to transport people to the debate. In the Audit staff's opinion, with the exception of expenses for the six persons who traveled 4 days or less, the costs associated with the White River Junction, Vermont trip (hotels, meals, staff salary, staff office equipment, van, and auto rentals) should have been allocated to the New Hampshire expenditure limit. Some of the expenditures for this trip are included in the non-travel section below.

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The next month numerous campaign workers stayed at the Lowell Hilton in Lowell, Massachusetts. The period was immediately preceding the New Hampshire primary. The Committee also had individuals, including the candidate, lodged at a hotel in Nashua, New Hampshire. In some cases, portions of the period were spent at both hotels, with some individuals' names appearing on rooms at both hotels. Also, many of the people, including the Candidate, who were staying in Nashua moved to the Lowell Hilton on the evening of February 13, and returned to New Hampshire on February 14 in an apparent effort to avoid the application of the 5 day rule. The current allocations include 15 individuals who traveled for 5 consecutive days in New Hampshire and Massachusetts and stayed at the Lowell Hilton, but can not be placed in New Hampshire for 5 consecutive days.

In the Interim Audit Report, the Audit staff determined that the following travel and salary cost totals should be allocated to Iowa and New Hampshire:

| | <u>Iowa</u> | <u>New Hampshire</u> |
|--------|---------------------|----------------------|
| Travel | \$ 52,152.44 | \$ 69,635.51 |
| Salary | <u>39,351.28</u> | <u>56,732.16</u> |
| TOTAL | \$ <u>91,503.72</u> | \$ <u>126,367.67</u> |

The Committee was provided schedules of these travel and salary costs at the exit conference.

In addition to the amounts chargeable to the State spending limitations, the reallocation of salary from the national campaign to a State limitation results in an adjustment to the amount chargeable to compliance for purposes of the overall spending limitation. As a State expense, salary is eligible for a 10% compliance exemption. Compensation charged to the National Office is 5% compliance if part of operating, 85% compliance if part of the accounting office or 100% charged to the legal cost center and not otherwise allocated (see Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing, April 1987, Pages 22-24).

Adjustments to the compliance exemption for the compensation payments discussed above result in an increase in amounts chargeable to the overall spending limitation of \$8,266.98.

The Committee did not agree with the Audit staff's adjustments regarding individuals' travel and salary. The Treasurer states, "The Audit Division incorrectly relies on the comment of the Compliance Manual that 'the Commission will generally look to

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calendar days or any portion thereof that the person was in the State rather than using 24-hour periods.' The Audit Division's reliance on this provision is irrelevant, for it is undisputed that the campaign staffers at issue here left the state before the fifth calendar day and also before the fifth 24-hour period. Our only dispute is over the fact that those workers, after being out of the state, returned again at some point during the next day. The Audit Division contends that this re-entry qualifies as the fifth 'consecutive' day, whereas the Committee maintains that the stay was by definition not consecutive (since it was broken by time out of state)."

The Treasurer continues, "...an individual may be in a particular state for only one hour a day for five days with the result being that the individual's salary and travel expenses are counted toward that state's expenditure limits." The report includes "15 individuals who travelled for five consecutive days in New Hampshire and Massachusetts and stayed at the Lowell Hilton, but can not be placed in New Hampshire for five consecutive days." The Treasurer states that these should not be allocated to New Hampshire since "they are clearly not allocable to any state". He continues, that under the regulations there is no "requirement that the Committee allocate that individual's salary or travel expenses to any particular state. It may well be true that the individual was in the state 'on consecutive days,' just as if he had been there for one hour on five consecutive days, but it is certainly not true that the individual was in the state 'for five consecutive days.' The Audit Division has failed to recognize this distinction."

As additional information the Committee included an affidavit from Gary E. Fendler, who according to the affidavit was "the Field Supervisor for the Advance Team of the George Bush for President Committee". According to the affidavit, "A number of rooms would be blocked by the Committee months before an anticipated stay in Iowa or New Hampshire in order to assure that sufficient rooms would be available for the travelling campaign entourage. Further, some of these rooms would be reserved for more than five days to permit Committee staff to arrive and leave the state prior to and following an event, as necessary." Mr. Fendler continues, "my direction as well as the direction to the advance staff was to adhere to the policy of the campaign not to permit individuals to stay in a state for more than four consecutive days, so that the individual's salary and transportation expenses would not be allocable to that state. Therefore it was campaign policy that no individual was permitted to continuously occupy a room for more than four days. Rather, as the time came, individuals would stay in the rooms on an as needed basis. The hotels, however, would not necessarily have any record of a particular individual's comings and goings."

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The Audit staff does not agree with the Committee's interpretation of the regulations at 11 CFR 106.2(b)(2). The references to the Explanation and Justification for that regulation and the similar passage in the Financial Control and Compliance Manual make it very clear that leaving a state for a short period during an otherwise uninterrupted stay of more than 4 days, does not begin a new trip. To follow that interpretation would allow the undesirable result of permitting a campaign worker to cross a state line every few days, buy a newspaper or have lunch to generate a document to prove he was in the other state, and then return to the state in which he is working. This would avoid any allocation of the campaign worker's salary or expenses even though the individual was working in the same state for weeks at a time. By defining consecutive days as a calendar day or any portion thereof, the Commission requires that a person be out of a state for at least one entire calendar day. This requirement serves to insure the underlying assumption stated in the Explanation and Justification. That assumption is as follows, "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". Therefore, if a person remains in the state for more than four consecutive days, they are presumed to be working to influence the primary election in the state. The Committee appears to argue that a short trip across a state border somehow converts the individuals function from state related to national campaign strategy.

The affidavit from Mr. Fendler serves only to establish that it was the Committee's intention to use the provisions of 11 CFR 106.2(b)(2) to avoid allocation whenever possible and that hotel rooms were not always used as indicated on Committee records. Though the problem with hotel records may be as previously described by the Committee, absent some indication to the contrary, the Audit staff must assume that if the Committee's records indicate that an individual was in a particular location for a specified period of time, that person was in that location.

With respect to those persons who were lodged in Massachusetts during the period immediately preceding the New Hampshire primary, the Committee's response provides no additional information. As noted above and in the Interim Audit Report, the Explanation and Justification for 11 CFR 106.2(c)(4) makes it clear that lodging in a contiguous state does not preclude the allocations of an individual's salary and expense because such travel is not considered exempt interstate travel. In this case, the expenses are allocable under the general allocation provisions of 11 CFR 106.2(a)(1).

In the Interim Audit Report, the Audit Staff allocated some of Mr. Fendler's salary and travel to Iowa and New Hampshire based on the records provided by the Committee during

fieldwork. According to this information, Mr. Fendler was in Iowa from January 18 to January 22, 1988. Mr. Fendler did spend the night of January 19 in Omaha, Nebraska but returned to Des Moines on January 20. Mr. Fendler left Iowa and traveled to New Hampshire on January 22. Regardless, Mr. Fendler was in Iowa for 5 consecutive days.

The next period of time Mr. Fendler was in Iowa was from January 29 to February 8, 1988. From the information provided Mr. Fendler stayed in Moline, Illinois the nights of February 1 and 5, but returned to Iowa the next day. Mr. Fendler had two trips allocated to New Hampshire. The first covered the period of January 11 to January 17. The nights of January 11 and 12, Mr. Fendler stayed in Bedford, New Hampshire. For the period January 13 to the 17, Mr. Fendler was with the group in White River Junction, Vermont that was previously explained in this finding. Mr. Fendler was also in New Hampshire for the period February 8, through February 17, with the group that stayed at the Clarion Somerset in New Hampshire and the Lowell Hilton in Massachusetts.

The affidavit submitted by Mr. Fendler and the information submitted by the Treasurer does not dispute this information. There was an overallocation of \$25.00 in the Interim Audit Report.

The next issue addressed in the Committee's response involved allocating expenses of Iowa residents to the state of Iowa. According to the Treasurer, none of these expenses should be allocated under the four day rule and none of these individuals were employees of the Committee. According to the Treasurer, "each of these individuals volunteered their time on an infrequent basis in order to assist the campaign, generally with a specific event, and they were reimbursed for their expenses. Thus, if an individual worked on an event for fewer than five days, his or her expenses were not allocated to the state, but rather that individual was treated in accordance with the four-day rule. This determination was appropriate because the individuals in question maintained non-Bush related jobs and would continue with their private lives at the end of their volunteer service to the campaign. The rules require that an individual work 'in a particular state for five consecutive days,'...before any travel or salary costs be attributed to that state."

The Audit staff is not able to determine whether a specific individual did volunteer work for the Committee on five consecutive days. Conversely, the Committee submits no evidence that their local campaign workers did not work on five or more consecutive days. However, this issue is not relevant. The Explanation and Justification for 11 CFR 106.2(b)(2) uses the term "remains in a State" when discussing the application of this provision. To use the Committee's standard that required that an individual work on the campaign, whether the person was a resident of the state or not, would require the Committee to keep detailed

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time records on all individuals that worked on the campaign. Further, it would allow a campaign to avoid any allocation of salary and travel expenses by simply giving each person a "day off" every fifth day.

The Treasurer also disagreed with the Audit staff's allocation of Ralph Brown's and Julie Mashburn's salary and travel expenses to the state of Iowa. The response states that all of Mr. Brown's and Ms. Mashburn's activity should be allocated to exempt legal compliance. The Treasurer also states that we should not have allocated \$566.02 of Jay Allison's expenses to Iowa for his hotel and rental car for the period April 7 to April 12, 1987. According to the Treasurer this should have been allocated to exempt fundraising.

The Audit staff cited 11 C.F.R. 106.2(c)(5) in the Interim Audit Report. The Committee elected to take 10% of campaign workers salaries as an exempt compliance cost and 10% for fundraising. The Regulation also states that a candidate can claim a larger exemption for any person, if the candidate establishes allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 C.F.R. 106.2(e). The Committee did not provide any documentation supporting allocations for each individual. The Committee can not claim 10% compliance costs for the other campaign workers in Iowa and 100% for Ralph Brown, and Julie Mashburn. The same is true for Jay Allison's travel expenses being totally allocated to the fundraising exemption.

According to the response, the Audit staff made errors of \$892.71. In the Interim Report, the Committee was provided an Attachment for the adjustments to allocations for travel and salaries. The adjustments were listed for each individual person and contains a separate column for salary and expenses. Therefore we are unable to determine what \$892.71 the Committee refers to as "errors in the figures provided by the Audit Division.

Based on the Committee's response the Audit staff concludes that no changes should be made to the \$91,503.72 allocated to Iowa for Travel and Salary expenditures, except for the previously mentioned \$25.00 overallocation to Mr. Fendler.

For New Hampshire, the Treasurer states that \$108,259.64 involved the four-day rule as previously discussed. Another \$4,430.87 was for allocating expenses for New Hampshire residents. As previously mentioned the Committee does not think these expenditures should be allocated. The Committee response also state that \$ 4,971.72 should not be allocated because they involved "individuals who were members of the exempt accounting staff, but who volunteered their time to the campaign while they were on vacation. These individuals were paid for their expenses

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while they were volunteering their time, and did not stay in the state for longer than four days." No documentation was submitted to demonstrate either the individuals volunteer status or that they were in New Hampshire for less than 5 days. The Committee also stated there was a discrepancy of \$5,238.65 in the figures provided by the Audit Division. As in the case in Iowa the Committee provided no information on how this discrepancy was determined. Also, as with Iowa an attachment was provided with the Interim Audit Report that listed each individual and the adjusted amount for that person's salary and travel. Earlier in the report we stated the Audit staff's position with regard to the five day rule and the New Hampshire residents. With the information in the Committee's response, we do not believe any change in the amount allocated to New Hampshire of \$126,367.67 is warranted.

3. Non-Travel and Salary

During the review of vendor files the Audit staff noted non-travel costs which were allocable to Iowa and New Hampshire but were not allocated to the states by the Committee. The Audit staff determined that non-travel costs, which were allocable to Iowa and New Hampshire, totaled \$39,286.15 and \$96,742.54 respectively. The types of expenditures that make up these adjustments, are as follows:

a) Hotel charges not allocated by the Committee that were not directly associated with the personal living expenses of a particular individual (i.e., banquet expenses and staff offices). The staff office was usually a room rented by the advance team of the Committee prior to the arrival of the candidate. The Committee generally allocated staff offices only if the rooms were rented for five consecutive days. Also included are the costs of incidentals related to groups of campaign workers staying at the Clarion Somerset (Nashua, New Hampshire) and the Lowell Hilton (Lowell, Massachusetts) for a period before the New Hampshire primary.

These miscellaneous hotel charges total \$14,983.31 in Iowa, and \$17,334.41 in New Hampshire.

The Committee's response to the Interim Audit Report did not include any additional documentation. According to the Treasurer, the staff offices were "residential suites - the extra hotel rooms associated with the sleeping quarters of campaign workers staying in particular states. The 'offices' were physically attached to these individuals' hotel rooms, and, in fact, were directly associated with the living expenses of Committee personnel while in the state. There should be no difference between renting an adjacent hotel room and renting a suite-like room with a separate living and dining area, as many hotel chains now offer. Thus, as with any room rented by a Committee staffer, if the individual left the state within four days, the costs of his or her rooms - including the staff office -

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were not allocated to the state." The Committee concludes that none of the \$14,136.59 of staff offices, which includes \$2,006.15 in long distance phone calls should be allocated.

The Committee's response argues only that these rooms were adjacent to accommodations of Committee staff. This proximity does not establish that the expenses were subsistence costs as defined at 11 CFR 106.2(b)(2)(iii) and therefore subject to the 5 day rule. That definition of subsistence "includes only expenditures for personal living expenses related to a particular individual traveling on committee business such as food or lodging". In this case, worksheets associated with most hotel bills show a room for each individual in the party with the associated charges, and a separate charge for "staff office" with no individual assigned to the room. The Audit staff has made no adjustment to the staff office allocation from the amount in the Interim Audit Report.

The Treasurer states, that another \$2,676.91 in expenses were neither incurred in Iowa or New Hampshire, and should not be allocated, but does not specify which expenses he is referring to. The Treasurer also states that \$2,026.08 in expenses were associated with volunteers. As the Treasurer previously stated, volunteer expenses are not allocated "if the volunteers did not work in the state for five consecutive days". As noted above, the Audit staff does not accept the Committee's interpretation. Also, as with the other amounts, no detail is provided to identify the particular expenses included in the amounts provided by the Committee.

Also, the Treasurer does not think that expenditures made to the Holiday Inn Center of New Hampshire should be allocated to New Hampshire. According to the response, the candidate and his guests did not stay five days. Though the Treasurer did not specify, there were two payments to this vendor that the Audit staff allocated to New Hampshire. The first involved miscellaneous charges of \$ 291.50 incurred by Kelly Walker. The travel expenses of Kelly Walker were allocated to the New Hampshire state expenditure limit. Walker was in New Hampshire from 11/11 to 11/18/87, and Lankering was in New Hampshire from 11/14 to 11/18/87. The Committee's invoice originally allocated this amount to New Hampshire.

The second payment to this vendor was \$1,078.75 for the final payment for a ballroom the night of February 16, 1988 and guest rooms at the hotel for the nights of February 15 and 16. The other payments to this vendor totaling \$2,453.00 were allocated to New Hampshire by the Committee. The payments were for the ballroom on 2/16/88 and guest rooms on 2/15 and 2/16/88. The Vice-President and numerous campaign staff were in New Hampshire from 2/10 to 2/16/88, including an overnight trip to the Lowell Hilton on 2/13 and 2/14. Further, expenses for the rental of a ballroom are not subject to the 5 day rule.

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The Committee does not think that the Audit Division should allocate the "hospitality suite for an RNC Convention to the State of New Hampshire." A review of the Audit workpapers indicates that rather than an RNC convention, these expenses relate to the Republican Party's Northeastern Regional Conference. The Commission has determined that such expenses are not allocable. The amount of allocable expenses has therefore been reduced by \$1,951.82.

The Committee does agree that \$7,929.16 should have been allocated to New Hampshire. Based on the Committee's response, the Audit staff recommends no changes from the Interim Report to the allocations for miscellaneous hotel charges of \$14,983.31 in Iowa and an adjustment of \$1,951.82 in New Hampshire, changing the amount allocable to \$15,382.59.

b) Vehicle rental not allocated to New Hampshire and Iowa totaled \$15,800.84. Most of the expenses were for vehicles used in motorcades, events, or the rental was for longer than a 5 day period, including some rentals relating to the White River Junction, Vermont travel discussed in Section 2 above;

The Committee agrees with the Audit staff's allocation of \$227.13 for Iowa and \$10,055.51 for New Hampshire. The Treasurer disagrees with the other \$5,518.20 allocated to New Hampshire. "The buses were used to transport the press to various campaign events around the state. However, due to the high level of activity in New Hampshire, the campaign was not able to bill the press accurately for this transportation." The Audit staff reviewed the documentation in our workpapers and determined that pursuant to 11 C.F.R. 106.2(c)(3), these expenditure should not be allocated to New Hampshire.

c) The Committee had expenditures for a telemarketing program in New Hampshire that were mostly allocated to exempt fundraising. The Committee did not provide scripts in connection with this project, so the Audit staff was unable to determine if the expenditures should be allocated to exempt fundraising. The expenditures totaled \$30,557.14. There were additional amounts for telephone service charges, intrastate calls, and telephone equipment in Iowa and New Hampshire totalling \$6,077.73. In response to the Interim Audit Report the Committee supplied scripts used in the telemarketing program in New Hampshire as requested in the Interim Audit Report. The Audit staff agrees with the committee's original allocation of \$36,634.87 to exempt fundraising.

d) The auditors identified costs for shipments of materials to Iowa and New Hampshire totaling \$2,621.77 and postage for mailings in Iowa and New Hampshire totaling \$15,139.88 that had not been allocated. The Committee provided additional documentation for \$13,860 in postage costs to support the original

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allocation to exempt fundraising. After reviewing this documentation the Audit staff agrees that these expenditures should not be allocated to Iowa.

The Treasurer also stated that \$396.58 and \$411.60 should not be allocated to Iowa and New Hampshire. "These payments were primarily for shipments of materials from the Office of the Vice President to the Advance Team in a particular state. Those shipments contained the Vice President's schedules and were not solely related to the destination state." The Treasurer also did not think \$384.25 of Federal Express charges should be allocated to Iowa because "these costs were related directly to exempt compliance". The Treasurer did not supply any additional documentation related to these expenditures and no adjustment to the Interim Audit Report allocations have been made.

e) A consultant wrote 10 speeches at \$1,000 a speech during the month of February and traveled to New Hampshire immediately preceding the New Hampshire primary. The Treasurer responded, "The more appropriate presumption is that Peggy Noonan wrote a series of speeches for the Vice President which he used in New Hampshire and throughout the campaign, including in connection with Super Tuesday which occurred on March 8, 1988. It would be reasonable to assume that she spent time in New Hampshire in order to confer with the Vice President about the contents of his speeches. It is also likely that the speeches were written in great part in Washington where Peggy Noonan lived. However, it is completely implausible that she would have written every speech while she was physically in New Hampshire, or that all ten speeches were given in New Hampshire."

According to the documentation provided by the Committee during fieldwork, Peggy Noonan was in New Hampshire from February 10 to February 17, 1988 and stayed at the Clarion Somerset and the Lowell Hilton. The billing Ms. Noonan sent to the Committee states that it is for services rendered, "Ten speeches for Vice President George Bush February, 1988". The billing was received by the Committee March 22, 1988. Since Ms. Noonan was in New Hampshire for eight consecutive days, it is not unreasonable to assume that the speeches were written in New Hampshire, although the allocation is not necessarily determined by the location of her writing. Also, Ms. Noonan's bill specifically is for February, 1988. The Committee provided no additional documentation, including copies of the speeches or an affidavit from Ms Noonan to support their position.

The Office of General Counsel's legal analysis did not agree with the Audit Division's allocation of the 10 speeches to the New Hampshire state expenditure limit. According to Counsel, "It is unlikely, based on the Committee's response, that Ms. Noonan's speeches were written or delivered to influence only the New Hampshire election. It is more plausible that her efforts were related to national strategy and that her speeches were used in several states."

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Based on the Counsel's recommendation, the \$10,000 for Ms. Noonan's speeches have not been allocated to the New Hampshire limit.

f) The remaining adjustments discussed in the Interim Audit Report were for miscellaneous expenses. In the response, the Treasurer stated that they could only account for \$4,145.55 in miscellaneous items. Of this amount the Treasurer does not contest expenses totaling \$2,903.15. He also states that "\$371.86 in expenses were directly related to staff offices and/or fundraising events and are therefore not allocable... Of the remaining \$834.54, in identifiable expenses, \$452.77 relates to equipment that was returned to Washington for use in additional states" and "\$390.77 related to equipment used by either Roger Ailes or George Bush in connection with his media consultation and was correctly charged to Media Equipment Lease." The Treasurer did not provide any additional documentation to support these statements. In the Audit staff's opinion these expenditures should still be allocated to the states, therefore no adjustment to the Interim Audit Report allocation has been made.

The Committee stated there was no corresponding workpapers for \$19,433.19. Copies of all workpapers that related to the Audit staff adjustments were provided to the Committee at the exit conference and during the Committee's response period of the Interim Audit Report. Some of the other expenses that make up the miscellaneous category are additional telephone charges, telephone equipment, campaign posters, and headbands. The Committee also sold a mailing list. Only 80% of the cost was allocated to New Hampshire, but the receipt from the sale was offset 100% against the New Hampshire state limit. This information along with explanations were provided to the Committee. Also, \$1600.00 was allocated in the Interim Audit Report, to New Hampshire for consulting fees. The Audit staff has not allocated these fees based on Commission decisions in earlier audits.

4. Equipment Sold During Campaign

In 1987 the Committee purchased computer equipment and furniture from various sources, including Fund for America's Future, which was apparently used in, but not properly allocated to New Hampshire. This same equipment was sold to the Sununu Committee in 1988 and an incorrect amount was used to reduce expenditures subject to the New Hampshire expenditure limit. An upward adjustment was made to the state's limit of \$6,300.96. The Treasurer did not contest the Audit staff's adjustment for the equipment sold to the Sununu Committee.

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5. Prohibited In-kind Contribution

Under Section 441b of Title 2 of the United States Code, it is unlawful for any corporation to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the forgoing offices, or for any candidate, political committee or other person knowingly to accept or receive any contribution prohibited by this section.

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

A corporation in Iowa leased the campaign vehicles in 1987 and 1988. The Committee generally paid for the gas, insurance, and sales tax, but not for the daily rent of the vehicle. The amount of the daily charge was on the bills sent to the Committee. The charges not paid by the Committee totaled \$4,815.95. This amount has also been allocated to the Iowa spending limitation, added to the Committee's accounts payable on their Net Outstanding Campaign Obligations and added to the expenditure subject to the overall limitation (Exhibit D).

The Treasurer did not agree that the Committee received a prohibited in-kind contribution. The Treasurer submitted an affidavit from Martha Charles, the Office Administrator of the Iowa state office for the Committee. According to Ms. Charles affidavit and the Treasurer, the Committee was "required to pay the costs of daily rentals plus mileage and other assessments if a vehicle had been otherwise requested by a renter. However, if no other renter requested a vehicle, then George Bush for President was required to pay only the fees assessed by Chuck Fletcher Ford." The Committee did not submit any contract or an affidavit from Chuck Fletcher's Ford with the response. It does not seem reasonable that a corporation in the rental car business, would not charge some fee for the use of it's vehicles in the normal course of business. The Audit staff recommends no change from the Interim Audit Report.

6. Allocation of Polling Expenses

The Committee had two corporations perform polling nationally and in many states. These corporations were associated with one pollster. The Committee paid the corporations a total of

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\$702,157.09. Of this total, \$240,000 was for consulting payments. The Committee allocated the survey costs correctly including allocation to the states. However, the Committee did not allocate any of the consulting payments to the states. The Audit staff divided the amount allocated to Iowa and New Hampshire by the total non-consulting expenditures totalling \$444,547.09. Approximately 4% of the corporations' work was allocated to Iowa and 2.81% was allocated to New Hampshire. When these were multiplied by the total consulting payments of \$240,000, \$9,600 and \$6,744 respectively are allocable to Iowa and New Hampshire. Based on Commission decisions on earlier audits, the Audit staff agrees with the Committee that consulting fees of \$9,600 and \$6,744 respectively for Iowa and New Hampshire should not be allocated.

7. Stale-Dated Committee Checks

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

The Audit staff reconciled the Committee's reported activity to its bank activity through September 30, 1989 and determined that the total amount of outstanding checks was \$52,663.22. Of this amount, \$46,659.64 were for checks dated between March 5, 1987 and January 4, 1989 and were considered stale-dated, including 13 totaling \$7,060.00 that are contribution refund checks. The remaining are to individuals and vendors in payment for various obligations.

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

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

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- d) After reviewing the information, the Commission would recommend the amount payable to the United States Treasury.

In response to the Audit Report, the Committee repaid \$33,845.24 to the United States Treasury. The Audit staff reviewed the additional information and agrees with the Committee that there is no obligation for \$2,930.49, which was allocated to the Iowa Expenditure Limit in the Interim Audit Report. The Treasurer stated that two checks for \$153.84, were voided and reissued. However, these two checks were deleted from the stale dated list, prior to the Interim Audit Report by the Audit staff. The Treasurer also stated that two checks, totaling \$208.19, were voided and reissued, and the remaining checks were all voided. The Committee did not send in documentation to establish that no obligation exists for the remaining \$9,883.91.

Recap of Iowa and New Hampshire Allocations

Presented below is a recap of allocable costs to Iowa and New Hampshire based on the response to the Interim Audit Report, and the adjustments the Audit staff recommends.

| | <u>Iowa</u> | <u>New Hampshire</u> |
|--|----------------------|----------------------|
| Amount Allocated by the Committee | \$ 775,041.95 | \$ 481,332.45 |
| 1) Adjustments Based on Committee Allocation Methods | (13,990.53) | (4,208.75) |
| 2) Travel and Salary Costs | 91,478.72 | 126,367.67 |
| 3) Non Travel Costs | 25,464.54 | 41,037.58 |
| 4) Purchase and Sale of Equipment | -0- | 6,300.96 |
| 5) In-Kind Contribution | 4,815.95 | -0- |
| 6) Allocation of Polling Expenses | -0- | -0- |
| 7) Testing-The-Waters (Exhibit F) | -0- | -0- |
| 8) Void Check (Final Audit Report Finding III.G.) | (2,930.40) | -0- |
| Total Allocable Amount | \$ 879,880.23 | \$ 650,829.91 |
| Less Expenditure Limitation | (775,217.60) | (461,000.00) |
| Amount in Excess of Limitation | <u>\$ 104,662.63</u> | <u>\$ 189,829.91</u> |

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Recommendation #3

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

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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 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 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 March 31, 1990 revealed that the Committee had reported Total Expenditures Subject to Limitation (Overall Limitation) of \$23,020,108.35. The expenditure limitation for the primary is \$23,050,000. In the Interim Audit Report, the Audit staff increased the total by \$617,158.78. As a result of these adjustments, the Committee exceeded the 2 U.S.C. 441a(b)(1)(A) spending limitation by \$587,267.13.

Presented below are the adjustments from the Interim Audit Report, the Committee's response to those adjustments, and the Audit staff analysis of the response. The Audit staff provided detailed schedules of these adjustments at the exit conference.

1. Differences Between Committee's FEC Reports, Committee Worksheets, and Computerized Data Base

A review was conducted to determine if the amounts reported were materially correct. A reconciliation was made for each report period between the Committee's F.E.C. reports, Committee worksheets used to prepare the reports, and the audit data base created from the computer discs provided by the Committee. Material differences were identified for each report. Overall, the Committee understated operating expenditures by \$203,762.14, overstated compliance expenditures by \$200,610.98, and understated total disbursements by \$3,151.16. The main reasons for these adjustments are listed below.

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a) Compliance Exemption

11 C.F.R. 9035.1(c) states, in part, that a candidate may exclude from the overall expenditure limitations of 11 C.F.R. 9035.1 an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters as an exempt legal and accounting compliance cost under 11 C.F.R. 100.8(b)(15). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption. If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of their time performing duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage.

The Compliance Manual on pages 22-27 explains two alternative methods of allocating amounts to compliance. The first allows a committee to allocate 85% of the accounting office to compliance (including payroll, overhead, and other expenses). In addition, a Committee may allocate 5% of all payroll, and overhead associated with the national campaign headquarters office, excluding the legal and accounting offices, to exempt compliance. The legal office is then allocated based on percentages developed by the Committee. The second alternative allows the Committee to allocate 85% of the accounting office payroll expenses as well as a percentage of legal payroll developed by the Committee. In addition an amount equal to 10% of all non-overhead expenses of the legal and accounting offices may be considered exempt legal and accounting overhead. As with the previous alternative 5% of other national overhead and payroll, excluding the legal and accounting offices, may be considered exempt.

The Committee used the first alternative from the compliance manual (85% of accounting, 50% of the legal office developed by the Committee and 5% of national payroll and overhead). In addition, the Committee took 10% of legal and accounting payroll and other expenses as additional exempt overhead as provided in the second alternative. This resulted in a double exemption for exempt legal and accounting overhead.

b) Allocation of Legal Payroll

The Committee also, allocated legal payroll, 50% to operating expenditures and 50% to exempt compliance. The Committee then took the part allocated to operating and allocated an additional 5% to exempt compliance.

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c) Voided Checks

The Committee generally reported voided checks written in earlier report periods as negative entries on later reports. If a compliance exemption was taken on the earlier report (i.e. the original charge was state or national payroll or overhead) the Committee would, in some cases, apply the entire voided amount against operating expenditures.

d) Refunds

The same problem that occurred with the voided checks mentioned above, occurred with some refunds or rebates received from vendors. If part of the original disbursement was allocated to exempt compliance when the refund was received by the Committee, the entire amount was applied against operating expenditures. In addition, the Committee received interest on deposits which in some cases, were reported as refunds and used to reduce the spending limitation. Also, near the end of 1988 and beginning of 1989 some Bush-Quayle '88 refunds were received and reported by the Committee as offsets against the expenditure limitation. These have been included as a payable on the Committee's Net Outstanding Campaign Obligations (Interim Audit Report Finding III.B.).

e) Miscellaneous Adjustments

There were also a number of miscellaneous adjustments, such as unreported disbursements, addition errors, voided checks not charged back against the limitation, expenditures reported twice, and voided checks charged back to operating when they had been originally reported as compliance.

It was noted that though provided for at 11 C.F.R. §9035.2(c)(1) the Committee did not generally charge the entire cost of matching fund submission preparation to compliance. The exception was third quarter 1987 where salaries of certain individuals were allocated 100% to compliance rather than 85% as part of the accounting office. The additional compliance allocation was \$1,937.19. Presumably similar adjustments could have been calculated for other periods. However, to take advantage of the exemption, detailed documentation supporting the calculations would be necessary.

As a result of the above adjustments, \$203,762.14 was added to the overall expenditure limitation.

In response to the Interim Audit Report, the Treasurer did not disagree with the adjustment of \$203,762.14. The Treasurer stated, "review of its accounts indicates that this aggregate figure is likely to be substantially accurate. Accordingly, the Committee has chosen not to expend its resources

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to identify the exact amount of each of these components, and will not dispute the Audit Division's overall figure."

However, the Treasurer did not agree with the determination made by the Audit staff that he could not take an additional 5% compliance exemption on the 50% of legal payroll the Committee allocated to the overall limit, in addition to allocating 50% to exempt compliance. The Treasurer also disagreed that he had applied the entire voided check amount against the operating expenditures. However, the Committee did not dispute the calculations of the Audit staff.

2. Vendor Payments Charged to Payroll

During the campaign the Committee contracted with different vendors to conduct various types of campaign activity such as polling, media production, telemarketing programs, etc. Contracts were made between the Committee and these vendors. Part of the contract stipulated that a portion of the payments to each contractor were for consulting fees. These consulting payments were treated like any other person's salary on the Committee's payroll. If the work was performed on the national level, 5% of the fee was allocated to exempt compliance. If the work was performed on the state level, 10% of the fee was allocated to exempt compliance.

Although the Committee had over 200 people and organizations classified as consultants, most performed the same functions as if they were employees of the Committee. However, in the Audit staff's opinion, a number of these consultants were vendors rather than Committee staff, and adjustments totaling \$40,531.89 were made reducing exempt compliance and increasing the overall expenditure limitation.

In response to the vendors not considered campaign staff and not eligible for the 5% compliance exemption, the Treasurer states that although the Audit staff chose to consider the payments at issue as payments to vendors rather than as payments in the payroll category eligible for the 5% compliance exemption, the payments were for the personal services of individuals and therefore appropriately considered payroll. He also states that other committees claimed these exemptions for individuals in similar situations. He continues, "these individuals' personal services were rendered at the campaign or campaign facilities. Each one of these individuals utilized campaign offices and telephones, and several support staff."

The Commission decided to permit the Bush-Quayle '88 Committee to charge similar vendor payments to payroll and thereby take a 5% compliance exemption. Based on this determination, the Audit Division has reversed the Interim Audit Report adjustment by \$40,531.89

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3. Prepaid Insurance

During the campaign, the Committee paid for a number of insurance policies with one vendor. The coverage dates on these policies carried over into the general election period. In September, 1988, Bush-Quayle '88 reimbursed the Committee for their share of the insurance. An analysis of the Committee's original allocation between Bush-Quayle '88, the Compliance Fund, and the Committee, and a revised analysis provided by the Committee indicates the need for revisions to the recorded allocations. Bush-Quayle '88 over reimbursed the Committee by \$14,859. This amount is included as a payable to Bush-Quayle '88 on the Net Outstanding Campaign Obligations (Interim Audit Report Finding III.B.). When comparing the Committee's revised analysis with recorded amounts, it was determined that the compliance portion of the insurance expenses was overstated by \$27,705.87. The Audit staff had adjusted \$14,739 of this amount as a compliance reimbursement offset against the expenditure limitation (Section 1.d. above), leaving \$12,966.87 to be adjusted from compliance to the spending limitation. The total to be allocated to the spending limitation is \$27,825.87 (\$14,859.00 + \$12,966.87).

The Committee agreed with the Audit staff's adjustment for prepaid insurance and has paid Bush-Quayle \$14,859.

4. Equipment

Another issue in the Interim Audit Report concerns the equipment Bush-Quayle bought from the Committee. Bush-Quayle paid for some items which the Committee had previously sold to the Sununu Committee, but failed to remove the items from the Committee's equipment inventory. Therefore, Bush-Quayle paid a total of \$4,140 for equipment that was not in the possession of the Committee.

The Treasurer states that the Audit staff had erroneously relied on an inventory list found in the Committees records and that Bush-Quayle paid full the value of the equipment it received. The Treasurer explained that the Committee "initially did maintain a list of equipment based on serial numbers", but "the Committee ceased to update this list with additions or deletions. While equipment bought and sold by the Committee was carefully accounted for, such accounting was not exclusively by serial number after the initial early days of the campaign because it became impractical to do so." The Treasurer continues, Bush-Quayle did buy equipment from the Committee accounting for the full purchase price of that equipment. "The apparent administrative discrepancy in the clerical recording of the serial numbers does not affect the amount paid by Bush-Quayle

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88 for the equipment it did in fact buy from the primary committee." Finally, an affidavit of a former Committee staff member was submitted in support of the Treasurer's explanation.

The Audit staff notes that the Committee did not provide in its response to the Interim Audit Report, any documentation to demonstrate which equipment was transferred to the Bush-Quayle from the Committee or the value of that equipment. The inventory list found in Committee records was, at the time of the audit, unverifiable. It is noted however, that the inventory list was the basis on which the amount of the payment from Bush-Quayle to the Committee for transferred equipment was determined. Absent the submission of more specific information, no change to the Interim Audit Report conclusion is warranted and the amount remains in expenditures subject to the spending limitation.

5. Exempt Legal and Accounting Expenditures

Section 100.8(b)(15) of Title 11 of the Code of Federal Regulations states, in part, that the cost of legal or accounting services rendered solely to ensure compliance with the Act do not count against the candidate's expenditure limitation under 11 CFR 9035.

Section 9035.1(c) of Title 11 of the Code of Federal Regulations states, in part, that a candidate may exclude from the overall expenditure limitation of 11 C.F.R. 9035.1 an amount equal to 10% of salaries and overhead expenditures for his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 C.F.R. 100.8(b)(15). If the candidate wishes to claim a larger compliance exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of their time to duties which are considered compliance. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity.

The Audit staff reviewed Committee disbursements allocated to exempt compliance. The auditors noted 86 disbursements, totaling \$70,301.94, to 28 vendors lacking adequate documentation to support the Committee's allocation to exempt compliance. In addition, the Audit staff noted a number of allocations to exempt compliance for the Committee's Treasury Division staff, in connection with the Republican Convention in New Orleans in July and August, 1988. There were 54 of these disbursements totaling \$43,502.33 to 17 payees. Of the 17 payees, 13 were Treasury Division employees, three were for lodging, and one was for telephones.

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Finally, between May 1, 1988 and August 31, 1988, the Committee added 40 employees to its Treasury Division. Thirty-eight of the 40 were new employees and two were transferred from other Divisions within the Committee. Payroll expenses for these individuals through August 31, 1988 totalled \$93,593.93. It was also noted that 37 of these employees later worked for either Bush-Quayle '88 or the Compliance Committee.

Lists of these disbursements were provided to the Committee on January 17, 1990.

In response to the Interim Audit Report, the Committee submitted additional information for most of the disbursements noted above. In the Audit staff's opinion, the Committee's response supported most of the Committee's allocations to exempt compliance except for the following items.

Hilary Chestnut received one \$1,500 consulting payment. According to the Committee's response, Ms. Chestnut provided consulting services to the Treasury Division for the month of February 1987. The authorization form indicates she worked for the Treasury Division, and was signed by Stan Huckaby." The Committee's response provides no additional documentation or information. The authorization form referenced in the response provides for sign-off by the requesting individual, the cost center and the treasurer's office. The initials SH appear under treasurer's office, Ede Holiday, legal counsel signed under cost center, and the requesting individual is illegible. The original "Division" typed is "Administration" which is crossed out and "Treasurer" is written on the "Division" line. No description of work is provided.

The Committee paid \$3,682.32 to a law firm that reviewed "loan documents and related materials. The check authorization form was signed by Ede Holiday as campaign legal counsel." The documentation indicates that the law firm was paid to "prepare and/or review" documents related to a "\$1,000,000 standby letter of credit" with Sovran Bank. It further appears that the Committee paid one-half of the charge and the Bank the other. This disbursement, regardless of the person who approved it, does not appear to be related to compliance with the Act. Another law firm received \$277.25 for what the Treasurer stated were "legal services to the campaign." Legal services are not automatically compliance expenditures. This amount represents monthly billings for out-of-pocket expenses. In some months, they are charged to the spending limitation while in other months, they are charged to exempt categories. One payment which is included in the amount questioned has a note on the documentation which says "legal non-compliance."

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Two of the Committee's staff people William Jasien and Julie Mashburn traveled to Michigan and Iowa. According to the Treasurer, Mr. Jasien "was required to go to Michigan to monitor and document campaign disbursements there." Ms. Mashburn's salary and travel was allocated to Iowa for reasons described in Exhibit C and an adjustment has previously been posted to the overall limitation. For the same reasons, Mr. Jasien's salary requires adjustment for the difference between the allowable compliance charge for a employee at National Headquarters (85%) and a campaign worker in a state (10%). Mr. Jasien also had 10% of his salary allocated to fundraising.

The Committee did not respond to payments to two vendors, the Federal Election Commission for copies of the Dukakis Committee's reports, and C & P Telephone for a 900 phone line.

Also, according to the response, the Committee maintained an adjunct accounting office in New Orleans from about mid July to August 20, 1988. The purpose of the office was to track "campaign expenditures during the convention period, and to issue checks in payment for expenditures directly related to the campaign portion of convention expenses."

In addition, the Committee responded to adding 40 employees to its Treasury Division between May 1, 1988 and August 31, 1988. According to the Treasurer, "These individuals were assigned to data entry of contributor information, matching fund submissions, data entry of expenditures, inventory (including preparation for this audit), accounts receivable billing statements, as well as general filing." He continues, that it was in this same time period that the original accounting staff was "involved with the accounting functions of the treasury office at the convention in New Orleans, ... Thus, an obvious gap had to be filled because all of the preexisting functions of the accounting staff were still to be completed."

The Audit staff concludes that the Committee's response is adequate to support the compliance exemption for both groups of Committee employees. The total adjustments to the overall expenditure limit is \$10,650.17. See Attachment 1 for the adjustments for each vendor.

6. Secret Service

The Secret Service traveled on the Committee's Press Plane, as well as Air Force II. The total billable costs to the Secret Service that traveled on the Press Plane was \$100,953.35. The Committee received total reimbursements from the Secret Service of \$50,944.80. The billable amounts exceed the reimbursements by \$50,008.55. As the Commission has determined in prior audits, this amount should not be applied against the Committee's overall expenditure limitation.

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7. Air Force II (See Exhibit B)

8. Expenditures Subject to Overall Limitation - Recap

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

| | |
|--|----------------------|
| Expenditures subject to the limitation as of March 31, 1990, as reported by the Committee | \$23,020,108.35 |
| Add: a) Overstated compliance and understated operating expenditures (Section 1. above) | 203,762.14 |
| b) Insurance reimbursed by Bush-Quayle '88 and the Compliance Fund (Section 3. above) | 27,825.87 |
| c) Air Force II and White House Communications cost not paid by the Committee (Exhibit B) | 89,225.42 |
| d) Equipment sold to the Sununu Committee (Section 4. above) | 4,140.00 |
| e) In kind contribution for automobiles (Exhibit C, Section 5) | 4,815.95 |
| f) Over allocation of equipment in Iowa to exempt compliance (Exhibit C, Section 1) | 100.20 |
| g) Adjustment to amounts charged to compliance for salary allocated to Iowa and New Hampshire from National (Exhibit C, Section 2) | 8,266.98 |
| h) Secret Service (Section 6. above) | (50,008.55) |
| i) Exempt Legal and Accounting (Section 5. above) | 10,650.17 |
| j) Reimbursement to Bush-Quayle '88 for August 16, 1988 Press Plane | 23,520.00 |
| k) Voided Checks (Exhibit C, Section 7) | (2,930.49) |
| TOTAL | \$23,339,476.04 |
| Less 2 U.S.C. §441a(b)(1)(A) spending Limitation | <u>23,050,000.00</u> |
| Total expenditures in excess of limit | <u>\$ 289,476.04</u> |

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In the Interim Audit Report the Audit staff determined that the Committee was in excess of the limit by \$587,699.18. As a result of the Committee's response, the overbilling for the press plane was reduced by \$298,046.54 (Finding III.C. of the Interim Audit Report), the liability to Bush-Quayle '88 was reduced by \$30,101.26 (Exhibit B), vendor payments charged to payroll of \$40,531.89 (Section 2. above), Secret Service billable costs exceeding reimbursements by \$50,008.55, and the Committee voided checks totaling \$2,930.49 reduced expenditures subject to the limit. However, the reallocation of exempt compliance expenditures of \$10,650.17, (Section 5. above), paying Bush-Quayle '88 \$23,520 for the press plane (Finding II.B.) of the Interim Audit Report and use of air Force II not paid by the Committee of \$89,225.42 (Exhibit B) increased expenditures subject to the limit. Therefore, the Committee's total expenditures are in excess of the limit by \$289,476.04.

Recommendation #4

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

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GEORGE BUSH FOR PRESIDENT, INC.
REFERRAL TO OGC

BS002577

EXHIBIT D
Attachment 1
Page 1 of 1

George Bush for President, Inc.

PORTIONS OF EXPENDITURES CHANGED
FROM COMPLIANCE TO THE OVERALL LIMIT

| <u>Payee Name</u> | <u>Amount</u> |
|-----------------------------|--------------------|
| Hilary Chestnut | \$1,200.00 |
| Federal Election Commission | 553.00 |
| Melrod, Redman, and Gartlan | 2,945.86 |
| Pierson, Ball, and Dowd | 167.86 |
| C & P Telephone | 701.34 |
| William Jasien | 4,515.12 |
| Julie Mashburn | <u>566.99</u> |
| TOTAL | <u>\$10,650.17</u> |

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 20, 1992

MEMORANDUM

TO: LAWRENCE M. NOBLE
THROUGH: JOHN C. SURINA
STAFF DIRECTOR
FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

MUR 3467

SUBJECT: REVISION ON REFERRALS SENT TO THE OFFICE OF GENERAL
COUNSEL-GEORGE BUSH FOR PRESIDENT COMMITTEE, INC.

On January 30, 1992 the Commission voted to make several changes to the George Bush For President Committee, Inc. Attached are the changes recirculated and approved by the Commissioners on February 18, 1992. The changes relate to Exhibits B, C, and D sent to your office on January 10, 1992.

Should you have any questions please contact Russ Bruner or Joe Stoltz at 219-3720.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

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February 11, 1992

MEMORANDUM

TO: THE COMMISSIONERS
THROUGH: JOHN C. SURINA
FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REVISED FINAL AUDIT REPORT - GEORGE BUSH FOR PRESIDENT
COMMITTEE, INC.

Attached for your approval are the pages of the subject report that the Commission voted to revise at the January 30, 1992 open session.

The adjustments to the Net Outstanding Campaign Obligations on page 23, are based on the revisions the Commission approved in Finding III.D., expenditures subject to the overall limit. As a result of this adjustment, the Committee no longer has a surplus. Therefore, the Committee has no repayment pursuant to 26 U.S.C. §9038(b)(3).

At the January 30 session the Commission voted to revise Finding III.C., page 41, line 2 (Travel and Salary Costs). The Commission voted to exclude the expenses of individuals that stayed in Lowell, Massachusetts and White River Junction, Vermont and could not be placed in New Hampshire five consecutive days. In reviewing our workpapers, we noted several individuals who were in the New Hampshire area, before and after the dates the majority of the people stayed in White River Junction, Vermont. However, since these individuals can not be placed in New Hampshire for five consecutive days they have also been excluded from allocation.

As a result of this adjustment, the expenditures excluded from allocation to the New Hampshire expenditure limit are higher than discussed at the January 30 meeting. Also, as noted in the report discussed by the Commission, some of the expenditures relating to Lowell, Massachusetts and White River

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Junction, Vermont were included in Finding III.C., page 41, line 3 (Non Travel Costs). Therefore, based on the Commission vote of January 30, Finding III.C., page 41, lines 2 and 3 have been decreased by a total of \$34,032.73.

Finding III.D. 8.c. on page 55 has been changed to reflect the Commission vote of January 30. All travelers except the candidate, the candidate's spouse, and individuals whose documentation have specific reference that they were George Bush for President travelers, have been excluded from expenditures subject to the overall limit. Also, though not discussed specifically by the Commission, White House Communication Agency costs have been excluded from the overall expenditure limitation. As a result the amount allocated to the overall expenditure limit has decreased from \$89,225.42 to \$13,969.00. The elimination of the White House Communication costs have no effect on the repayment, since the amount in excess of expenditures subject to the state limits is a higher amount.

Based on the two adjustments mentioned above, and the Commission vote of January 30, the repayment amount in Finding III.E. has decreased. Since the amount in excess of the state limit is greater then the overall limit, that amount is used for repayment purposes, see Finding III.E. page 58. The summary on page 59 has also changed.

As requested by the Chairman at the January 30 meeting, only the pages containing changes are attached.

Recommendation

The Audit staff recommends that the changes to the attached report be approved.

This document is being circulated for a tally vote. Should an objection be received, I recommend that it be considered at the next regularly scheduled open session.

Should you have any questions, please contact Joe Stoltz or Russ Bruner at 219-3720.

Attachment as stated

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George Bush for President Committee, Inc.
Statement of Net Outstanding Campaign Obligations as of
August 17, 1988^{a/}

Assets

| | | |
|---------------------|--------------------------|--------------------|
| Cash in Banks | \$1,122,102.92 | |
| Accounts Receivable | 585,331.90 ^{b/} | |
| Capital Assets | <u>114,371.14</u> | |
| Total Assets | | \$1,821,805.96 |

Liabilities

| | | |
|---|-----------------------------------|-----------------------|
| Accounts Payable | | |
| Campaign Expenses and Winding Down Costs 8/17/88 to 9/30/91 | 1,902,598.00 ^{c/} | |
| 2 Amount Due Bush-Quayle '88 | 42,519.00 ^{d/} | |
| 3 Offset to Payables Unqualified 3 Campaign Expenditures Contained 7 in Accounts Payable at 8/17/88 | <u>(214,219.62) ^{e/}</u> | |
| 0 Total Accounts Payable | 1,730,897.38 | |
| 0 Estimated Winding Down and 3 Compliance Costs Post 9/30/91 | 90,908.58 ^{f/} | |
| 0 Total Liabilities | | <u>\$1,821,805.96</u> |
| 0 Net Outstanding Campaign Obligations | | <u>\$ -0-</u> |

Footnotes to the NOCO

- a/ All figures shown were determined as of 8/17/88 unless otherwise noted.
- b/ Accounts Receivable includes refunds, rebates, interest earned and reimbursements received between 8/18/88 and 9/30/91, and excludes what Bush-Quayle '88 paid for Committee Assets. Amounts received between 8/18/88 and 9/30/89 were verified via the Committee's Account Receivable records. Figures between 10/1/89 through 9/30/91 are from reports filed and are subject to audit verification.
- c/ These amounts include adjustments other than the Press Plane and Payables to Bush-Quayle '88 discussed later in the report.
- d/ See Findings II.B Press Plane (\$23,520), III.D.4. Equipment Sold (\$4,140), and III.D.3. Prepaid Insurance (\$14,859).
- e/ This amount is the same as expenditures in excess of the overall limit. All amounts paid in excess of the overall spending limitation were paid after the date of ineligibility. (Finding III.D.)
- f/ Amounts provided by Committee in response to the Interim Audit Report.

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Recommendation # 4

The Audit staff recommends that the Commission make an initial determination that there is no repayment to the United States Treasury pursuant to 26 U.S.C. §9038(b)(3).

C. Allocation of Expenditures to States

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

Section 106.2(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that 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. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. Further, 11 C.F.R. §106.2(c) describes the various types of activities that are exempted from State allocation.

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

Section 106.2(b)(2)(iv) of Title 11 of the Code of Federal Regulations states, in part, that overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

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in the rental car business, would not charge some fee for the use of it's vehicles in the normal course of business. The Audit staff recommends no change from the Interim Audit Report.

6. Allocation of Polling Expenses

The Committee had two corporations perform polling nationally and in many states. These corporations were associated with one pollster. The Committee paid the corporations a total of \$702,157.09. Of this total, \$240,000 was for consulting payments. The Committee allocated the survey costs correctly including allocation to the states. However, the Committee did not allocate any of the consulting payments to the states. The Audit staff divided the amount allocated to Iowa and New Hampshire by the total non-consulting expenditures totalling \$444,547.09. Approximately 4% of the corporations' work was allocated to Iowa and 2.81% was allocated to New Hampshire. When these were multiplied by the total consulting payments of \$240,000, \$9,600 and \$6,744 respectively are allocable to Iowa and New Hampshire. Based on Commission decisions on earlier audits, the Audit staff agrees with the Committee that consulting fees of \$9,600 and \$6,744 respectively for Iowa and New Hampshire should not be allocated.

During the Commission's consideration of this finding, the Commission could not reach a consensus, whether to include in expenditures subject to the New Hampshire state limit campaign activity related to the Lowell Hilton in Lowell, Massachusetts and activity related to White River Junction, Vermont, in those cases where an individual could not be placed in New Hampshire for at least five consecutive days. See Section 2. (Individual's Travel and Salary) and Section 3. (Non Travel Costs).

A motion was made to approve this finding provided the expenditures relating to Lowell, Massachusetts and White River Junction, Vermont were not included in expenditures subject to the New Hampshire state limit. This motion failed by a vote of 2-3 (Commissioners Aikens and Elliott voting in the affirmative and Commissioners McDonald, McGarry and Thomas voting against.)

A second motion was made to approve the finding as written; that motion failed by a vote of 3-2 (Commissioners McDonald, McGarry and Thomas voting in the affirmative and Commissioners Aikens and Elliott voting against.

A third motion was made to exclude the amounts for activity relating to Lowell, Massachusetts and White River Junction, Vermont from expenditures subject to the New Hampshire state limit. This motion passed by a vote of 5-0.

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Recap of Iowa and New Hampshire Allocations

Presented below is a recap of allocable costs to Iowa and New Hampshire based on the response to the Interim Audit Report, and the adjustments the Audit staff recommends.

| | <u>Iowa</u> | <u>New Hampshire</u> |
|--|----------------------|----------------------|
| Amount Allocated by the Committee | \$ 775,041.95 | \$ 481,332.45 |
| 1) Adjustments Based on Committee Allocation Methods | (13,990.53) | (4,208.75) |
| 2) Travel and Salary Costs | 91,478.72 | 97,714.26 |
| 3) Non Travel Costs | 25,464.54 | 35,658.26 |
| 4) Purchase and Sale of Equipment | -0- | 6,300.96 |
| 5) In-Kind Contribution | 4,815.95 | -0- |
| 6) Allocation of Polling Expenses | -0- | -0- |
| 7) Testing-The-Waters (Finding II.C) | -0- | -0- |
| 8) Void Check (Final Audit Report Finding III.F.) | <u>(2,930.40)</u> | <u>-0-</u> |
| Total Allocable Amount | \$ 879,880.23 | \$ 616,797.18 |
| Less Expenditure Limitation | <u>(775,217.60)</u> | <u>(461,000.00)</u> |
| Amount in Excess of Limitation | <u>\$ 104,662.63</u> | <u>\$ 155,797.18</u> |

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of the United States travels as a matter of course on Air Force II, so that all personal guests are handled through the United States Government. Moreover, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the transportation of the individuals in question, unless that information is publicly available."

The Treasurer continues, "as was the case in the general election Audit Report, several of the federal candidates or office holders identified on Attachment 2 to the Interim Report paid for their transportation as reflected on their FEC disclosure reports on file with the Commission. As to several of the remaining trips identified on Attachment 2 to the Audit Report, the Commission has already been notified that these were not campaign related trips". The Committee provided no additional additional information as to which office holders paid for their transportation expenses.

The Committee goes on to state that several individuals were incorrectly identified as Committee staff on Attachment 2 of the Interim Audit Report. According to the Treasurer, "Every Bush staffer or individual authorized to travel on behalf of George Bush for President was paid for by the Bush Committee." Again, as noted by the Audit staff in the Interim Audit Report, the information relied on by the staff was from the billings to the Committee by the Office of Vice President.

With respect to White House communication costs, the Treasurer explains that, as in the case of the Air Force II costs, "when the Vice-President travelled on non-campaign business, the campaign was not charged for WHCA costs. As can be seen when comparing Attachments 2 and 3 to the Interim Audit Report, for each trip which previously was identified as non-campaign related, no WHCA costs were assessed to the campaign. Again therefore, because the billing was handled in this manner, the Committee is unable to provide information as to what entity actually paid for the WHCA costs in question, unless that information is publicly available."

The Audit staff researched the Federal Election Commission disclosure reports and identified 18 individuals who were members of or candidates for Congress, whose air travel between March 24 and August 9, 1988, was paid for by their own committees. This included a three spouses of candidates who traveled on Air Force II for unofficial reasons. Of \$18,525.00 billed for these individuals, \$5,854.00 was paid by the candidate committees. Another \$5,992.00 pertained to travel that the Commission determined to be the General Election Committee's activity in August, 1988. An explanation of that activity is presented below. Of the original \$69,814.00 detailed in the interim audit report, \$57,968.00 remains unaccounted for as to which organization paid for this travel. The Audit staff recommended that the \$57,968.00 in transportation costs and the

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White House Communication Agency costs of \$31,257.42 not paid by the Committee be considered contributions in-kind and applied to the overall spending limitation.

On January 30, 1992 the Commission voted to exclude from expenditures subject to the overall limit, people traveling on Air Force II except for the candidate, his spouse, and anyone identified or associated with George Bush for President. White House Communication Agency costs have also been excluded. As a result the total amount considered as an in-kind contribution totals \$13,969.00.

In the next issue addressed, the Treasurer states "the travel in the week of August 2 through 9 were appropriately charged to the General Election Committee." The Treasurer reasons that "by summer, 1988 all of the presidential primaries had been completed, and Vice President Bush was assured of his party's nomination. Thus, the campaign properly undertook to determine whether Vice President Bush's travel during this post-primary period was nomination or general election related. Expenses were paid by either George Bush for President or Bush-Quayle 88 in accordance with this determination." The Treasurer states further, that "the Commission has previously permitted general election committees to pay expenses attributable to the general election which are incurred prior to the general election period", and the Treasurer refers to Reagan-Bush Audit of 1984 as support for this statement.

The Audit staff does not dispute that by August of 1988, all primaries were over or that the Candidate appeared to be assured the nomination. In the Bush-Quayle 88 audit report, the Commission determined that the travel costs discussed above did not meet the definition of permissible pre-expenditure report period expenses and therefore were considered non-qualified campaign expenses on the Bush-Quayle 88 audit report. The Audit staff is of the opinion that no further action, with respect to the Committee, is necessary with regard to the \$30,101.26.

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8. Expenditures Subject to Overall Limitation - Recap

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

| | |
|--|----------------------|
| Expenditures subject to the limitation as of March 31, 1990, as reported by the Committee | \$23,020,108.35 |
| Add: a) Overstated compliance and understated operating expenditures (Section 1. above) | 203,762.14 |
| b) Insurance reimbursed by Bush-Quayle '88 and the Compliance Fund (Section 3. above) | 27,825.87 |
| c) Air Force II costs not paid by the Committee (Section 7. above) | 13,969.00 |
| d) Equipment sold to the Sununu Committee (Finding III.D.4.) | 4,140.00 |
| e) In kind contribution for automobiles (Finding III.C.5.) | 4,815.95 |
| f) Over allocation of equipment in Iowa to exempt compliance (Finding III.C.1.) | 100.20 |
| g) Adjustment to amounts charged to compliance for salary allocated to Iowa and New Hampshire from National (Finding III.C.2.) | 8,266.98 |
| h) Secret Service (Section 6. above) | (50,008.55) |
| i) Exempt Legal and Accounting (Section 5. above) | 10,650.17 |
| j) Reimbursement to Bush-Quayle '88 for August 16, 1988 Press Plane (Finding II.B.) | 23,520.00 |
| k) Voided Checks (Finding III.F.) | <u>(2,930.49)</u> |
| TOTAL | \$23,264,219.62 |
| Less 2 U.S.C. §441a(b)(1)(A) spending Limitation | <u>23,050,000.00</u> |
| Total expenditures in excess of limit | <u>\$ 214,219.62</u> |

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In the Interim Audit Report the Audit staff determined that the Committee was in excess of the limit by \$587,699.18. As a result of the Committee's response, the overbilling for the press plane was reduced by \$298,046.54 (Finding II.B.), the liability to Bush-Quayle '88 was reduced by \$30,101.26 (Section 7), vendor payments charged to payroll of \$40,531.89 (Section 2. above), Secret Service billable costs exceeding reimbursements by \$50,008.55, (Section 6) and the Committee voided checks totaling \$2,930.49 reduced expenditures subject to the limit. However, the reallocation of exempt compliance expenditures of \$10,650.17, (Section 5. above), paying Bush-Quayle '88 \$23,520 for the press plane (Finding II.B.) and use of air Force II not paid by the Committee of \$13,969.00 (Section 7) increased expenditures subject to the limit. Therefore, the Committee's total expenditures are in excess of the limit by \$214,219.62.

E. Use of Funds for Non-Qualified Campaign Expenses

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

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

On January 30, 1992, the Audit staff presented a final audit report to the Commission that the Committee had exceeded the state expenditure limitations for New Hampshire and Iowa by a total of \$294,492.54 (Finding III.C.) and the overall limitation by a total of \$289,476.04 (Finding III.D). These determinations were made by analyzing the Committee's expenditures made through December 31, 1989 which were allocable to these states' and/or the overall spending limitation and by adding to these totals the accounts payable relative to the respective limits.

In the case of the state spending limitation, all but \$1,533.78 was paid before the candidate's date of ineligibility. For the overall spending limitation, an amount totaling more than the overage was applied to the limitation after the Candidate's date of ineligibility. Therefore, the entire amount of the overage is assumed to have been paid in the post date of ineligibility period. Only the \$1,533.78 was paid when both sets of limitations had been exceeded and to avoid any double counting, only that amount needed to be adjusted out of the total of the two overages.

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Finally, the Committee's NOCO statement, as adjusted, reflected a surplus. It was assumed that the portion of the surplus which the Committee was not required to repay was applied to the amount in excess of the spending limitation. Thus a portion of the overall spending limitation excess was paid with purely private funds. This amount was adjusted out prior to the application of the repayment ratio.

Given the above, the repayment calculation for amounts paid in excess of the spending limitation was as follows:

| | |
|--|---------------------|
| Amount in Excess of the State Spending Limitation | \$294,492.54 |
| Amount in Excess of the Overall Spending Limitation | 289,476.04 |
| Surplus from Finding III.B. | \$25,749.13 |
| Less Repayment | <u>(6,856.01)</u> |
| Non-Federal Funds Portion of the Surplus Applied to Expenditures in Excess of the Spending Limitation | <u>(18,893.12)</u> |
| Total Amount in Excess of the Spending Limitation Paid with Mixed Pool of Private and Federal Funds | 565,075.46 |
| Less: Amount Paid in Violation of Both Limitations | <u>(1,533.78)</u> |
| Amount Subject to 11 C.F.R. 9038.2(b) Ratio Repayment | \$563,541.68 |
| Times the Repayment Ratio from Finding III.A. | <u>.266262</u> |
| Repayment Amount | <u>\$150,049.73</u> |

In response to the Interim Audit Report the Committee calculated, that they were in excess of the New Hampshire state limit by \$44,262.26 and the overall limit by \$225,316.56, resulting in a repayment of \$71,778.58. The Committee submitted a check in that amount with the response to the Interim Audit Report.

The following recommendation was presented to the Commission on January 30, 1992:

"The Audit staff recommends that the Commission make an initial determination that \$150,049.73 is repayable to the United States Treasury pursuant to 11 CFR 9038.2(b)(2)."

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The Commission did not agree with this method for determining the repayment. Instead, it was decided to compute the repayment using the larger of expenditures in excess of the state limits or expenditures in excess of the overall limit and not combine the two excessive amounts.

Based on the changes to Finding III.C. and D. the amount in excess of the state spending limitation totaled \$260,459.81 and the amount in excess of the overall spending limitation totaled \$214,219.62. Multiplying the larger amount by the repayment ratio of .266262 results in a repayment amount of \$69,350.55. Based on the changes to Finding III.D. the Committee's NOCO statement, as adjusted, no longer reflects a surplus.

Recommendation #5

Based on the Commissions decisions described above, the Audit staff recommends that the Commission make an initial determination that \$69,350.55 is repayable to the United States Treasury pursuant to 11 CFR 9038.2(b)(2).

F. Stale-Dated Committee Checks

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

The Audit staff reconciled the Committee's reported activity to its bank activity through September 30, 1989 and determined that the total amount of outstanding checks was \$52,663.22. Of this amount \$46,659.64 were for checks dated between March 5, 1987 and January 4, 1989, including 13 totaling \$7,060.00 that are contribution refund checks. The remaining are to individuals and vendors in payment for various obligations.

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

- a) the checks are not outstanding (i.e., copies of the front and back of the negotiated checks); or
- b) the outstanding checks are void (copies of the voided checks with evidence that no committee obligation exists, or copies of negotiated replacement checks); and

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- c) inform the Commission of the Committee's attempts locate the payees to encourage them to cash the outstanding checks or provide evidence documenting the Committee's efforts to resolve these items.
- d) After reviewing the information, the Commission would recommend the amount payable to the United States Treasury.

In response to the Audit Report, the Committee repaid \$33,845.24 to the United States Treasury. The Audit staff reviewed the additional information and agrees with the Committee that there is no obligation for \$2,930.49. The Treasurer stated that two checks for \$153.85, were voided and reissued. However, these two checks were deleted from the stale dated list, prior to the Interim Audit Report by the Audit staff. The Treasurer also stated that two checks, totaling \$208.19, were voided and reissued, and the remaining checks were all voided. The Committee did not submit documentation to establish that no obligation exists for outstanding checks totaling \$9,883.91.

Recommendation # 6

The Audit staff recommends that the Commission make an initial determination that an additional \$9,883.91 be paid to the United States Treasury pursuant to 11 C.F.R. § 9038.6.

G. Recap - Amounts Repayable to the United States Treasury

Presented below is a recap of the amounts recommended by the Audit staff as subject to the repayment provisions of 26 U.S.C. §9038(b)(2) and (3), and 11 C.F.R. §9038.6.

| | |
|--|--------------------|
| Expenditures in Excess of State and Overall Limitations (See Finding III.E.) | 69,350.55 |
| Remaining Stale Dated Outstanding Checks (See Finding III.G.) | 9,883.91 |
| Amount Committee Repaid in Response to the Interim Audit Report | <u>(71,778.58)</u> |
| Total Recommended Repayment | <u>\$ 7,455.88</u> |

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

SENSITIVE

First General Counsel's Report

MUR: 3467

STAFF MEMBER: Mary Ann Bumgarner

SOURCE: INTERNALLY GENERATED

RESPONDENTS: George Bush for President Committee, Inc. and
Stan Huckaby, as treasurer
Murray Liebowitz
Walter Thayer
F.H. Prince & Co. Political Action Committee
and Sarah A. Loeffler, as treasurer
H & G Political Action Committee
and Thomas R. Kelsey, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 431(11)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(b)(1)(A)
2 U.S.C. § 441a(c)
2 U.S.C. § 441a(f)
26 U.S.C. § 9033
26 U.S.C. § 9035
11 C.F.R. § 103.3(b)
11 C.F.R. § 106.2
11 C.F.R. § 110.1
11 C.F.R. § 9003.3

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the George Bush for President Committee, Inc. (the "Committee") and Stan Huckaby, as treasurer, pursuant to 26 U.S.C. § 9038(a) to determine whether there had been compliance with the provisions

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of the Federal Election Campaign Act of 1971, as amended (the "Act"), and of the Presidential Primary Matching Payment Account Act ("Matching Payment Act"). See also, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2). On January 7, 1992, the Commission voted to refer certain matters arising from the audit to the Office of General Counsel for enforcement purposes. Attachment 1. These matters include the Committee's receipt of excessive contributions from individuals and political committees, the Committee's use of Air Force II for campaign travel, the allocation of Committee expenditures to several states and the Committee's expenditures subject to the overall limitation. On January 30, 1992, the Commission made certain revisions to the overall expenditure limitation and the state allocations sections of the Final Audit Report. Attachment 2. These revisions, affecting the referrals previously sent to this Office, were forwarded on February 20, 1992.

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II. FACTUAL AND LEGAL ANALYSIS

A. Introduction

Section B of this Analysis addresses the Committee's receipt of 194 excessive contributions from individuals which were not refunded in a timely manner. Further, this section addresses the Committee's failure to obtain redesignations for 45 contributions from individuals in a timely manner. This

section also addresses the Committee's receipt of five excessive contributions from political committees which were not refunded in a timely manner. At the conclusion of this section, this Office recommends that the Commission find reason to believe the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(f).

Section C of this Analysis addresses the allocation of Committee expenditures to the Iowa and New Hampshire state expenditure limitations. Based on the review by the Audit staff, the Committee exceeded its state expenditure limits by \$104,662.63 in Iowa and by \$155,797.18 in New Hampshire. Therefore, this section concludes with a recommendation that the Commission find reason to believe the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a).

B. Excessive Contributions

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. See 2 U.S.C. § 431(11). Further, 2 U.S.C. § 441a(a)(2)(A) states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election

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for Federal office which in the aggregate exceed \$5,000.¹ Moreover, no candidate or political committee shall knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id. The regulations further provide that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such

1. A multicandidate political committee means a political committee that has been registered with the Commission for at least six months and has received contributions from more than 50 persons and, except for a state political party organization, has made contributions to five or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). A committee that has not met these requirements is subject to the \$1,000 contribution limit set out in section 441a(a)(1)(A).

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contributions or maintain sufficient funds to refund these contributions if necessary. 11 C.F.R. § 103.3(b)(4).

In addition, the Commission regulations provide that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k).

Furthermore, when a contribution exceeds the limitations on contributions set forth in 2 U.S.C. § 441a(a), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3). In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id.

The Commission regulations further provide that if a political committee receives a written redesignation or reattribution of a contribution, the treasurer shall retain the

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written redesignation or reattribution signed by each contributor. 11 C.F.R. § 110.1(1). If a political committee does not retain the required written records, the redesignation or reattribution is not effective and the initial designation or attribution shall control. Id.

Finally, the Commission regulations permit a candidate to establish a legal and accounting compliance fund prior to being nominated as a major party candidate for President. 11 C.F.R. § 9003.3(a)(1)(i). Contributions which exceed the contributor's limitation for the primary election may be deposited in the compliance fund if the candidate obtains the contributor's redesignation of the contribution in accordance with 11 C.F.R. § 110.1. 11 C.F.R. § 9003.3(a)(1)(iii).

1. Individual Excessive Contributions

The examination and audit of the George Bush for President Committee identified 244 contributions from individuals with excessive portions totaling \$192,245. Of these 244 excessive contributions, 194 contributions totaling \$163,725 were refunded in an untimely manner. The average number of days from the Committee's date of deposit to the date of refund was 112. The Audit staff also determined that the Committee had not established a separate account for the deposit of contributions which were possibly excessive or prohibited. However, the Audit staff notes there was sufficient cash on

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hand in the Committee's regular accounts at all times to make any necessary refunds.²

In its response to the Interim Audit Report, the Committee stated that a majority of the 194 contributions occurred in early 1987. The Committee argued that the Commission regulation that existed during that time period only required a refund or redesignation be made within a reasonable time. Since the 60 day rule set out at 11 C.F.R. § 110.1(b)(5)(ii) was not in effect until April 8, 1987, contributions received early in the election cycle therefore should be governed by the "reasonable time to refund" standard under the former regulations.

Of the 194 excessive contributions not refunded in a timely manner, only 74 were deposited prior to April 8, 1987. However, none of these contributions was refunded prior to April 8, 1987. The average number of days from the Committee's date of deposit to the date of refund for the 74 was 150. This Office concurs with the Audit staff that the average of 150 days does not meet the "reasonable time" standard in the previous regulation. This is valid especially in light of the reasoning behind the 60 day rule present in the current regulation. The 60 day time limit represents a balance between the need to establish realistic deadlines and the need to

2. The Committee was provided with a list of the untimely refunds and redesignations at the exit conference.

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resolve excessive contribution problems quickly. See Explanation and Justification for 11 C.F.R. §§ 110.1(b)(5); 110.1(k) and 103.3(b)(3), 52 Fed.Reg. 760, 763 (January 9, 1987). Therefore, it does not appear that the Committee refunded in a timely manner any of the 194 excessive contributions from individuals totaling \$163,725.

The remaining 50 excessive contributions from individuals totaling \$28,520 were transferred to the George Bush for President Compliance Fund ("Compliance Fund"). Of these 50 contributions, 41 contributions totaling \$21,835 were redesignated by the contributors. The Committee provided no evidence of the dates on which these contributions were redesignated to the Compliance fund. The copies of the letters for redesignation to the Compliance Fund provided by the Committee contained the contributors' signatures, but provided no line which requested or encouraged the contributors to enter a date. No other evidence as to the dates the redesignations were received was retained by the Committee. Other than the date of transfer to the Compliance Fund, none of the dates maintained in the Committee's records suggested that the contributions were redesignated in a timely manner.³

3. The Audit staff notes that later in the campaign the Committee used letters requesting that contributors enter response dates, and in some instances, maintained the post marked envelopes in which the redesignation had been received.

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In addition, the records furnished for the audit did not include any redesignation letters for the remaining nine transfers which totaled \$6,685. The average number of days from the Committee's date of deposit to the apparent date of transfer was 82. In response to the Interim Audit Report, the Committee provided documents which demonstrate that five of these nine contributions were redesignated in a timely manner. The Committee did not provide any documentation for the other four Compliance Fund transfers totaling \$2,635. The Committee argued that the Audit staff should not have relied on the "action date" as the date upon which the redesignation occurred or as the date the transfer of funds took place. The Committee argued that the action date instead was the date the Committee used to update its computer files. Since this was done only periodically, the action date frequently did not coincide with the date of transfer. In support of this argument, the Committee submitted the aforementioned documents for five of the nine redesignations that the Audit staff could not locate during fieldwork. Since the "action date" for these five contributions was much later than the dates provided by the contributors on the redesignation letters, the Committee argued that all the undated redesignations should be presumed to have been performed in a timely manner. The Committee further argued that neither the regulations nor Explanation and

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Justification required the date of redesignation to be provided, but merely required that redesignations be completed in 60 days. The Committee contended that it transferred only those contributions for which it had proper redesignations and that there is no evidence it did not follow this policy.

This Office concurs with the Audit Division that the burden is on the Committee to document that it received written redesignations of excessive contributions in a timely manner. If the redesignations are not in writing or not received in a timely manner, the excess amounts must be refunded. See Explanation and Justification for 11 C.F.R. § 110.1(b)(5)(ii), 52 Fed. Reg. 760, 763 (January 9, 1987). The Commission regulations require a committee treasurer to retain written redesignations provided by the contributors. 11 C.F.R. § 110.1(1)(2). If the treasurer does not retain such documentation, the redesignations shall not be effective. 11 C.F.R. § 110.1(1)(5). Without documentation of the dates of redesignation, the Commission would not be able to determine whether the redesignations were effective, or whether refunds are required.

The Audit staff recognized the limited usefulness of the action date to measure timely redesignations. However, since the Committee provided no other verifiable date, the only alternative to using the action date would be to treat all

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undated redesignations as untimely. The five letters submitted by the Committee in response to the Interim Audit Report did not prove that all redesignations were timely. According to the evidence, it does not appear that the Committee has documentation of when redesignations were received for 45 of the 50 contributions transferred to its compliance fund. Without proof of timeliness, the redesignations are ineffective. The excessive portions of these 45 contributions total \$24,470.

Based on the foregoing, of the 244 contributions originally cited by the Audit Division as being excessive, the Committee accepted 239 excessive contributions from individuals totaling \$188,195. These contributions were not refunded or redesignated in a timely manner. In addition, this Office notes that two individual contributors made total contributions to the Committee that exceeded applicable limits by more than twofold. These contributors, Walter Thayer and Murray Liebowitz, each made contributions totaling \$3,000 to the Committee.

2. Excessive Contributions from Political Committees

During its examination and audit of the Committee, the Audit staff discovered that five contributions from political committees with excessive portions totaling \$11,000 were not refunded in a timely manner. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A) and 11 C.F.R. §§ 110.1(b)(1) and 110.2(b)(1).

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The average number of days from the Committee's date of deposit to the date of refund was 121.⁴ Of the five political committees involved, only one qualified as a multicandidate political committee at the time it made its excessive contribution to the Committee.

In the Interim Audit Report, the Audit staff recommended that the Committee provide evidence that these five contributions were refunded in a timely manner. In its response, the Committee failed to provide any documentation to demonstrate the timeliness of the refunds of these five excessive contributions. Therefore, the Committee accepted excessive contributions from political committees totaling \$11,000. In addition, this Office notes that two political committees made total contributions to the Committee that exceeded their applicable limits by more than twofold. The committees, F.H. Prince & Co. Political Action Committee and the H & G Political Action Committee, each made contributions totaling \$5,000 to the Committee. Neither of these committees qualified as a multicandidate committee at the time the

4. As discussed above, the Committee did not establish a separate account for the deposit of possible illegal contributions. However, there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds. The Committee was provided with a schedule of the excessive political committee contributions at the exit conference.

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contributions were made and therefore were subject to the \$1,000 contribution limit of 2 U.S.C. § 441a(a)(1)(A).⁵

3. Summary

Based on the foregoing, the Office of the General Counsel recommends that the Commission find reason to believe the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting 239 excessive contributions from individuals totaling \$188,195 and by knowingly accepting five excessive contributions from political committees totaling \$11,000 that were not redesignated, reattributed or refunded in a timely manner.

This Office further recommends that the Commission find reason to believe Walter Thayer and Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Committee totaling \$2,000 each. In addition, this Office recommends that the Commission find reason to believe the F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A) by making excessive contributions to the Committee totaling \$4,000 each.

5. According to the Reports Analysis Division ("RAD"), the F.H. Prince & Co. Political Action Committee at no time has qualified as a multicandidate committee. RAD states that as of 11/21/89, the H & G Political Action Committee qualified as a multicandidate committee. However, its contribution to the Committee took place on 5/4/87, prior to the date of its qualification.

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C. Excessive State Expenditures

No candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000, as adjusted by the change in the Consumer Price Index. 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c) and 26 U.S.C. § 9035(a). 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. 11 C.F.R. § 106.2(a)(1) and (c). In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. 11 C.F.R. § 106.2(a)(1).

The categories of expenditures exempted from state allocation are outlined at 2 U.S.C. § 431(9)(B)(vi) and 11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c). National campaign expenditures, including operating expenditures related to a national campaign headquarters, national advertising, and nationwide polls are not allocable. Nor are media production

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costs allocable whether or not the media advertising is used in more than one state. 11 C.F.R. § 106.2(c)(1) and (2).

Interstate travel and telephone calls are also exempt.

11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c)(4). An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular state may be excluded from allocation to that state as exempt fundraising expenditures. But, this exemption shall not apply within 28 calendar days of the primary election.

11 C.F.R. § 106.2(c)(5). Overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone service base charges.

11 C.F.R. § 106.2(b)(2)(iv).

For the 1988 presidential primary election, the expenditure limitation for the State of Iowa was \$775,217.60; for the State of New Hampshire the limitation was \$461,000. Through the Committee's March 31, 1990 report on its FEC Form 3P, Page 3, the Committee showed allocable costs to Iowa and New Hampshire of \$775,041.95 and \$481,332.45, respectively. On its report covering April, 1988, the Committee included a downward adjustment of its Iowa expenditures subject to the spending limitation. The support for this adjustment was a recalculation of Iowa allocable amounts from the starting date

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to April 30, 1988. In reviewing this recalculation by the Committee, the Audit staff made several additional adjustments to the allocable amount to Iowa. The net effect of these additional adjustments was a \$13,990.53 reduction in the reported allocation. Attachment 1 at 20. The Audit staff also made several adjustments to the Committee's allocation for New Hampshire, thereby decreasing expenditures subject to the New Hampshire limit by \$4,208.75. Id.

In addition to the adjustments discussed above, the Audit staff determined that additional amounts needed to be allocated to both the Iowa and New Hampshire expenditure figures. These additional amounts involve numerous categories of expenses which the Committee may not have properly allocated. These categories include individuals' travel, non-travel and salary⁶, equipment sold during the campaign, prohibited in-kind contributions, allocation of polling expenses and stale-dated committee checks. The attached referral from the Audit Division provides a detailed analysis of these additional expenditure allocations. See Attachment 1 at 21-35. Also, as a result of the Commission's revisions of January 30, 1992 to the Final Audit Report, the expenditures allocable to New Hampshire in the categories of travel, non-travel and salary costs were decreased by a total of \$34,032.73. See Attachment

6. This category includes such things as hotel costs, vehicle rental, telemarketing programs and shipment of materials.

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2 at 2-3 and 8. The following chart lists all the additional allocations to both Iowa and New Hampshire as per the revised Final Audit Report:

Recap of Iowa and New Hampshire Allocations

| | <u>Iowa</u> | <u>New Hampshire</u> |
|---|----------------------|----------------------|
| Amount Allocated by the Committee | \$ 775,041.95 | \$ 481,332.45 |
| Adjustments Based on Committee Allocation Methods | (13,990.53) | (4,208.75) |
| Additional Allocations by Audit staff: | | |
| Travel and Salary Costs | 91,478.72 | 97,714.26 |
| Non Travel Costs | 25,464.54 | 35,658.26 |
| Purchase and Sale of Equipment | -0- | 6,300.96 |
| In-Kind Contribution | 4,815.95 | -0- |
| Allocation of Polling Expenses | 9,600.00 | -0- |
| Testing-The-Waters | -0- | -0- |
| Void Check | <u>(2,930.40)</u> | <u>-0-</u> |
| | | |
| Total Allocable Amount | 879,880.23 | 616,797.18 |
| Less Expenditure Limitation | <u>(775,217.60)</u> | <u>(461,000.00)</u> |
| Amount in Excess of Limitation | <u>\$ 104,662.63</u> | <u>\$ 155,797.18</u> |

The additional allocations to the amount spent by the Committee in Iowa result in expenditures in excess of the state limitation totaling \$104,662.63. In the case of New Hampshire, the additional allocations result in expenditures in excess of the state limitation totaling \$155,797.18. Therefore, this Office recommends that the Commission find reason to believe

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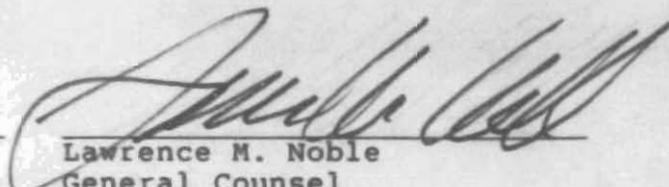
that the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a).

III. RECOMMENDATIONS

1. Find there is reason to believe George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).
2. Find there is reason to believe that Walter Thayer violated 2 U.S.C. § 441a(a)(1)(A).
3. Find there is reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A).
4. Find there is reason to believe that the F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
5. Find there is reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
6. Approve the appropriate letters and attached Factual and Legal Analyses.

Date

2/2/93


Lawrence M. Noble
General Counsel

Attachments

1. Referral Materials
2. Commission's revisions to referrals
3. Factual and Legal Analyses

Staff Member: Mary Ann Bumgarner

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS *[Signature]*
COMMISSION SECRETARY

DATE: FEBRUARY 3, 1993

SUBJECT: MUR 3467 - FIRST GENERAL COUNSEL'S REPORT
DATED FEBRUARY 2, 1993.

The above-captioned document was circulated to the Commission on Tuesday, February 2, 1993 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens _____
Commissioner Elliott _____
Commissioner McDonald _____
Commissioner McGarry XXX
Commissioner Potter _____
Commissioner Thomas _____

This matter will be placed on the meeting agenda for Tuesday, February 9, 1993.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
George Bush for President) MUR 3467
Committee, Inc. and Stan Huckaby,)
as treasurer;)
Murray Liebowitz;)
Walter Thayer;)
F.H. Prince & Co. Political Action)
Committee and Sarah A. Loeffler, as)
treasurer;)
H & G Political Action Committee)
and Thomas R. Kelsey, as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on February 9, 1993, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MUR 3467:

1. Find there is reason to believe George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f), and 26 U.S.C. § 9035(a).
2. Find there is reason to believe that Walter Thayer violated 2 U.S.C. § 441a(a)(1)(A).
3. Find there is reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A).

(continued)

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4. Find there is reason to believe that the F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
5. Find there is reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. 441a(a)(1)(A).
6. Approve the appropriate letters and Factual and Legal Analyses as recommended in the General Counsel's report dated February 2, 1993.
7. Direct the Office of General Counsel to draft conciliation agreements pursuant to the meeting discussion and circulate the proposed agreements for Commission approval on a tally vote basis.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision. Commissioner Aikens was not present. Commissioner Potter had recused himself from consideration of MUR 3467 and was not present.

Attest:

2-9-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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SENSITIVE

March 5, 1993

MEMORANDUM

TO: The Commission
FROM: Lawrence M. Noble *LMN*
General Counsel
SUBJECT: MUR 3467
Conciliation Agreements

On February 9, 1993, the Commission decided by a vote of 4-0 to find reason to believe that the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a). The Commission also found that there is reason to believe that Murray Liebowitz, Walter Thayer, F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and H & G Political Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A). On that same date, the Commission directed this Office to draft conciliation agreements in this matter.

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RECOMMENDATION

1. Approve the attached conciliation agreements.

Staff Assigned: Mary Ann Bumgarner

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BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|--------------------------------------|---|----------|
| In the Matter of |) | |
| |) | |
| George Bush for President Committee, |) | MUR 3467 |
| Inc. and Stan Huckaby, as treasurer; |) | |
| Murray Liebowitz; |) | |
| Walter Thayer; |) | |
| F.H. Prince & Co. Political Action |) | |
| Committee and Sarah A. Loeffler, as |) | |
| treasurer; |) | |
| H & G Political Committee and |) | |
| Thomas R. Kelsey, as treasurer. |) | |

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 10, 1993, the Commission decided by a vote of 5-0 to approve the conciliation agreements in MUR 3467, as recommended in the General Counsel's Memorandum dated March 5, 1993.

Commissioners Aikens, Elliott, McDonald, McGarry and Thomas voted affirmatively for the decision; Commissioner Potter recused himself from this matter and did not cast a vote.

Attest:

3-10-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

| | |
|------------------------------|----------------------------------|
| Received in the Secretariat: | Friday, March 5, 1993 9:47 a.m. |
| Circulated to the Commission | Friday, March 5, 1993 12:00 p.m. |
| Deadline for vote: | Wed., March 10, 1993 4:00 p.m. |

dr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

March 17, 1993

Sarah A. Loeffler, Treasurer
F.H. Prince & Co. Political Action
Committee
10 South Wacker Drive, Suite 2575
Chicago, Illinois 60606

RE: MUR 3467
F.H. Prince & Co. Political
Action Committee and
Sarah A. Loeffler, as
treasurer

Dear Ms. Loeffler:

On February 9, 1993, the Federal Election Commission found that there is reason to believe that the F.H. Prince & Co. Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The 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. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer 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 approved on March 10, 1993.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, 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,

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Page 2

are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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 the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,


Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: F.H. Prince & Co. MUR: 3467
Political Action Committee
and Sarah A. Loeffler, as
treasurer

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). The information is based on contributions received by the George Bush for President Committee, Inc. (the "Committee").

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. See 2 U.S.C. § 431(11). No multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.¹ Moreover, no candidate or political committee shall

1. A multicandidate political committee means any political committee that has been registered with the Commission for at least six months and has received contributions from more than 50 persons and, except for a state political party organization, has made contributions to five or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). A committee that

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knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a(a). 2 U.S.C. § 441a(f).

The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

Respondents made a \$5,000 contribution to the Committee on October 7, 1987, which was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee. Since respondents did not qualify as a multicandidate committee at the time the contribution was made, this contribution exceeds the \$1,000 per election limit of 2 U.S.C. § 441a(a)(1)(A).

Therefore, there is reason to believe that the F.H. Prince & Co. Political Action Committee violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Committee totaling \$4,000.

(Footnote 1 continued from previous page)
has not met these requirements is subject to the \$1,000 per election limit set out in section 441a(a)(1)(A).

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 17, 1993

Thomas R. Kelsey, Treasurer
H & G Political Action Committee
3300 Citicorp Center
1200 Smith
Houston, TX 77002

RE: MUR 3467
H & G Political Action
Committee and Thomas R.
Kelsey, as treasurer

Dear Mr. Kelsey:

On February 9, 1993, the Federal Election Commission found that there is reason to believe that the H & G Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The 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. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer 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 approved on March 10, 1993.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation

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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.

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 the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: H & G Political Action Committee MUR: 3467
and Thomas R. Kelsey, as treasurer

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). The information is based on contributions received by the George Bush for President Committee, Inc. (the "Committee").

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. See 2 U.S.C. § 431(11). No multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.¹ Moreover, no candidate or political committee shall

1. A multicandidate political committee means any political committee that has been registered with the Commission for at least six months and has received contributions from more than 50 persons and, except for a state political party organization, has made contributions to five or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). A committee that has not met these requirements is subject to the \$1,000 per election limit set out in section 441a(a)(1)(A).

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knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a(a). 2 U.S.C. § 441a(f).

The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

Respondents made a \$5,000 contribution to the Committee on May 4, 1987, which was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee. Since respondents did not qualify as a multicandidate committee at the time the contribution was made, this contribution exceeds the \$1,000 per election limit of 2 U.S.C. § 441a(a)(1)(A).

Therefore, there is reason to believe that the H & G Political Action Committee violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Committee totaling \$4,000.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1993

Mr. Murray Liebowitz
1850 Northeast 48th Street
Suite 187
Pompano Beach, Florida 33064

RE: MUR 3467
Murray Liebowitz

Dear Mr. Liebowitz:

On February 9, 1993, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The 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. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer 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 approved on March 10, 1993.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, 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.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days

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prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Murray Liebowitz MUR: 3467

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). The information is based on contributions received by the George Bush for President Committee, Inc. (the "Committee").

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. Moreover, no candidate or political committee shall knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a(a). 2 U.S.C. § 441a(f).

The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or

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redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

The Commission regulations further provide that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature on each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k). Furthermore, when a contribution exceeds the limitations on contributions set forth in 11 C.F.R. § 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3). In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id.

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Respondent made a \$3,000 contribution to the Committee on November 30, 1987, which was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee.

Therefore, there is reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Committee totaling \$2,000.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1993

Mr. Walter Thayer
450 East 52nd Street
New York, New York 10020

RE: MUR 3467
Walter Thayer

Dear Mr. Thayer:

On February 9, 1993, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The 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. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer 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 approved on March 10, 1993.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, 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.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days

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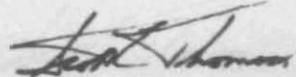
prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

- Factual and Legal Analysis
- Procedures
- Designation of Counsel Form
- Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Walter Thayer

MUR: 3467

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). The information is based on contributions received by the George Bush for President Committee, Inc. (the "Committee").

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. Moreover, no candidate or political committee shall knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a(a). 2 U.S.C. § 441a(f).

The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or

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redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

The Commission regulations further provide that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k).

Furthermore, when a contribution exceeds the limitations on contributions set forth in 11 C.F.R. § 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3).

In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id.

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Respondent made a \$3,000 contribution to the Committee on May 26, 1987, which was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee.

Therefore, there is reason to believe that Walter Thayer violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Committee totaling \$2,000.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 17, 1993

Stan Huckaby, Treasurer
George Bush for President Committee, Inc.
228 South Washington Street #200
Alexandria, VA 22314

RE: MUR 3467
George Bush for President
Committee, Inc. and Stan
Huckaby, as treasurer

Dear Mr. Huckaby:

On February 9, 1993, the Federal Election Commission found that there is reason to believe that the George Bush for President Committee, Inc. (the "Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath.

In the absence of any additional information demonstrating that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer 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 approved on March 10, 1993.

If you are interested in expediting the resolution of this matter by pursuing probable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation

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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.

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 the General Counsel ordinarily will not give extensions beyond 20 days.

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 authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain 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. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,


Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

cc: The Honorable George Bush

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: George Bush for President MUR: 3467
Committee, Inc. and Stan Huckaby,
as treasurer

I. GENERATION OF MATTER

This matter was generated on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its responsibilities. 2 U.S.C. § 437g(a)(2). It is based on an audit of the George Bush for President Committee, Inc. (the "Committee") and Stan Huckaby, as treasurer, pursuant to 26 U.S.C. § 9038(a) to determine whether there had been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the "Act") and of the Presidential Primary Matching Payment Account Act ("Matching Payment Act). See also, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

Pursuant to 2 U.S.C. § 441a(a)(1)(A), 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. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or

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group of persons. See 2 U.S.C. § 431(11). Further, 2 U.S.C. § 441a(a)(2)(A) states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which in the aggregate exceed \$5,000.¹ Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a.

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The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id. The regulations further provide that any contribution which appears to be illegal and which is deposited into a campaign depository

1. A multicandidate political committee means any political committee that has been registered with the Commission for at least six months and has received contributions from more than 50 persons and, except for a state political party organization, has made contributions to five or more candidates for Federal office. 2 U.S.C. § 441a(a)(4). A committee that has not met these requirements is subject to the \$1,000 per election limit set out in section 441a(a)(1)(A).

shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to refund these contributions if necessary. 11 C.F.R. § 103.3(b)(4).

In addition, the Commission regulations provide that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k).

Furthermore, when a contribution exceeds the limitations on contributions set forth in 2 U.S.C. § 441a(a), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3).

In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate

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the amount to be attributed to each contributor if equal attribution is not intended. Id.

The Commission regulations further provide that if a political committee receives a written redesignation or reattribution of a contribution, the treasurer shall retain the written redesignation or reattribution signed by each contributor. 11 C.F.R. § 110.1(1). If a political committee does not retain the required written records, the redesignation reattribution is not effective and the initial designation or attribution shall control. Id.

Finally, the Commission regulations permit a candidate to establish a legal and accounting compliance fund prior to being nominated as a major party candidate for President. 11 C.F.R. § 9003.3(a)(1)(i). Contributions which exceed the contributor's limitation for the primary election may be deposited in the compliance fund if the candidate obtains the contributor's redesignation of the contribution in accordance with 11 C.F.R. § 110.1. 11 C.F.R. § 9003.3(a)(1)(iii).

1. Individual Excessive Contributions

The examination and audit of the George Bush for President Committee identified 244 contributions from individuals with excessive portions totaling \$192,245. Of these 244 excessive contributions, 194 contributions totaling \$163,725 were refunded in an untimely manner. The average number of days from the Committee's date of deposit to the date of refund was 112. The Audit staff also determined that the Committee had not established a separate account for the deposit of

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contributions which were possibly excessive or prohibited. However, the Audit staff notes there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds.²

In its response to the Interim Audit Report, the Committee stated that a majority of the 194 contributions occurred in early 1987. The Committee argued that the Commission regulation that existed during that time period only required a refund or redesignation be made within a reasonable time. Since the 60 day rule set out at 11 C.F.R. § 110.1(b)(5)(ii) was not in effect until April 8, 1987, contributions received early in the election cycle therefore should be governed by the "reasonable time to refund" standard under the former regulations.

Of the 194 excessive contributions not refunded in a timely manner, only 74 were deposited prior to April 8, 1987. However, none of these contributions was refunded prior to April 8, 1987. The average number of days from the Committee's date of deposit to the date of refund for the 74 was 150. The average of 150 days does not meet the reasonable time standard in the previous regulation. This is true especially in light of the reasoning behind the 60 day rule present in the current regulation. The 60 day time limit represents a balance between the need to establish realistic deadlines and the need to

2. The Committee was provided with a list of the untimely refunds and redesignations at the exit conference.

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resolve excessive contribution problems quickly. See Explanation and Justification for 11 C.F.R. §§ 110.1(b)(5); 110.1(k) and 103.3(b)(3), 52 Fed.Reg. 760, 763 (January 9, 1987). Therefore, it does not appear that the Committee refunded in a timely manner any of the 194 excessive contributions from individuals totaling \$163,725.

The remaining 50 excessive contributions from individuals totaling \$28,520 were transferred to the George Bush for President Compliance Fund ("Compliance Fund"). Of these 50 contributions, 41 contributions totaling \$21,835 were redesignated by the contributors. The Committee provided no evidence of the dates on which these contributions were redesignated to the Compliance fund. The copies of the letters for redesignation to the Compliance Fund provided by the Committee contained the contributors' signatures, but provided no line which requested or encouraged the contributors to enter a date. No other evidence as to the dates the redesignations were received was retained by the Committee. Other than the date of transfer to the Compliance Fund, none of the dates maintained in the Committee's records indicated that the contributions were redesignated in a timely manner.³

In addition, the records furnished for the audit did not include any redesignation letters for the remaining nine

3. The Audit staff notes that later in the campaign the Committee used letters requesting that contributors enter response dates, and in some instances, maintained the post marked envelopes in which the redesignation had been received.

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transfers which totaled \$6,685. The average number of days from the Committee's date of deposit to the apparent date of transfer was 82. In response to the Interim Audit Report, the Committee provided documents which demonstrate that five of these nine contributions were redesignated in a timely manner. The Committee did not provide any documentation for the other four Compliance Fund transfers totaling \$2,635. The Committee argued that the Audit staff should not have relied on the "action date" as the date upon which the redesignation occurred or as the date the transfer of funds took place. The Committee argued that the action date instead was the date the Committee used to update its computer files. Since this was done only periodically, the action date frequently did not coincide with the date of transfer. In support of this argument, the Committee submitted the aforementioned documents for five of the nine redesignations that the Audit staff could not locate during fieldwork. Since the "action date" for these five contributions was much later than the dates provided by the contributors on the redesignation letters, the Committee argued that all the undated redesignations should be presumed to have been performed in a timely manner. The Committee further argued that neither the regulations nor Explanation and Justification required the date of redesignation to be provided, but merely required that redesignations be completed in 60 days. The Committee contended that it transferred only those contributions for which it had proper redesignations and that there is no evidence it did not follow this policy.

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The burden is on the Committee to document that it received written redesignations of excessive contributions in a timely manner. If the redesignations are not in writing or not received in a timely manner, the excess amounts must be refunded. See Explanation and Justification for 11 C.F.R. § 110.1(b)(5)(ii), 52 Fed. Reg. 760, 763 (January 9, 1987). The Commission regulations require a committee treasurer to retain written redesignations provided by the contributors. 11 C.F.R. § 110.1(l)(2). If the treasurer does not retain such documentation, the redesignations shall not be effective. 11 C.F.R. § 110.1(l)(5). Without documentation of the dates of redesignation, the Commission would not be able to determine whether the redesignations were effective, or whether refunds are required.

The Audit staff recognized the limited usefulness of the action date to measure timely redesignations. However, since the Committee provided no other verifiable date, the only alternative to using the action date would be to treat all undated redesignations as untimely. The five letters submitted by the Committee in response to the Interim Audit Report did not prove that all redesignations were timely. According to the evidence, it does not appear that the Committee has documentation of when redesignations were received for 45 of the 50 contributions transferred to its compliance fund. Without proof of timeliness, the redesignations are ineffective. The excessive portions of these 45 contributions total \$24,470.

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Based on the foregoing, of the 244 contributions originally cited by the Audit Division as being excessive, the Committee accepted 239 excessive contributions from individuals totaling \$188,195. These contributions were not refunded or redesignated in a timely manner. Therefore, there is reason to believe the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(f).

2. Excessive Contributions from Political Committees

During its examination and audit of the Committee, the Audit staff discovered that five contributions from political committees with excessive portions totaling \$11,000 were not refunded in a timely manner. See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(2)(A) and 11 C.F.R. §§ 110.1(b)(1) and 110.2(b)(1). The average number of days from the Committee's date of deposit to the date of refund was 121.⁴ Of the five political committees involved, only one qualified as a multicandidate political committee at the time it made its excessive contribution to the Committee.

In the Interim Audit Report, the Audit staff recommended that the Committee provide evidence that these five contributions were refunded in a timely manner. In its response, the Committee failed to provide any documentation to

4. As discussed above, the Committee did not establish a separate account for the deposit of possible illegal contributions. However, there was sufficient cash on hand in the Committee's regular accounts at all times to make any necessary refunds. The Committee was provided with a schedule of the excessive political committee contributions at the exit conference.

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demonstrate the timeliness of the refunds of these five excessive contributions. Therefore, there is reason to believe the George Bush for President, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from political committees totaling \$11,000 which were not redesignated, reattributed or refunded in a timely manner.

B. Excessive State Expenditures

No candidate for the office of President of the United States, who is eligible under Section 9033 of Title 26 to receive payments from the Secretary of the Treasury, may make expenditures in any one State aggregating in excess of the greater of 16 cents multiplied by the voting age population of the State, or \$200,000, as adjusted by the change in the Consumer Price Index. 2 U.S.C. §§ 441a(b)(1)(A) and 441a(c) and 26 U.S.C. § 9035(a). 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. 11 C.F.R. § 106.2(a)(1) and (c). In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable. 11 C.F.R. § 106.2(a)(1).

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The categories of expenditures exempted from state allocation are outlined at 2 U.S.C. § 431(9)(B)(vi) and 11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c). National campaign expenditures, including operating expenditures related to a national campaign headquarters, national advertising, and nationwide polls are not allocable. Nor are media production costs allocable whether or not the media advertising is used in more than one state. 11 C.F.R. § 106.2(c)(1) and (2).

Interstate travel and telephone calls are also exempt.

11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c)(4). An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular state may be excluded from allocation to that state as exempt fundraising expenditures. But, this exemption shall not apply within 28 calendar days of the primary election.

11 C.F.R. § 106.2(c)(5). Overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone service base charges.

11 C.F.R. § 106.2(b)(2)(iv).

For the 1988 presidential primary election, the expenditure limitation for the State of Iowa was \$775,217.60; for the State of New Hampshire the limitation was \$461,000. Through the Committee's March 31, 1990 report on its FEC Form 3P, Page 3, the Committee showed allocable costs to Iowa and New Hampshire of \$775,041.95 and \$481,332.45, respectively. On

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its report covering April, 1988, the Committee included a downward adjustment of its Iowa expenditures subject to the spending limitation. The support for this adjustment was a recalculation of Iowa allocable amounts from the starting date to April 30, 1988. In reviewing this recalculation by the Committee, the Audit staff made several additional adjustments to the allocable amount to Iowa. The net effect of these additional adjustments was a \$13,990.53 reduction in the reported allocation. The Audit staff also made several adjustments to the Committee's allocation for New Hampshire, thereby decreasing expenditures subject to the New Hampshire limit by \$4,208.75.

In addition to the adjustments discussed above, the Audit staff determined that additional amounts needed to be allocated to both the Iowa and New Hampshire expenditure figures. These additional amounts involve numerous categories of expenses which the Committee may not have properly allocated. These categories include individuals' travel, non-travel and salary⁵, equipment sold during the campaign, prohibited in-kind contributions, allocation of polling expenses and stale-dated committee checks. The attached Final Audit Report provides a detailed analysis of these additional allocations. The

5. This category includes such things as hotel costs, vehicle rental, telemarketing programs and shipment of materials.

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following chart lists all the additional allocations to both Iowa and New Hampshire as per the revised Final Audit Report:

Recap of Iowa and New Hampshire Allocations

| | <u>Iowa</u> | <u>New Hampshire</u> |
|---|----------------------|----------------------|
| Amount Allocated by the Committee | \$ 775,041.95 | \$ 481,332.45 |
| Adjustments Based on Committee Allocation Methods | (13,990.53) | (4,208.75) |
| Additional Allocations by Audit staff: | | |
| Travel and Salary Costs | 91,478.72 | 97,714.26 |
| Non Travel Costs | 25,464.54 | 35,658.26 |
| Purchase and Sale of Equipment | -0- | 6,300.96 |
| In-Kind Contribution | 4,815.95 | -0- |
| Allocation of Polling Expenses | 9,600.00 | -0- |
| Testing-The-Waters | -0- | -0- |
| Void Check | <u>(2,930.40)</u> | <u>-0-</u> |
| | | |
| Total Allocable Amount | 879,880.23 | 616,797.18 |
| Less Expenditure Limitation | <u>(775,217.60)</u> | <u>(461,000.00)</u> |
| Amount in Excess of Limitation | \$ <u>104,662.63</u> | \$ <u>155,797.18</u> |

The additional allocations to the amount spent by the Committee in Iowa result in expenditures in excess of the state limitation totaling \$104,662.63. In the case of New Hampshire, the additional allocations result in expenditures in excess of the state limitation totaling \$155,797.18. Therefore, there is reason to believe the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a).

Attachment
Final Audit Report

94030973397

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

MAR 29 12 05 PM '93

F. H. Prince & Co. Inc.
10 South Wacker Drive, Suite 2575
Chicago, Illinois 60606

Sarah A. Loeffler
Assistant Treasurer

Tel: (312) 454-1100
Fax: (312) 454-9125
Telex: 910-221-0055

March 24, 1993

Ms. Mary Ann Bumgarner
Federal Election Commission
Washington D.C. 20463

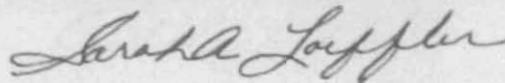
Dear Ms. Bumgarner:

Enclosed is the signed conciliation agreement and a check for the civil penalty relating to the F. H. Prince & Co. Political Action Committee matter.

Since you were listed in the cover letter as the attorney handling this matter, I thought it best to send the documents directly to your attention.

It is my understanding that the matter should now be resolved. If this is not the case, or if you need any additional information, please contact me at (312) 454-1100.

Sincerely,



Sarah A. Loeffler

SAL:dt

Enclosure

94030973398

RECEIVED
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93 MAR 29 PM 2:03

MAR 29 PM 3:31
FEDERAL ELECTION COMMISSION

OG-C 8795

RECEIVED
FEDERAL ELECTION COMMISSION

93 MAR 31 AM 10: 58



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 30, 1993

TWO WAY MEMORANDUM

TO: OGC, Docket
FROM: Philomena Brooks *PB*
Accounting Technician
SUBJECT: Account Determination for Funds Received

We recently received a check from F.H. Prince & Co
Petroleum Action FIA, check number 141, dated
March 23, 1993, and in the amount of \$ 1,000.00.
Attached is a copy of the check and any correspondence that
was forwarded. Please indicate below the account into which
it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician
FROM: OGC, Docket *By aa*

In reference to the above check in the amount of
\$ 1000.00, the MUR number is 3467 and in the name of
F.H. Prince & Co. PAC. The account into
which it should be deposited is indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Amia Alexander
Signature

3-31-93
Date

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RECEIVED
FEDERAL ELECTION COMMISSION

93 MAR 31 AM 10:59

141

2-17710
BRANCH 813

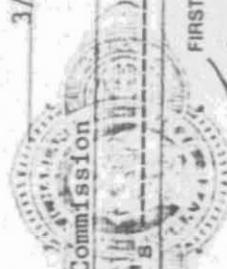
3/23 1993

\$ 1,000.00

F. H. PRINCE & CO.
POLITICAL ACTION FIA
10 SOUTH WACKER DRIVE, SUITE 2575
CHICAGO, IL 60606

Payable to
Federal Election Commission

One thousand and no/100's



FIRST CHICAGO
The First National Bank of Chicago
Chicago, Illinois 60670

FIRST INVESTMENT ACCOUNT

James J. Jeffrey
Robert J. Jeffrey

⑆071000013⑆ 92 04970⑈

0141

OAC 8885

Bush & Quayle

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE
93 APR -7 PH 3:51

HAND DELIVERY

April 7, 1993

The Honorable Scott E. Thomas, Chairman
Federal Election Commission
999 E Street NW
Washington, DC 20463

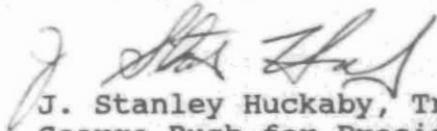
Re: Mur 3467

Dear Chairman Thomas:

Your letter informing me of MUR 3467 was received on Monday, March 29, 1992.

In consideration of the research of our files necessary in order to be able to respond to the issues raised in this MUR, I am requesting a twenty day extension of time in which to respond to this letter with respect to MUR 3467, which would set a due date for the response of May 3, 1993. Thank you for your consideration of this request.

Sincerely:



J. Stanley Huckaby, Treasurer
George Bush for President Committee, Inc.

94030973401



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APRIL 9, 1993

Stan Huckaby, Treasurer
George Bush for President Committee, Inc.
228 South Washington Street #200
Alexandria, VA 22314

RE: MUR 3467
George Bush for President
Committee, Inc. and Stan
Huckaby, as treasurer

Dear Mr. Huckaby:

This is in response to your letter dated April 7, 1993, which we received on April 7, 1993, requesting an extension of 20 days to respond to the Commission's reason to believe findings and conciliation agreement in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on May 3, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

A handwritten signature in cursive script that reads "Mary Ann Bumgarner".

Mary Ann Bumgarner
Attorney

94030973402

HUTCHESON & GRUNDY, L.L.P.

FAX # (713) 951-2925

FAX # (713) 951-2929

Attorneys at Law
3300 Citicorp Center
1200 Smith Street
Houston, Texas 77002-4579

mur 3467

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE
93 APR -5 PM 1:57

FAX COVER LETTER

We Are Transmitting From A Group III Machine

TO: Mary Ann Bumgarner
Federal Election Commission

FAX: 202-219-3923

DATE: April 1, 1993

OFFICE:

FROM: Thomas R. Kelsey

USER: 1500

FILE NO.: 99999-99999

TIME: 100

Total Number of Pages Including Cover Letter: 2

MESSAGE: ATTACHED IS A MEMO PREPARED BY ANNE BERRY WHICH EXPLAINS OUR UNDERSTANDING OF THE FACTS. PLEASE REVIEW AND CALL.

Thomas R. Kelsey
Direct Dial No. 951-2831

CONFIDENTIALITY NOTE

The documents accompanying this fax transmission may contain information from the law firm of Hutcheson & Grundy which is confidential or privileged. The information is intended for the use of the individual or entity to whom it is directed. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of the contents of the faxed information is prohibited. If you have received this fax in error, please notify us by telephone immediately so that we can arrange for the retrieval of the original documents at no cost to you.

If you have problems with this transmission, please call [Signature] at (713) 951-2966

94030973403

From: ANNE T. BERRY (BERRYA)
To: KELSEY
Date: Wednesday, March 31, 1993 5:21 pm
Subject: FEC Analysis

I have researched the reports and correspondence relating to the contribution in question. It appears that some confusion resulted from the fact that the contribution was made just prior to the FEC issuing new guidelines relating to contribution limits. The intent was to make the maximum allowable contribution, which at the time was thought to be \$5,000. Refer to the letter of solicitation received from the Finance Co-Chairman for Texas which stated maximum FEC allowable amounts for PACs and individuals. H&G PAC made a \$5,000 contribution with check #1007 dated April 30, 1987, not May 4, 1987 as the FEC has indicated. H&G PAC subsequently received a Memorandum dated April 27, 1987 from the FEC to Committee Treasurers regarding revised regulations on contribution limits, which became effective April 8, 1987. It is apparent that no one was aware of the new limitations imposed in April on contributions from PACs not qualifying as multicandidate at the time the contribution was made. Upon being advised by the FEC by letter dated 9/30/87 that a contribution in excess of the limit was made, a good faith effort to comply with all FEC directives was made in a timely and complete fashion. Not only is this exhibited through correspondence, but we were verbally assured on 10/9/87 by Robert DiNardo, FEC Reports Analyst, that the PAC would not be fined and that statement was related to the FEC in return correspondence from us and not subsequently disputed by them. A refund was requested from the Bush Campaign by letter dated 10/12/87 with copy to the FEC. The refund was received from the Bush Campaign with letter dated 11/4/87. The refund was reflected on the January 31 Year End Report to the FEC. Over five years have passed since the refund was obtained and amended reports were filed and accepted by the FEC. Our prompt action in obtaining a refund of the excessive amount as soon as we were advised, and our prompt response to all inquiries regarding the Report of Receipts and Disbursements will hopefully be taken into consideration by the FEC, as we were told it would be by the FEC at the time.

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93 APR 20 PM 12: 54

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
F.H. Prince & Co. Political Action) MUR 3467
Committee and Sarah A. Loeffler,)
as treasurer)
Walter Thayer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Sarah A. Loeffler, treasurer of the F.H. Prince & Co. Political Action Committee. Attachment 1. The attached agreement contains no changes from the agreement approved by the Commission on March 10, 1993. A check for the civil penalty has been received. Attachment 2. This Office recommends that the Commission accept the attached conciliation agreement and close the file as to these respondents.

In addition, this Office has been informed that Walter Thayer, a respondent in this matter, is deceased. Therefore, this Office recommends that Commission take no further action with respect to Walter Thayer and close the file as to this respondent.¹

1. The Commission also made reason to believe determinations in this matter against the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, the H & G Political Committee and Thomas R. Kelsey, as treasurer, and Murray Liebowitz. The Commission also determined to enter into conciliation with these respondents. A response has been received from the H & G Political Committee. Responses have not yet been received from the Bush Committee or Mr. Liebowitz.

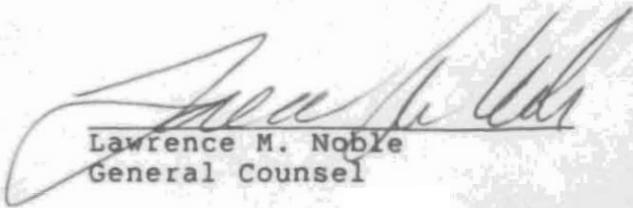
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II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and close the file as these respondents.
2. Take no further action with respect to Walter Thayer and close the file as to this respondent.
3. Approve the appropriate letters.

Date

4/20/93


Lawrence M. Noble
General Counsel

Attachments

1. Signed Conciliation Agreement
2. Copy of civil penalty check

Staff Assigned: Mary Ann Bumgarner

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
F.H. Prince & Co. Political Action) MUR 3467
Committee and Sarah A. Loeffler, as)
treasurer;)
Walter Thayer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on April 23, 1993, the Commission decided by a vote of 5-0 to take the following actions in MUR 3467:

1. Accept the conciliation agreement with the F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and close the file as to these respondents, as recommended in the General Counsel's Report dated April 20, 1993.
2. Take no further action with respect to Walter Thayer and close the file as to this respondent.

(continued)

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3. Approve the appropriate letters, as recommended in the General Counsel's Report dated April 20, 1993.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter did not cast a vote.

Attest:

4-23-93
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Tues., April 20, 1993 12:54 p.m.
Circulated to the Commission: Tues., April 20, 1993 4:00 p.m.
Deadline for vote: Fri., April 23, 1993 4:00 p.m.

bjr

94030973408



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

APRIL 30, 1993

Sarah A. Loeffler, Treasurer
F.H. Prince & Co. Political Action
Committee
10 South Wacker Drive, Suite 2575
Chicago, Illinois 60606

RE: MUR 3467
F.H. Prince & Co.
Political Action
Committee and Sarah A.
Loeffler, as treasurer

Dear Ms. Loeffler:

On April 23, 1993, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your behalf in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed as it pertains to the F.H. Prince & Co. Political Action Committee and you, as treasurer.

This matter will become public within 30 days after it has been closed with respect to all other respondents involved. Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Mary Ann Bumgarner
Attorney

Enclosure
Conciliation Agreement

94030973409

93 MAR 31 AHID: 59

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
F.H. Prince & Co. Political Action) MUR 3467
Committee and Sarah A. Loeffler, as)
treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer ("Respondents") violated 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, do hereby agree as follows:

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

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

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

1. 2 U.S.C. § 441a(a)(1)(A) limits the contributions a person may make to any candidate and his authorized political committee with respect to any election for Federal office to \$1,000. 2 U.S.C. § 441a(f) provides that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of Section 441a.

2. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. See 2 U.S.C. § 431(11).

3. The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

4. The Commission's regulations state that when a contribution exceeds the limitations on contributions set forth in 11 C.F.R. § 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the

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contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3). In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k).

5. The Commission's regulations state that the treasurer may request a written redesignation of a contribution by the contributor for a different election if a contribution exceeds the limitation on contributions. 11 C.F.R. §§ 110.1(b)(5) and 110.2(b)(5). A contribution shall be considered to be redesignated for another election if within sixty days from the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of a contribution for another election, which is signed by the contributor. Id.

6. Respondents made a \$5,000 contribution to the George Bush for President Committee, Inc. on October 7, 1987, which

was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee.

7. Respondents made an excessive contribution to the George Bush for President Committee, Inc. totaling \$4,000.

V. Respondents violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the George Bush for President Committee, Inc.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of One Thousand dollars (\$1,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the 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.

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

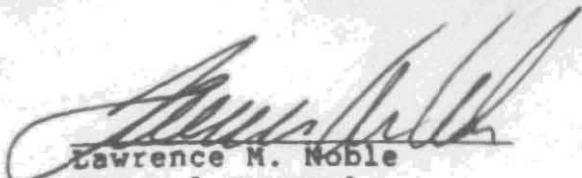
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

4/29/93
Date

FOR THE RESPONDENT:


Name: SARAH A. LOEFFLER
Position: TREASURER

3/23/93
Date

94030973414



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APRIL 30, 1993

Arthur Rosenberg, Esquire
Gilbert, Segall & Young
430 Park Avenue
New York, New York 10022

RE: MUR 3467
Walter Thayer

Dear Mr. Rosenberg:

On February 9, 1993, the Federal Election Commission found reason to believe that Walter Thayer violated 2 U.S.C. § 441a(a)(1)(A). After considering the circumstances of the matter, the Commission determined on April 23, 1993, to take no further action and closed the file as it pertains to Mr. Thayer. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Attorney

94030973415



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 13, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Murray Liebowitz
1850 Northeast 48th Street
Suite 187
Pompano Beach, Florida 33064

RE: MUR 3467
Murray Liebowitz

Dear Mr. Liebowitz:

Enclosed you will find notification that the Federal Election Commission found reason to believe that you violated the Federal Election Campaign Act of 1971, as amended ("the Act"). The Commission attempted to serve the enclosed documents on March 17, 1993. Please be advised that you have 15 days from the receipt of this letter to respond to the Commission's finding and conciliation offer.

Review all of the enclosed materials, and if you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Attorney

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RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

BATHGATE, WEGENER, DUGAN & WOLF JUN 7 11 43 AM '93

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
ONE AIRPORT ROAD
POST OFFICE BOX 2043
LAKEWOOD, NEW JERSEY 08701
(908) 383-0666
FAX #
(908) 383-9864

THREE GATEWAY CENTER
FIFTEENTH FLOOR
NEWARK, NEW JERSEY 07102
(201) 623-8663
FAX #
(201) 623-5464

June 4, 1993

VIA FAX 202-219-3923

Ms. Mary Ann Bumgarner
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: Murray Liebowitz
MUR 3467

Dear Ms. Bumgarner:

In connection with the above matter, enclosed please find a Statement of Designation of Counsel form, duly executed by Mr. Liebowitz.

Very truly yours,


Loraine Russo,
Legal Assistant to
LAWRENCE E. BATHGATE, II

/lr
enc.

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93 JUN -7 PM 4:17

RECEIVED
FEDERAL ELECTION
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STATEMENT OF DESIGNATION OF COUNSEL

NO. 3467

NAME OF COUNSEL: Lawrence E. Bathgate, II, Esq.

ADDRESS: Bathgate, Wegener, Dugan & Wolf, Esqs.

One Airport Road

Lakewood, NJ 08701

TELEPHONE: 908-363-0666

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RECEIVED
FEDERAL RESERVE COMMISSION
WASHINGTON, D.C. 20540

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

June 4, 1993
Date


SIGNATURE MURRAY LIEBOWITZ

RESPONDENT'S NAME: Murray Liebowitz

ADDRESS: c/o M.L. Property Management
2600 N. Commercial Blvd. - Suite 213
Fort Lauderdale, Florida 33306

HOME PHONE: 413-528-5400

BUSINESS PHONE: 305-491-4511

94030973418

BATHGATE, WEGENER, DUGAN & WOLF

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
THREE GATEWAY CENTER
NEWARK, NEW JERSEY 07102

(201) 623-6663

FAX #
(908) 663-6664

RECEIVED
FEDERAL ELECTION COMMISSION

93 JUN 15 PM 3:14

ONE AIRPORT ROAD
P.O. BOX 2043
LAKEWOOD, NEW JERSEY 08701

(908) 663-6666

FAX #
(908) 663-6664

June 4, 1993

"Via Telefax (202) 219-3923"

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
999 E Street N.W.
Washington, D.C. 20463

ATTENTION: Mary Ann Bumgarner, Esquire

RE: MUR 3467
MURRAY LIEBOWITZ

Dear Ms. Bumgarner:

This letter shall confirm that the undersigned is counsel to Murray Liebowitz, Fort Lauderdale, Florida, in connection with the above referenced matter. It is understood that a Designation of Counsel is in the process of being executed by Mr. Liebowitz designating the undersigned to act as his counsel in connection with this matter and that same will be forwarded to your forthwith.

This letter shall serve as our formal request for an extension of time in which to respond to the Commissions' finding and conciliation offer as referred to in your letter to Mr. Liebowitz dated May 13, 1993.

I have advised you that the letter that was forwarded to Mr. Liebowitz on or about May 13, 1993 was forwarded to an address in Pompano Beach, Florida where Mr. Liebowitz no longer has any connection. Further, the enclosures referred to in the subject letter including, but not limited to, the conciliation agreement and Designation of Counsel were inadvertently omitted. The undersigned requires a reasonable extension of time in which to prepare a proper response to the position of the FEC as it relates to Mr. Liebowitz. This letter shall serve as our agreement in the absence of a formal extension of time, that this matter has been under discussion between you and the undersigned,

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FEDERAL ELECTION COMMISSION
MAIL ROOM

BATHGATE, WEGENER, DUGAN & WOLF

A PROFESSIONAL CORPORATION

FEDERAL ELECTION COMMISSION

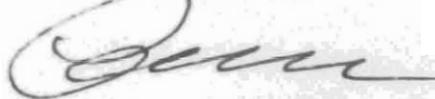
PAGE 2

June 4, 1993

and we are awaiting receipt of a formal extension from you, after you have received the required Designation of Counsel from this firm.

Please advise should you require any additional information at this time, I remain

Very truly yours,



LAWRENCE E. BATHGATE, II

LEB:klv

94030973420



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 8, 1993

Lawrence E. Bathgate, II, Esquire
Bathgate, Wegener, Dugan & Wolf
One Airport Road
P.O. Box 2043
Lakewood, N.J. 08701

RE: MUR 3467
Murray Liebowitz

Dear Mr. Bathgate:

This is in response to your letter dated June 4, 1993, which we received on that same date, requesting an extension of time to respond to the Commission's reason to believe finding in this matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted an extension of 10 days. Accordingly, your response is due by the close of business on June 16, 1993.

If you have any questions, please contact me at (202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Mary Ann Bumgarner
Attorney

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FEDERAL ELECTION
COMMISSION
WASHINGTON

BATHGATE, WEGENER, DUGAN & WOLF

JUN 15 1 18 PM '93

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ATTORNEYS AT LAW
ONE AIRPORT ROAD
POST OFFICE BOX 2043
LAKEWOOD, NEW JERSEY 08701
(908) 363-0666
FAX #
(908) 363-0804

THREE GATEWAY CENTER
FIFTEENTH FLOOR
NEWARK, NEW JERSEY 07102
(201) 623-6883
FAX #
(201) 623-5464

June 14, 1993

FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
999 E Street N.W.
Washington, D.C. 20463

ATTENTION: Mary Ann Bumgarner, Esquire

RE: MURRAY LIEBOWITZ
MUR 3467

Dear Ms. Bumgarner:

In connection with the above matter, and your letter to the undersigned dated June 8, 1993, please consider this letter as our Response to the Factual and Legal Analysis prepared by the Federal Election Commission in connection with the above matter.

- (1) The facts contained in the Commission's Factual and Legal Analysis are inaccurate. Murray Liebowitz issued a check dated April 6, 1987 to the George Bush for President Committee, in the sum of \$1,000.00.
- (2) On or after November 30, 1987, Murray Liebowitz issued a check dated November 30, 1987 to the George Bush for President Committee, in the sum of \$2,000.00.
- (3) The George Bush for President Committee refunded the sum of \$2,000.00 to Murray Liebowitz by check dated November 30, 1988.
- (4) The check refunding the \$2,000.00 to Murray Liebowitz was reported and recorded by the George Bush for President Committee in its filing with the Commission on or about February 8, 1988.
- (5) Mr. Liebowitz did not knowingly intend to violate 2 U.S.C. § 441(a)(1)(A).
- (6) The Bush Committee, after receiving the second check (in the sum of \$2,000.00) refunded the contribution to Mr. Liebowitz within sixty (60) days of the Bush Committee's receipt of the contribution, all as contemplated by the Federal statutes.

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BATHGATE, WEGENER, DUGAN & WOLF
A PROFESSIONAL CORPORATION

FEDERAL ELECTION COMMISSION
June 14, 1993
Page -2-

We respectfully request that the Commission take no further
action in this matter.

Very truly yours,



LAWRENCE E. BATHGATE, II

LEB/lr
cc: Mr. Murray Liebowitz

VIA FEDERAL EXPRESS

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BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|--------------------------------------|---|----------|
| In the Matter of |) | |
| |) | |
| George Bush for President Committee, |) | MUR 3467 |
| Inc. and Stan Huckaby, as treasurer |) | |
| H & G Political Action Committee |) | |
| and Thomas R. Kelsey, as treasurer |) | |
| Murray Liebowitz |) | |

SENSITIVE

MUR 3467

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 7, 1992, the Commission referred to the Office of the General Counsel four items arising from the Audit of the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer (the "Bush Committee") and determined to open a matter under review ("MUR").¹ On February 9, 1993, the Commission found reason to believe that the Bush Committee and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f) of the Federal Election Campaign Act of 1971, as amended, ("the Act") and 26 U.S.C. § 9035(a). On that same date, the Commission also found reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, ("H & G PAC") and Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A).² On March 10, 1993, the Commission determined

1. On January 30, 1992, the Commission voted to make several changes to the referral. These changes were sent to this Office on February 20, 1992.

2. The Commission also made reason to believe determinations in this matter against F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and Walter Thayer. On April 23, 1993, the Commission voted to accept the

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to offer to enter into conciliation negotiations prior to probable cause to believe and approved conciliation agreements in this matter.

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(Footnote 2 continued from previous page)
signed conciliation agreement submitted by F.H. Prince & Co. Political Action Committee and Sarah A. Loeffler, as treasurer, and closed the file as to these respondents. On that same date, the Commission voted to take no further action with respect to Walter Thayer and closed the file as to this respondent. This determination was based on information obtained by this Office that Mr. Thayer is deceased.

This report contains recommendations to assure that this matter conforms to the Court's opinion in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993) ("NRA").

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II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

Based upon the original audit and consistent with the Commission's November 9, 1993, decisions concerning compliance with the NRA opinion, this Office recommends that the Commission revoke the determinations to: (1) find there is reason to believe George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f) and 26 U.S.C. § 9035(a); (2) find there is reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A); (3) find there is reason to believe Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A); (4) approve the factual and legal analyses for the Bush Committee, H & G PAC, and Murray Liebowitz that were attached to the First General Counsel's Report dated

February 2, 1993; (5) enter into pre-probable cause conciliation with the Bush Committee regarding the violations of 2 U.S.C. §§ 441a(b)(1)(A) and 441a(f) and 26 U.S.C. § 9035(a); and (6) enter into pre-probable cause conciliation with H & G PAC regarding the violation of 2 U.S.C. § 441a(a)(1)(A). For the convenience of the Commission, this Office has attached the certifications in this matter dated February 9, 1993, and March 10, 1993. Attachments 7 and 8.

III. RECOMMENDED ACTION IN LIGHT OF MOST RECENT RESPONSES

A. The Bush Committee

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B. H & G PAC

In the first response from H & G PAC (see Attachment 3), its treasurer, Thomas R. Kelsey, asserts that there was "some confusion" by H & G PAC when it made the contribution to the Bush Committee, and he suggests that this was due, in part, to the "FEC issuing new guidelines relating to contribution limits." In support, Mr. Kelsey cites to a Federal Election Commission memorandum dated April 27, 1987, "regarding revised regulations on contribution limits, which became effective April 8, 1987." Mr. Kelsey further asserts that the PAC's intent was to make the maximum allowable contribution at that time which was "thought to be \$5,000." He argues that no one was aware of "the new limitations imposed in April on contributions from PACs not qualifying as multicandidate at the time the contribution was made."

According to Mr. Kelsey, when the Commission notified H & G PAC of the excessive contribution on September 30, 1987, he

contacted the Reports Analysis Division ("RAD"). Mr. Kelsey further asserts that he was advised by staff of RAD that H & G PAC "would not be fined." Mr. Kelsey states that on October 12, 1987, he wrote to the Bush Committee requesting a refund and on October 15, 1987, he mailed an amended report to the Commission. According to Mr. Kelsey, a refund check from the Bush Committee was received on November 4, 1987.

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Based on the foregoing responses, it appears that H & G PAC was confused as to the statutory contribution limit for political committees not qualifying as multicandidate committees. In his first response, Mr. Kelsey refers to "revised regulations on contribution limits, which became effective April 8, 1987." However, the statutory contribution limit for political committees not qualifying as multicandidate committees did not change and has always been \$1,000. See 2 U.S.C. § 441a(a)(1)(A). In his second response, Mr. Kelsey does not discuss specifically the issue of "contribution limits," but simply refers to "changes in election laws" that occurred at the time of the contribution. As in his first response, Mr. Kelsey once again refers to April 8, 1987, as the effective date for the "changes." This Office believes that Mr. Kelsey's confusion may stem from the implementation of the sixty-day rule set out at 11 C.F.R. §§ 103.3(b)(3), 110.1(b)(5)(ii) and 110.1(k), which took effect on April 8, 1987. However, this Office notes that the implementation of the sixty-day rule is irrelevant to this matter and would have had no bearing on H & G PAC at the time it actually made the excessive contribution to the Bush Committee.⁵

5. H & G PAC made a \$5,000 contribution to the Bush Committee on May 4, 1987, resulting in a \$4,000 excessive contribution.

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C. Murray Liebowitz

In the response on behalf of Murray Liebowitz (see Attachment 6), counsel states that the facts contained in the factual and legal analysis are inaccurate and requests that the Commission take no further action in this matter. According to counsel, Mr. Liebowitz issued a check dated April 6, 1987, to the Bush Committee in the sum of \$1,000. In addition, counsel states that on or after November 30, 1987, Mr. Liebowitz issued a second check to the Bush Committee, dated November 30, 1987, in the sum of \$2,000. Counsel then states that the Bush Committee refunded the sum of \$2,000 to Mr. Liebowitz by check dated November 30, 1988.⁸ According to counsel, the Bush Committee refunded the \$2,000 contribution to Mr. Liebowitz within sixty days of receipt of the contribution as "contemplated by the Federal statutes." Therefore, counsel asserts that Mr. Liebowitz did not knowingly intend to violate the Act.

Counsel's recitation of the dates do not jibe with the disclosure reports filed with the Commission nor other information obtained by the Audit Division.⁹ Based upon these records, Mr. Liebowitz made two contributions to the Bush

8. Counsel's cite to November 30, 1988, as the date of the refund check, is an error. The actual date of the refund from the Bush Committee was January 30, 1988.

9. The information obtained from the Audit Division includes a copy of the front of the contribution check dated November 13, 1987, from Mr. Liebowitz to the Bush Committee, and a copy of the front of the refund check dated January 30, 1988, from the Committee to Mr. Liebowitz.

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Committee: (1) he first contributed \$1,000 by check dated April 6, 1987; and (2) he later contributed \$2,000 by check dated November 13, 1987, which was reported by the Bush Committee as received on November 30, 1987. The Bush Committee refunded the excessive contribution of \$2,000 to Mr. Liebowitz by check dated January 30, 1988.

According to counsel, the check from Mr. Liebowitz was "issued on or after November 30, 1987" and, therefore, was refunded within sixty days. This Office does not have a copy of the back of the contribution check from Mr. Liebowitz with the date of deposit which would help verify the precise time frame surrounding the making and receipt of this contribution. However, accepting the Bush Committee's report as accurate, it appears that the contribution from Mr. Liebowitz was refunded only one day beyond the requisite sixty-day time period set out by the Commission's regulations.

In light of the foregoing,

this Office recommends that the Commission exercise its prosecutorial discretion and accept counsel's request to take no further action with respect to this violation. See Heckler v. Chaney, 470 U.S. 821 (1985). If the Commission adopts this recommendation, this Office will send the appropriate admonishment letter to Mr. Liebowitz. In addition, this Office recommends that the Commission close the file as to this respondent.

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III. RECOMMENDATIONS

1. Find reason to believe George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).
2. Find reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
3. Find reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A).
4. Approve the factual and legal analyses for George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, and Murray Liebowitz attached to the First General Counsel's Report dated February 2, 1993.
5. Enter into conciliation prior to a finding of probable cause to believe with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, regarding the violations of 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).
6. Enter into conciliation prior to a finding of probable cause to believe with the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, regarding the violation of 2 U.S.C. § 441a(a)(1)(A).
7. Approve the attached conciliation agreement with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer.
8. Approve the attached conciliation agreement with the H & G Political Action Committee and Thomas R. Kelsey, as treasurer.
9. Take no further action against Murray Liebowitz with respect to the violation of 2 U.S.C. § 441a(a)(1)(A).
10. Close the file as to Murray Liebowitz.
11. Approve the appropriate letters.

1/28/94
Date

LM Noble (742)
Lawrence M. Noble
General Counsel

94030973434

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 George Bush for President Committee) MUR 3467
 Inc. and Stan Huckaby, as treasurer;)
 H & G Political Action Committee and)
 Thomas R. Kelsey, as treasurer;)
 Murray Liebowitz.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on February 3, 1994, the Commission decided by a vote of 4-0 to take the following actions in MUR 3467:

1. Find reason to believe George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).
2. Find reason to believe that the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A).
3. Find reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A).
4. Approve the factual and legal analyses for George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, and Murray Liebowitz attached to the First General Counsel's Report dated February 2, 1993.

(continued)

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5. Enter into conciliation prior to a finding of probable cause to believe with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, regarding the violations of 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).
6. Enter into conciliation prior to a finding of probable cause to believe with the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, regarding the violation of 2 U.S.C. § 441a(a)(1)(A).
7. Approve the conciliation agreement with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer, as recommended in the General Counsel's Report dated January 28, 1994.
8. Approve the conciliation agreement with the H & G Political Action Committee and Thomas R. Kelsey, as treasurer, as recommended in the General Counsel's Report dated January 28, 1994.
9. Take no further action against Murray Liebowitz with respect to the violation of 2 U.S.C. § 441a(a)(1)(A).
10. Close the file as to Murray Liebowitz.

(continued)

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11. Approve the appropriate letters, as recommended in the General Counsel's Report dated January 28, 1994.

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioner Potter recused himself from this matter and did not vote; Commissioner McDonald did not cast a vote.

Attest:

2-4-94
Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., Jan. 28, 1994 2:48 p.m.
Circulated to the Commission: Mon., Jan. 31, 1994 11:00 a.m.
Deadline for vote: Thurs., Feb. 03, 1994 4:00 p.m.

dh

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

FEBRUARY 10, 1994

Stan Huckaby, Treasurer
George Bush for President
Committee, Inc.
228 South Washington Street #200
Alexandria, VA 22314

RE: MUR 3467
George Bush for President
Committee, Inc. and Stan
Huckaby, as treasurer

Dear Mr. Huckaby:

On February 9, 1993, the Federal Election Commission found reason to believe that George Bush for President Committee, Inc. and you, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a), and subsequently entered into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

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Mr. Huckaby
Page 2

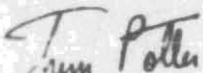
In this matter, on February 3, 1994, the Commission revoted to find reason to believe that George Bush for President Committee, Inc. and you, as treasurer, violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a), and to approve the Factual and Legal Analysis previously mailed to you. You should refer to that document for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

Furthermore, the Commission revoted to enter into conciliation negotiations prior to a finding of probable cause to believe

In view of the NRA decision, and the reconstitution of the Commission as a six member body, it is necessary that you sign the enclosed conciliation agreement reflecting those terms. Please sign and return the enclosed agreement within ten days.

Given the unique circumstances engendered by the NRA decision, conciliation negotiations, prior to a finding of probable cause to believe, will be limited to a maximum of 30 days. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,


Trevor Potter
Chairman

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

FEBRUARY 10, 1994

Thomas R. Kelsey, Treasurer
H & G Political Action Committee
Hutcheson & Grundy, L.L.P.
Citicorp Center
1200 Smith Street, Suite 3300
Houston, TX 77002-4579

RE: MUR 3467
H & G Political Action
Committee and Thomas R.
Kelsey, as treasurer

Dear Mr. Kelsey:

On February 9, 1993, the Federal Election Commission found reason to believe that H & G Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and subsequently entered into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

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Mr. Kelsey
Page 2

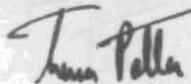
In this matter, on February 3, 1994, the Commission revoted to find reason to believe that H & G Political Action Committee and you, as treasurer, violated 2 U.S.C. § 441a(a)(1)(A), and to approve the Factual and Legal Analysis previously mailed to you. You should refer to that document for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

Furthermore, the Commission revoted to enter into conciliation negotiations prior to a finding of probable cause to believe

In view of the NRA decision, and the reconstitution of the Commission as a six member body, it is necessary that you sign the enclosed conciliation agreement reflecting those terms. Please sign and return the enclosed agreement within ten days. The check for the civil penalty should be made payable to the Federal Election Commission.

Given the unique circumstances engendered by the NRA decision, conciliation negotiations, prior to a finding of probable cause to believe, will be limited to a maximum of 30 days. If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,



Trevor Potter
Chairman

Enclosure
Conciliation Agreement

94030973441



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEBRUARY 10, 1994

Lawrence E. Bathgate, II, Esquire
Bathgate, Wegener, Dugan & Wolf
One Airport Road
Post Office Box 2043
Lakewood, NJ 08701

RE: MUR 3467
Murray Liebowitz

Dear Mr. Bathgate:

On February 9, 1993, the Federal Election Commission found reason to believe that Murray Liebowitz violated 2 U.S.C. § 441a(a)(1)(A), and subsequently entered into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. A proposed conciliation agreement was mailed to Mr. Liebowitz, and a response was submitted on June 14, 1993.

As you may be aware, on October 22, 1993, the D.C. Circuit declared the Commission unconstitutional on separation of powers grounds due to the presence of the Clerk of the House of Representatives and the Secretary of the Senate or their designees as members of the Commission. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, (U.S. No. 93-1151, Jan. 18, 1994). Since the decision was handed down, the Commission has taken several actions to comply with the court's decision. While the Commission petitions the Supreme Court for a writ of certiorari, the Commission, consistent with that opinion, has remedied any possible constitutional defect identified by the Court of Appeals by reconstituting itself as a six member body without the Clerk of the House and the Secretary of the Senate or their designees. In addition, the Commission has adopted specific procedures for revoting or ratifying decisions pertaining to open enforcement matters.

In this matter, on February 3, 1994, the Commission revoted to find reason to believe that Mr. Liebowitz violated 2 U.S.C. § 441a(a)(1)(A), and to approve the Factual and Legal Analysis previously mailed to him. You should refer to that document

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Mr. Bathgate
Page 2

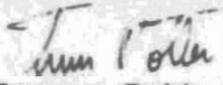
for the basis of the Commission's decision. If you need an additional copy, one will be provided upon request.

Furthermore, after considering the circumstances of this matter, the Commission also determined on February 3, 1994, to take no further action against Mr. Liebowitz and closed the file as it pertains to him. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved. You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply with respect to all respondents still involved in this matter. The Commission will notify you when the entire file has been closed.

The Commission reminds you that the \$3,000 contribution by Mr. Liebowitz to the Bush Committee, which was not redesignated, reattributed, or refunded within 60 days of receipt by the Committee, was a violation of 2 U.S.C. § 441a(a)(1)(A). Your client should take immediate steps to insure that this activity does not occur in the future.

If you have any questions, please contact Mary Ann Bumgarner, the attorney assigned to this matter, at (202) 219-3400.

For the Commission,


Trevor Potter
Chairman

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

STANDARD FORM NO. 64

Mar 15 1994

TWO WAY MEMORANDUM

TO: OGC, Docket

FROM: Philomena Brooks *PB*
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from Huck Kason +
Shirley L. L.P., check number 3661, dated
March 7, 1994, and in the amount of \$ 500.00.
Attached is a copy of the check and any correspondence that
was forwarded. Please indicate below the account into which
it should be deposited, and the MUR number and name.

TO: Philomena Brooks
Accounting Technician
FROM: OGC, Docket *Byaa*

In reference to the above check in the amount of
\$ 500.00, the MUR number is 3467 and in the name of
HRC Political Action Committee. The account into
which it should be deposited is indicated below:

- Budget Clearing Account (OGC), 95F3875.16
- Civil Penalties Account, 95-1099.160
- Other: _____

Anita Alexander
Signature

3-15-94
Date

94030973444

HUTCHESON & GRUNDY, ~~LLP~~

3 0 9 7 3 4 4 . 5

056601
CHECK NO 56601

ATTORNEYS AT LAW
1200 SMITH STREET, SUITE 3300
HOUSTON, TEXAS 77002-4579

BANK ONE
HOUSTON, TEXAS

FIVE HUNDRED AND NO/100 DOLLARS

DATE 3/07/94

AMOUNT OF CHECK
*****500.00

PAY TO THE ORDER OF

THIS CHECK VOID AFTER THREE (3) MONTHS.

Federal Election Commission

[Handwritten Signature]

⑈056601⑈ ⑆113000065⑆ 0010128833⑈

94 MAR 24 PM 3: 58

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
George Bush for President Committee,)
Inc. and Stan Huckaby, as treasurer)
H & G Political Action Committee)
and Thomas R. Kelsey, as treasurer)

SENSITIVE

MUR 3467

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement signed by Stan Huckaby, treasurer of George Bush for President Committee, Inc. (the "Bush Committee"). Attachment 1. Also attached is a conciliation agreement signed by Thomas R. Kelsey, treasurer of H & G Political Action Committee ("H & G PAC"). Attachment 2. The attached agreements contain no changes from the agreements approved by the Commission on February 3, 1994. Checks for the civil penalties have been received from both the Bush Committee and H & G PAC.

Accordingly, this Office recommends that the Commission accept the attached conciliation agreements and close the file in this matter.

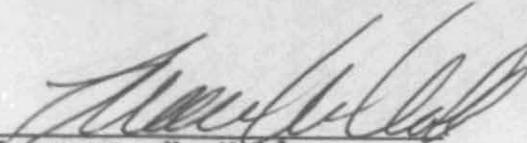
II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer.
2. Accept the attached conciliation agreement with H & G Political Action Committee and Thomas R. Kelsey, as treasurer.

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3. Approve the appropriate letters.
4. Close the file.

3/24/44
Date


Lawrence M. Noble
General Counsel

Attachments

1. Bush Committee conciliation agreement
2. H & G PAC conciliation agreement

Staff Assigned: Mary Ann Bumgarner

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
George Bush for President Committee,) MUR 3467
Inc. and Stan Huckaby, as treasurer;)
H & G Political Action Committee and)
Thomas R. Kelsey, as treasurer.)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 30, 1994, the Commission decided by a vote of 4-0 to take the following actions in MUR 3467:

1. Accept the conciliation agreement with George Bush for President Committee, Inc. and Stan Huckaby, as treasurer.
2. Accept the conciliation agreement with H & G Political Action Committee and Thomas R. Kelsey, as treasurer.

(continued)

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3. Approve the appropriate letters, as recommended in the General Counsel's Report dated March 24, 1994.

4. Close the file.

Commissioners Aikens, Elliott, McGarry, and Thomas voted affirmatively for the decision; Commissioners McDonald and Potter did not cast votes.

Attest:

3-30-94

Date

Delores Hardy
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Mar. 24, 1994 3:58 p.m.
Circulated to the Commission: Fri., Mar. 25, 1994 12:00 p.m.
Deadline for vote: Wed., Mar. 30, 1994 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

APRIL 8, 1994

Lawrence E. Bathgate, II, Esquire
Bathgate, Wegener, Dugan & Wolf
One Airport Road
P.O. Box 2043
Lakewood, NJ 08701

RE: MUR 3467
Murray Liebowitz

Dear Mr. Bathgate:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APRIL 8, 1994

Arthur Rosenberg, Esquire
Gilbert, Segall & Young
430 Park Avenue
New York, NY 10022

RE: MUR 3467
Walter Thayer

Dear Mr. Rosenberg:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

Mary Ann Bumgarner
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

APRIL 8, 1994

Sarah A. Loeffler, Treasurer
F.H. Prince & Company Political
Action Committee
10 South Wacker Drive, Suite 2575
Chicago, IL 60606

RE: MUR 3467
F.H. Prince & Company
Political Action Committee
and Sarah A. Loeffler, as
treasurer

Dear Ms. Loeffler:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at
(202) 219-3400.

Sincerely,

Mary Ann Bumgarner

Mary Ann Bumgarner
Attorney

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

APRIL 8, 1994

Thomas R. Kelsey, Treasurer
H & G Political Action Committee
Hutcheson & Grundy, L.L.P.
Citicorp Center
1200 Smith Street, Suite 3300
Houston, TX 77002-4579

RE: MUR 3467
H & G Political Action
Committee and Thomas R.
Kelsey, as treasurer

Dear Mr. Kelsey:

On March 30, 1994, the Federal Election Commission accepted the signed conciliation agreement submitted by H & G Political Action Committee and you, as treasurer, in settlement of a violation of 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

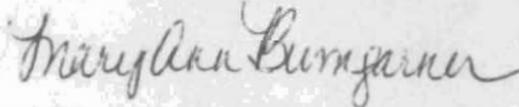
Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Mr. Kelsey
Page 2

Enclosed you will find a copy of the fully executed
conciliation agreement for your files. If you have any questions,
please contact me at (202) 219-3400.

Sincerely,



Mary Ann Bumgarner
Attorney

Enclosure
Conciliation Agreement

94030973454

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
H & G Political Action Committee) MUR 3467
and Thomas R. Kelsey, as treasurer)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that H & G Political Action Committee and Thomas R. Kelsey, as treasurer ("Respondents"), violated 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, do hereby agree as follows:

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

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

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

1. 2 U.S.C. § 441a(a)(1)(A) limits the contributions a person may make to any candidate and his authorized political committee with respect to any election for Federal office to \$1,000. 2 U.S.C. § 441a(f) provides that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of Section 441a.

2. The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons. See 2 U.S.C. § 431(11).

3. The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

4. The Commission's regulations state that when a contribution exceeds the limitations on contributions set forth in 11 C.F.R. § 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the

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contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3). In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. 11 C.F.R. § 110.1(k).

5. The Commission's regulations state that the treasurer may request a written redesignation of a contribution by the contributor for a different election if a contribution exceeds the limitation on contributions. 11 C.F.R. §§ 110.1(b)(5) and 110.2(b)(5). A contribution shall be considered to be redesignated for another election if within sixty days from the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of a contribution for another election, which is signed by the contributor. Id.

6. Respondents made a \$5,000 contribution to the George Bush for President Committee, Inc. on May 4, 1987, which was

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not redesignated, reattributed, or refunded within 60 days of receipt by the Committee.

7. Respondents made an excessive contribution to the George Bush for President Committee, Inc. totaling \$4,000.

V. Respondents violated 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the George Bush for President Committee, Inc.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Five Hundred dollars (\$500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the 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.

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

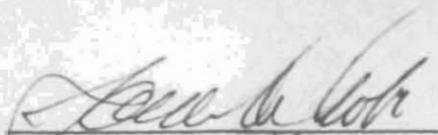
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

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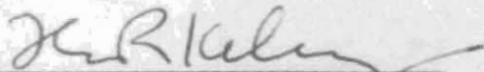
oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

4/8/94
Date

FOR THE RESPONDENT:

H+G PAC

Name: THOMAS R. KEYEY
Position: Treasurer

3/3/94
Date

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

APRIL 8, 1994

Stan Huckaby, Treasurer
George Bush for President
Committee, Inc.
228 South Washington Street #200
Alexandria, VA 22314

RE: MUR 3467
George Bush for President
Committee, Inc. and Stan
Huckaby, as treasurer

Dear Mr. Huckaby:

On March 30, 1994, the Federal Election Commission accepted the signed conciliation agreement submitted by George Bush for President Committee, Inc. and you, as treasurer, in settlement of violations of 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

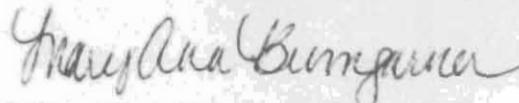
Please be advised that information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Mr. Huckaby
Page 2

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3400.

Sincerely,



Mary Ann Bumgarner
Attorney

Enclosure
Conciliation Agreement

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06C 344

RECEIVED
FEDERAL ELECTION COMMISSION

94 MAR -3 PM 12:25

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|--------------------------------------|---|----------|
| In the Matter of |) | |
| |) | |
| George Bush for President Committee, |) | MUR 3467 |
| Inc. and Stan Huckaby, as |) | |
| treasurer |) | |

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that the George Bush for President Committee, Inc. and Stan Huckaby, as treasurer ("Respondents"), violated 2 U.S.C. §§ 441a(b)(1)(A), 441a(f) and 26 U.S.C. § 9035(a).

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

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

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

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

1. The George Bush for President Committee, Inc. is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Stan Huckaby is the treasurer of the George Bush for President Committee, Inc.

3. 2 U.S.C. § 441a(f) provides that no candidate or political committee shall knowingly accept any contribution in violation of the provisions of 2 U.S.C. § 441a.

4. Pursuant to 2 U.S.C. § 441a(a)(1)(A), no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

5. The Commission regulations provide that contributions which on their face exceed the contribution limitations and contributions which do not appear to be excessive on their face, but which exceed the contribution limits when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor. Id. If the reattribution or redesignation is not obtained, the treasurer shall, within sixty

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(60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. Id.

6. The Commission's regulations state that the treasurer may request a written redesignation of a contribution by the contributor for a different election if a contribution exceeds the limitation on contributions. 11 C.F.R. §§ 110.1(b)(5) and 110.2(b)(5). A contribution shall be considered to be redesignated for another election if within sixty days from the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of a contribution for another election, which is signed by the contributor. Id.

7. The Commission's regulations state that when a contribution exceeds the limitations on contributions set forth in 11 C.F.R. § 110.1(b), the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. 11 C.F.R. § 110.1(k)(3). In order for a contribution to be considered reattributed to another contributor, the treasurer must first inform the contributor that the contribution may be refunded. Next, within sixty days from the date of the treasurer's receipt of the contribution, the contributors must provide the treasurer with a written reattribution of the contribution. This written reattribution must be signed by each contributor and indicate the amount to be attributed to each contributor if equal attribution is not intended. Id. A contribution made by more than one person that does not indicate the amount to be attributed to each

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contributor shall be attributed equally to each contributor.
11 C.F.R. § 110.1(k).

8. The Commission regulations further provide that if a political committee receives a written redesignation or reattribution of a contribution, the treasurer shall retain the written redesignation or reattribution signed by each contributor. 11 C.F.R. § 110.1(l). If a political committee does not retain the required written records, the redesignation or reattribution is not effective and the initial designation or attribution shall control. Id.

9. Pursuant to the Commission's regulations, any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to refund these contributions if necessary. 11 C.F.R. § 103.3(b)(4).

10. The Commission regulations permit a candidate to establish a legal and accounting compliance fund prior to being nominated as a major party candidate for President. 11 C.F.R. § 9003.3(a)(1)(i). Contributions which exceed the contributor's limitation for the primary election may be deposited in the compliance fund if the candidate obtains the contributor's redesignation of the contribution in accordance with 11 C.F.R. § 110.1. 11 C.F.R. § 9003.3(a)(1)(iii).

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11. During the 1987-88 election cycle, Respondents accepted 239 excessive contributions from individuals totaling \$188,195. Of these 239 excessive contributions, 194 contributions totaling \$163,725 were refunded in an untimely manner. The remaining 45 excessive contributions totaling \$24,470 were transferred to the George Bush for President Compliance Fund. Respondents do not have documentation of when the redesignations were received for these contributions. Without proof of timeliness, the redesignations are ineffective. Therefore, Respondents accepted 239 excessive contributions totaling \$188,195.

12. During the 1987-88 election cycle, Respondents also accepted five excessive contributions from political committees totaling \$11,000 that were refunded in an untimely manner.

13. 2 U.S.C. § 441a(b)(1)(A) establishes national and state expenditure limitations for candidates who receive public financing while seeking nomination for the office of President.

14. 26 U.S.C. § 9035(a) prohibits presidential candidates who accept public funds pursuant to 26 U.S.C. § 9034 from knowingly incurring qualified campaign expenses in excess of the expenditure limitations established by 2 U.S.C. § 441a(b)(1)(A).

15. Except for expenditures exempted under 11 C.F.R. § 106.2(c), expenditures incurred by a candidate's authorized committee for the purpose of influencing the nomination of that candidate with respect to a particular State must be allocated to that State on a reasonable basis. 11 C.F.R. § 106.2(a)(1) and (c).

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16. The categories of expenditures exempted from state allocation are outlined at 2 U.S.C. § 431(9)(B)(vi) and 11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c). National campaign expenditures, including operating expenditures related to a national campaign headquarters, national advertising, and nationwide polls are not allocable. Nor are media production costs allocable whether or not the media advertising is used in more than one state. 11 C.F.R. § 106.2(c)(1) and (2). Interstate travel and telephone calls are also exempt. 11 C.F.R. §§ 106.2(b)(2)(v) and 106.2(c)(4).

17. Pursuant to 11 C.F.R. § 106.2(c)(5), an amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular state may be excluded from allocation to that state as exempt fundraising expenditures. This exemption shall not apply within 28 calendar days of the primary election. 11 C.F.R. § 106.2(c)(5). Overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies and telephone service base charges. 11 C.F.R. § 106.2(b)(2)(iv).

18. For the 1988 presidential primary election, the expenditure limitation for the State of Iowa was \$775,217.60. Respondents made a total of \$879,880.23 in expenditures allocable to Iowa.

19. Respondents exceeded the Iowa state expenditure limitation by \$104,662.63.

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20. For the 1988 presidential primary election, the expenditure limitation for the State of New Hampshire was \$461,000. Respondents made a total of \$616,797.18 in expenditures allocable to New Hampshire.

21. Respondents exceeded the New Hampshire state expenditure limitation by \$155,797.18.

V. Respondents violated 2 U.S.C. § 441a(f) by accepting 239 excessive contributions from individuals totaling \$188,195 and five excessive contributions from political committees totaling \$11,000.

VI. Respondents violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035 by making expenditures in excess of the Iowa state expenditure limitation in the amount of \$104,662.63 and the New Hampshire state expenditure limitation in the amount of \$155,797.18.

VII. Respondents have paid a civil penalty to the Federal Election Commission in the amount of Forty Thousand Dollars (\$40,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the 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.

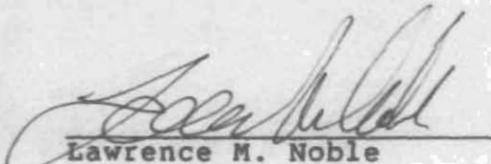
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IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondents shall have no more than 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.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters 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 enforceable.

FOR THE COMMISSION:


Lawrence M. Noble
General Counsel

4/8/94
Date

FOR THE RESPONDENTS:


Name
Position

3/3/94
Date

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3467

DATE FILMED 5-11-94 CAMERA NO. 2

CAMERAMAN JM14

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