FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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June 19, 1992

The Honorable Joan Aikens
Chairman
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20463

Re: Petition to deny certification to the Clinton for President Committee for eligibility to receive payments from the Presidential Primary Matching Payment Account and Presidential Election Campaign Fund.

Dear Madame Chairman:

This petition is filed with the Federal Election Commission ("FEC") challenging the eligibility of the Clinton for President Committee ("Clinton Committee") to receive payment from the Presidential Primary Matching Payment Account, 26 U.S.C. §9033, and the Presidential Election Campaign Fund, 26 U.S.C. §9006(a) of the Presidential Election Campaign Fund Act, 26 U.S.C. §§9001-9013, 9031-9042. As demonstrated below, the Clinton campaign has illegally used general election funds to raise primary election funds from private sources and the United States Treasury and has commingled general election and primary election funds. Accordingly, the Commission should deny certification of eligibility for any additional taxpayer funds to the Clinton campaign.

Facts

The Clinton Committee and the Democratic National Committee (DNC) have violated the law through an illegal $395,000 contribution designed to salvage Clinton's anemic primary fundraising effort.

Under the guise of claiming a general election "coordinated expenditure" by the DNC, Clinton has tried to forge a loophole to subsidize his primary campaign in violation of the Federal Election Campaign Act ("Act") and the FEC's Advisory Opinions ("AO"). In fact, this illegal contribution is being used to claim additional taxpayer funding from the United States Treasury that Clinton would be unable to obtain without this illegal contribution. The funds are further being used to allow payments of salaries to his employees for the primary campaign before the Democratic National Convention.

The violation arises because of the Clinton campaign's failure to convince donors to contribute to his campaign, thus causing severe deficits to develop in his primary account. On its May 1992 report, the Clinton campaign showed debts of $2,764,981.40 and cash-on-hand of $258,215.46. Press reports also indicate that Clinton's campaign has been unable to meet payroll. With the Clinton campaign's flawed operation bringing on a vicious cycle of inability to gain media attention, inability to purchase media time on its own and, consequently, inability to raise needed resources, the primary turned to an untapped pot of money -- the DNC's coordinated expenditure monies, 2 U.S.C. §441a(d).

Approximately $400,000 from these monies, which must be used "in connection with the general election campaign," *id.*, were spent on a June 12, 1992 television "town meeting." The town meeting featured Clinton answering questions on a variety of issues. The November general election was never referred to. *See transcript attached*. In addition, an "800" number was flashed repeatedly on the screen during the broadcast. Among the options given callers to the "800" number was contributing to Clinton's primary campaign. *See* Affidavit of John Wehrung, attached as Exhibit C of the accompanying Complaint.

Discussion

The FEC has ruled that using coordinated expenditures on behalf of a presidential candidate before a party's nominating convention is permissible as long as they are made "in connection with the general election campaign." 2 U.S.C. §441a(d). In determining whether such expenditures are allowable, "the proper analytical focus is whether the expenditures ... are made for the purpose of influencing the outcome of the general election for President of the United States." FEC AO 1984-15 (emphasis added).

By soliciting primary contributions on a broadcast paid for with general election funds, the Clinton campaign and the DNC have blatantly violated the letter and spirit of the Act and the FEC's AOs. Since the coordinated expenditures were used to solicit contributions, by definition, the funds were spent in the primary election. A presidential campaign may not solicit any contributions in the general election. 26 U.S.C. §9003(b)(2). A presidential campaign may solicit private contributions only in

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the primary campaign, and may receive matching funds from the U.S. Treasury for contributions under $250. 26 U.S.C. §9034.

Bill Clinton cannot have it both ways. The limit on a national party's contribution to a presidential primary campaign is $5,000. 2 U.S.C. §441a(a)(2)(A). If the Clinton campaign and the DNC maintain that having the DNC purchase a $400,000 nation-wide call-in show is for the primary election, since the "800" number was designed to raise primary matching funds, Clinton has accepted an illegal contribution above the $5,000 primary limit. On the other hand, if Clinton and the DNC are admitting that the general election has begun, they would be prohibited from the future raising of additional funds for the primaries and collecting matching funds from the United States Treasury without specifically informing contributors that their contributions will be used for primary debt retirement or for legal and accounting expenses. At a minimum, this illegal use of coordinated expenditure money for primary fundraising means that any funds raised as a result of the Clinton "town hall meeting" must be refunded to the contributors since general election contributions for publicly financed candidates are prohibited. In addition, the FEC must deny certification for any additional public funds in light of this improper raid on the United States Treasury, *see* below.

Federal election law precludes a publicly financed presidential candidate from mixing general and primary monies for the same event. Again, Clinton cannot have it both ways. If he is claiming that the June 12, 1992 broadcast was a general election expenditure, then primary funds cannot be used to pay for any expenses ancillary to the event such as travel costs to Pittsburgh for him and his entourage, or for staff salaries for that day if staff members went with him to that show, or for expenses on that trip.

If this broadcast is a general election expense, Clinton would be precluded from using primary funds for any future call-in shows with a similar format or from using primary funds to pay for similar fundraising events such as the fifty state fundraising satellite program he reportedly contemplates for later in the month (See *Washington Post* article attached as Exhibit A of the accompanying Complaint). The use of general election funds for this "town meeting" format featuring questions by telephone or from an audience means that all such future engagements paid for by the Clinton committee can only be paid for with general election funds. If this format is "general election" now, it must be for the remainder of the campaign. Accordingly, at least all direct and incidental expenses incurred by the Clinton campaign for future town hall meetings must be paid for with general, not primary, election funds. In addition, all ancillary expenses to these events must be paid for with general, not primary, funds the that Democratic nominee will receive.

On the other hand, if the Clinton argues that this expenditure was for the primary election campaign, then he has received an illegal and excessive contribution and the DNC has made an excessive contribution.

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The Clinton committee has qualified for, and has received, matching fund payments from the United States Treasury pursuant to 26 U.S.C. §§9031-9042. In return for these matching funds, candidate Clinton personally agreed to accept the taxpayers' matching funds for his campaign to conduct his primary election activities provided he abided by spending limits and contribution limits set forth in the Act. *See* 11 C.F.R. §9033.1. Although contributions from the national party are non-matchable, they are permitted subject to a $5,000 primary limit as would be the case for any other multi-candidate committee. *See* 2 U.S.C. §441a(a)(2)(A).

In the general election, nominees to the major parties may voluntarily agree to accept a taxpayer grant of $55.24 million, 26 U.S.C. §9004(a)(1), provided spending limits and other restrictions contained in the candidate's agreement are agreed to, 11 C.F.R. §9003.1. General election contributions are prohibited for taxpayer financed candidates, including contributions from party committees. However, the national committee of a major political party is allowed to make expenditures on behalf of the party's nominee under 2 U.S.C. §441a(d), provided the expenditures do not exceed $10.3 million.

All agreements to receive taxpayer funds are accompanied by an agreement signed by the candidate that his campaign will abide by all the rules set forth in the statute and regulations. At present, the Clinton committee cannot certify on good faith that these statutorily required conditions have been met or will be met in running his campaign. To the contrary, actions taken and statements made undermine any possible certification that Clinton may make that he does not intend to use improperly general election monies for primary election activities. Thus, if the Commission certifies the Clinton campaign to receive any more primary public funds, it will be sanctioning the open intention of the Clinton campaign, as exhibited by the overt and desperate acts described above, to undermine the Fund Act.

The facts of this matter are neither prospective or speculative, but exist on the public record. As such, the Commission has an obligation to consider this petition and further investigate the matter before performing its duty of assigning additional matching funds or certifying the Clinton campaign's general election funds. This duty can only be fulfilled upon the determination that the Clinton committee will not violate the Act or the Fund Act. As the D.C. Circuit has previously noted:

> If there were no circumstances under which a pre-certification investigation were permissible, the public could conceivably witness the spectacle of millions of taxpayer dollars being channeled to a candidate who had, before certification, either flouted the eligibility requirement or stated his intention to defy the restrictions imposed by the Fund Act on publicly financed candidates.

In Re Carter/Mondale Reelection Committee, Inc., 642 F.2d 538, 551 (D.C. Cir. 1980) (Wald, J., concurring).

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Certification of the Clinton committee for additional taxpayer money would undoubtedly raise this possibility. In this instance, for the first time since the enactment of the Fund Act, a candidate has chosen to impermissibly use coordinated expenditure general election money for primary election activities. What makes this case particularly insidious is that the impermissible coordinated funds are being used to pry additional, and otherwise unobtainable, taxpayer dollars from the United States Treasury for that candidate's primary campaign. Thus, the FEC should grant this petition to deny certification to the Clinton Committee for any additional public funds until such time that it is confident that millions of dollars will not be wrongly spent on this campaign.

Because the DNC appears to have subsidized the Clinton committee's primary election expenses by making excessive primary contributions of approximately $395,000, it violated 2 U.S.C. §441a(a)(2)(A) and the Clinton committee violated 2 U.S.C. §441a(f) by accepting this in-kind contribution. As a result, Governor Clinton appears to have breached his candidate agreement by failing to comply with 2 U.S.C. §431 et seq.; 26 U.S.C. §9031 et seq. and the Commission's regulations; 11 C.F.R. §9033.1(b)(9).

Based on these violations the Commission should rule on this petition expeditiously and deny the Clinton committee any more taxpayer funding from the United States Treasury based on this illegal fundraising subsidy. In addition, the Commission should begin an immediate investigation of the allegations made in the attached complaint.

Sincerely,

Benjamin L. Ginsberg

cc: The Honorable Lee Ann Elliot
The Honorable Danny McDonald
The Honorable John McGarry
The Honorable Trevor Potter
The Honorable Scott Thomas

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BEFORE THE FEDERAL ELECTION COMMISSION

OF THE UNITED STATES OF AMERICA

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUN 19 PM 12:46

Complaint: Violations of 2 U.S.C. §§441 a(a)(2)(A), 441 a(f), 2 U.S.C. §441d(a), 26 U.S.C. §9003(b)(2), 11 C.F.R. §90331(b)(9) and 11 C.F.R. §9034.4 (a)(l).

Respondents: Governor Bill Clinton, Clinton For President Committee and Democratic National Committee

Complainant: Republican National Committee

INTRODUCTION

Pursuant to 2 U.S.C. §437(g), the Republican National Committee ("RNC") brings this complaint against Governor Bill Clinton, the Clinton For President Committee ("Clinton Committee") and the Democratic National Committee ("DNC") for actual and impending violations of the Federal Election Campaign Act of 1971 as amended (FECA), including 26 U.S.C. §9030 et seq. and Federal Election Commission ("FEC") regulations. Specifically, the violations result from the DNC's purchase of approximately $400,000 in television time for the benefit of the Clinton Committee. The RNC respectfully requests that the FEC initiate an expeditious investigation of this matter and, if necessary, seek injunctive relief authorized by 26 U.S.C. §9010(c) in order to prevent taxpayers' monies from being applied to non-qualified campaign expenses and to assure compliance with the Candidate's Agreement signed personally by Clinton.

The Complainant also respectfully requests that the FEC promptly make a finding that either: (a) the DNC's use of coordinated expenditures for primary election activities is impermissible and constitutes an illegal primary election contribution of approximately $395,000 by the DNC to the Clinton Committee, or (b) if these DNC expenditures are

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viewed as general election related, then, (i) all related expenditures by the Clinton Committee, such as travel, subsistence and advance costs should also be classified as general election expenditures and, therefore, non-qualified primary campaign expenses under 26 U.S.C. §9032(9) and 11 C.F.R. §9032.9, (ii) any future expenditures made in relation to similar events either by the DNC or the Clinton Committee should be viewed as general election related expenditures subject to the appropriate general election expenditure limits and that (iii) any contributions raised as a result of the June 12, 1992 television program should be refunded to the contributors.

STATEMENT OF FACTS

1. On June 12, 1992 Governor Bill Clinton appeared on nationwide network television in a "town hall meeting" to answer questions posed to him by the television audience for 30 minutes.

2. The event cost approximately $400,000 and, according to the disclaimer shown on the program, was "Paid for by the DNC".

3. The DNC apparently felt it was authorized to pay for this event under its general election expenditure authority on behalf of its party's nominee because it was part of its "general election strategy" (Washington Post, June 13, 1992, attached as EXHIBIT A). This "general election strategy" apparently contemplates "several" more such town hall meeting events before the Democratic National Convention next month.

4. During the program, Clinton responded to questions concerning the issues that had been raised throughout the primary campaign. There was no apparent attack on the opposition candidates and there was only one specific reference to President Bush, relating to the "China Trade" issue. (See transcript of "town hall meeting" attached as EXHIBIT B).

5. Listeners were given a toll free number to call if they wanted to "ask a question or get more information". Reference to the toll free number was made by Clinton himself.

6. Callers to the toll free number were given the option of: (i) obtaining "Bill Clinton's Plan for America's Future", (ii) making a contribution, or (iii) leaving a message for Governor Clinton (Affidavit of John Wehrung attached as EXHIBIT C).

7. It appears the Clinton primary campaign is financially strapped, having cash on hand as of April 30, 1992 of only $258,215.46, but debts and obligations of

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$2,764,981.40. (Committee Summary of Receipts and Disbursements, FEC Report for April 1992, dated May 20, 1992, attached as EXHIBIT D).

8. It appears that the Clinton Committee's cash flow prevented the purchase of time which would have otherwise been treated as a qualified primary campaign expense.

9. Clinton has not filed an FEC Statement of Organization establishing a general election campaign committee. However, there is a general election legal and compliance fund registered with the FEC and affiliated with the Clinton primary Committee.

LEGAL ANALYSIS

Candidates seeking their party's nomination for president may voluntarily accept taxpayers' matching funds to conduct their primary campaigns if they comply with spending limits and other requirements set forth in the agreement signed by the candidate, *see* 11 C.F.R. §9033.1. Although contributions from the national party are non-matchable, they are allowed subject to a $5,000 primary limit. 2 U.S.C §441 a(a)(2)(A).

In the general election, nominees of the major parties may voluntarily agree to accept a taxpayer grant of $55.24 million, 11 C.F.R. §9004.1, provided they adhere to the spending limits and other restrictions set forth in the candidate agreement, 11 C.F.R §9003.1. General election contributions are prohibited for taxpayer financed candidates, including contributions from party committees. However, the national committee of a major political party is allowed to make expenditures on behalf of its 1992 nominee pursuant to 2 U.S.C. §441a(d) provided the expenditures do not exceed $10.3 million. They may or may not be coordinated with the campaign but these funds cannot be directly deposited into the Presidential campaign committee's account. These national party funds can in fact be expended prior to the selection of the party's nominee provided they "are made for the purpose of influencing the outcome of the general election for President of the United States." FEC Advisory Opinion 1984-15. That Advisory Opinion answered a narrow set of factual questions concerning negative ads against the other party's candidate that were not coordinated with any candidate. Specifically, the FEC found that party expenditures prior to the nominee being selected could be made for the purpose of influencing the outcome of the general election in the specific instance of a political ad attacking the opposition party candidate coupled with a partisan get-out-the vote message geared toward the November general election. The expenditures made by the DNC on behalf of Clinton are contrary to these facts.

The DNC payment for the Clinton "town hall meeting" expenses appears to have been motivated by a reason different than the "general election strategy" reported in the media and sanctioned in the 1984 FEC Advisory Opinion. The true reason is more

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basic -- the lack of primary funds available to the Clinton Committee. It appears that the Clinton Campaign intended to treat this event as a primary event and under FEC regulations would have been presumed to be a qualified primary campaign expense since it was incurred prior to the nominating convention of the Democratic Party. *See* 11 C.F.R. §§9032.9 and 9034.4. However, because of financial difficulty, the funds simply were not available. *See* FEC April Report dated May 20, 1992, Committee Summary of Receipts and Disbursements, Exhibit B. With the paucity of funds in its primary account, the Clinton campaign was forced to turn to impermissible sources -- the DNC and its general election coordinated expenditures.

While general election funds paid for it, the event was by legal definition a primary election event. Indeed, the television audience was urged to call the toll free number where the caller was given the option of making a contribution to the Clinton Committee. Contributions without additional designation are presumed to be for the next election, in this case the primary. *See* 11 C.F.R. §110.1(b)(2)(ii). Contributions to a publicly financed presidential candidate in the general election are prohibited. 11 C.F.R. §9012.2. Contributions to a general election legal and compliance fund are allowed subject to limit provided the monies are clearly solicited for this fund or if they are surplus primary funds that are specifically re-designated in writing by the contributor for the legal and compliance fund. 11 C.F.R. §§9003.3(a)(1)(i)(A) and (B) and (ii).

To summarize, the DNC purchased a $400,000 nationwide call-in program. During the course of that broadcast, an "800" number was referenced and repeatedly flashed on the screen. Calls to the "800" number invited respondents to, among other options, make a contribution to the Clinton Committee. That solicitation was clearly for the primary election effort since no money can be raised for the general election under the Presidential Funding Act. By allowing the DNC to purchase a $400,000 nationwide call-in show using its general election coordinated expenditure authority, money was made available to raise primary matching funds, which evidence suggests would not otherwise have been available to the Clinton Committee. Therefore, evidence suggests that the DNC used its coordinated expenditure authority not on "general election strategy" but blatantly to raise primary contributions on behalf of the Clinton For President Committee.

By subsidizing Clinton Committee primary election expenses, the DNC made excessive primary contributions amounting to approximately $395,000 in violation of 2 U.S.C. §441a(a)(2)(A). The Clinton Committee violated 2 U.S.C. §441a(f) by accepting excessive in-kind contributions. As a result, Clinton appears to have breached his candidate agreement by failing to comply with 2 U.S.C. §§431 et seq.; 26 U.S.C. §9031 et seq. and the Commission's regulations; 11 C.F.R. §9033.1(b)(9).

In the alternative, if the Commission determines that the "town hall meeting" is a general election expenditure, the Clinton Committee violated 11 C.F.R. §9034.4(a)(1) by making non-qualified primary campaign expenditures when it paid for or incurred

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any obligation to pay for related expenses associated with the "town hall meeting", such as travel, subsistence and any advance or planning costs of the event.

All contributions raised from callers to the "800" number as a result of the June 12, 1992 Clinton television program must also be refunded to the contributors since contributions cannot be accepted for the general election of a publicly financed candidate. 26 U.S.C. §9003(b)(2).

Although FEC regulations allow primary funds to be temporarily loaned to the general election effort to pay for qualified general election campaign expenses, these funds must be repaid to the primary account once the general election public grant money is received. 11 C.F.R. §9003.4 (b)(4)(i). But that is not what happened here; therefore, this defense is not available to the Clinton committee.

Also, if the FEC determines that the "town hall meeting" is a general election event, then similar future events must also be considered as general election related, whether paid for by the DNC or the Clinton Committee. Therefore, any expenditure or obligation incurred in connection with these future events by either the DNC or the Clinton Committee would count against the appropriate general election expenditure limits.

It is also imperative that the FEC make clear to the Clinton Committee that if these events are classified as general election activity, private contributions cannot be raised to pay for these specific events. Indeed, the only funds that can ultimately be used to pay for these expenses are Clinton's general election taxpayer grant of $55.24 million or the DNC's coordinated party expenditure authority of $10.3 million.

If the Commission determines, as in Advisory Opinion 1984-15, that Clinton's town hall meeting "effectively advocated the defeat of a clearly identified candidate" in November's election, then the DNC violated the FECA's mandatory disclaimer provisions, 2 U.S.C. §441d(a). Since the expenditure involved a clearly identified candidate the disclaimer needed to indicate not only that the communication was paid for by the DNC but also whether it was authorized by any candidate or candidate's committee. 2 U.S.C. §441d(a)(2) and (3); 11 C.F.R. §§110.11 (a)(1)(ii) and (iii).

CONCLUSION

Based upon the facts as known, the Complainant has reason to believe that the Respondents violated the FECA by making and accepting excessive primary contributions. In the alternative, if these expenditures are determined to be general election related, the Clinton Committee has violated 11 C.F.R. §9034.4(a)(1) by making non-qualified primary expenditures using primary contributions to pay for

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general election expenditures. More importantly, if the "town hall meeting" is classified as general election related, then all similar future events must be classified the same, implicating both the DNC's and the Clinton Committee's general election expenditure limits and prohibiting the Clinton Committee from using or raising primary contributions to pay for these future events or any related costs.

Respectfully submitted,

Benjamin L. Ginsberg
General Counsel

District of Columbia, ss:

Sworn to and subscribed before me this 19th day of June 1992.

Notary Public

Nicholas Lieder
Notary Public, District of Columbia
My Commission Expires April 30, 1997

My Commission Expires:

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EXHIBIT A

WASHINGTON POST 6/13/92

DNC Bails Clinton Out

■ Bill Clinton's presidential campaign has been facing such a cash crunch that it turned to the Democratic National Committee to pay the nearly $400,000 needed for a half-hour of network television time for a Clinton call-in show last night. "This is a judgment that Chairman [Ron] Brown made as a part of our general election strategy," DNC press secretary Ginny Terzano said.

Clinton's campaign hasn't been able to pay its staff on time lately, either. Spokesman Jeff Eller said yesterday that the staff's June 1 paychecks contained only one week's pay, instead of the usual two, but the shortage should be made up by the end of the month. The campaign, which is running about a $1 million vendor debt, has about 20 fund-raisers planned over the next month, including a 50-state satellite fund-raising event June 24 that officials hope will raise $1 million.

The funding difficulties should ease after the Democratic convention in mid-July, when the campaign should receive $55.24 million in public funds for the general election.

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EXHIBIT B

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-1 page# 1

dest=notvpol,elecus,cak,fns13684,fns10000,taxes,deped,edfund,jbcrp
dest+=hlth,hlthcr,hcf,fretrdag,ecdev,fortr,trdpol,hiwy,airc,fiberop
dest+=child,childwelf,childcare,labor,laborpol,laborun,labmgt,bus
dest+=crime,guncon
data

GOV. CLINTON: Thank you very much. First I want to thank all of you for coming tonight and for being willing to participate in this national town hall meeting. I did meetings like this on television with undecided voters in primary states from New Hampshire right through here in Pennsylvania. But we've never done it on a national basis before. We're doing this tonight for what I think are some very good reasons. As I traveled across America for eight months during the primary season, I found that most people

future.

I feel that, too. I've been out here on the firing line, on the receiving end of most of what's happened in Washington for the last 10 or 11 years, trying to balance budgets and put people to work and educate children and adults and trying to move people from welfare to work and make this system work. And I know it's tough. And it just seems to me that the best way for all of us as Americans to make the right decision in this presidential race is for anybody who wants to be president to be as open to the American people as possible, to be direct and accessible to their questions. And I've worked hard on a lot of these problems for years, so I think I've got some answers. I know you've got some questions, so let's get started. Go ahead.

Q Governor Clinton, I'm very sensitive about the job issues here and what we're seeing in this country's exportation of meaningful jobs into Mexico and other foreign countries. What would you do to keep jobs in this country?

GOV. CLINTON: I would, first of all, give us a national economic plan to generate good jobs. We're the only advanced nation that doesn't have a national economic strategy to keep good jobs here. I would do it by saying, look, let's look at what we did wrong. What did we do wrong in the '80s? In the '80s, we didn't have a strategy. We just cut taxes on the wealthiest people and on corporations and said, "They'll invest in our economy," but they didn't. Instead, the top 1 percent of the people got more wealth than the bottom 90 percent for the first time in 70 years, but they moved jobs offshore.

So here's what I think we ought to do. We ought to take every dollar by which defense is reduced and put it into investing in American jobs; into high-speed rail, into fiber optics, into new water and sewer and road systems, into new highway systems and new airplane systems, building an economy for the 21st century. We

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ought to change the tax system. We ought to say to business and to wealthy people, "We want you to have more tax incentives, but only if you invest in this country. So here are more incentives for new plant and equipment, for new businesses, for housing." But we're going to take all those ridiculous incentives out of the tax code that are there now that actually encourage people with your tax money to shut plants down and move them overseas. We're going to have a tough trade policy that says, "We want to expand trade, but you've got to treat us fair." We're going to educate and train our people as well as any country in the world, and we're going to control health care costs and provide health care to all our people so we can be competitive. Those are the things that will give us a national economic strategy. And if we don't do it, the economy won't recover.

is on tuition tax credits and vouchers at the federal level, and also whether you would ever see putting any government money into private education programs like the Edison Project.

GOV. CLINTON: I do not favor tuition tax credits or vouchers. I do favor public school choice. My state was the second state in the country to give parents and their children more choice of the schools that they attend at the public school level. We do provide for vouchers for people to go to private child care centers before public schools, and we provide scholarships in my state that are available for both private and public universities. But there's a very clear reason why I don't favor vouchers for public schools -- that is, kindergarten through 12th grade -- and that is that our nation already spends less money on kindergarten through 12th grade education than most other countries we're competing with for high-wage jobs, and most states are having a very hard time paying the school bill. I know we are.

So even though I support the right of people to go to private schools, and I think it's good for the public schools to have some competition -- I've spent more time working trying to improve education than anything else, and my daughter is a 7th grader in the public schools in Little Rock -- I still think that private school competition is good, but I don't think we ought to divert public money for private schools.

Yes, sir.

Q Governor, I'd like to get your feelings on the worker replacement bill.

GOV. CLINTON: I support the bill which would make it illegal to fire -- permanently replace workers who legally strike. And I hope something can be worked out on that. I think that we shouldn't build an economy by making people work harder for lower wages and fewer benefits. That's what we've been doing for the last 12 years.

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It hasn't worked very well. (Applause.)

Let me say, one of the things we have to do is do on the national level what I've worked hard to do at the local level, which is to say, "Look, you don't have to choose between workers and business. You can be pro-business and pro-worker if you're determined to build a high-wage, high-growth country." You know, if we're all working together on the same team -- look at these countries. Germany -- let's just take Germany. The average working person -- people, like most of you, in Germany makes 20 percent more than the average American for a shorter work week with health care and a four-week vacation, and, I might add, family leave if there's a baby born or a sick parent -- none of the things we have. Why? One reason is business, labor, education, government -- they work together. It works. And that's what we need to do. We cannot get

ago, including a lot of people in this room tonight. And we ought to turn that around. (Applause.)

Yes, ma'am.

Q I wanted to talk about gridlock in government. We can't get a crime bill passed. I mean, more than 90 percent of the people support the Brady bill, but we can't get it passed because the Republicans are filibustering and you can't get it to the floor. How could you make a difference in that?

GOV. CLINTON: Be president and be for the Brady bill; I am. And I'm the only one of the three people running for president who will say I am for the Brady bill -- no ifs, ands or buts. And let me -- for those of you who don't know, the Brady bill would require anybody who wants to buy a handgun to go through a waiting period so we could check, or a criminal history or mental health history for appropriate age. That's one of the things that we need to do. This is a real big issue to me. I'm tired of going to schools -- I was in a town the other day where there are 11 grade schools with metal detectors to take the guns and knives off the 8- and 9-year-olds.

Now, you know, I know what it's like to be a victim of crime. Twenty years ago, I was robbed twice within a two-year period, and I lost everything I owned. I was really mad about it. This world is a lot more violent now than it was then. You've got more and more young people, more and more people with guns in their hands. There's a lot that needs to be done on crime. But we ought to start with the Brady bill. And the reason there's gridlock is, you know, the President doesn't believe in it. And so he uses it as an excuse not to sign a crime bill. There's a lot of other good things in that crime bill, too; more money so that cities like Pittsburgh can hire more police to go on the street for community-based policing.

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-S-2 page# 1
dest=notvpol,elecus,cak,fns13684,fns10000,crime,drug,guncon,hmless,jbcrp
dest+=hlth,hlthcr,hcf
data

Believe me, we can clean up our neighborhoods. Across the state in Philadelphia, I walked down a street that used to be dominated by crack houses and gangs, where people walk safely now because of a partnership between the federal law enforcement authorities, the state and the local people and people watching their own neighborhoods. We need to do more of that. But we've got to pass the Brady bill. It's a big deal.

Yes, sir.

Q Governor Clinton, I would like to ask what do you plan to do about the urban plight of the cities, particularly about the homeless?

GOV. CLINTON: Well, there are lots of things we can talk about with the urban plight. And maybe while we're all here, other questions will be asked, too. But let's just talk about the homeless for a moment. And think back 10 or 11 years ago when we didn't have much of a homeless problem. It was really unusual, wasn't it, to see someone sleeping on the street. You didn't -- now you see it in all cities of all sizes. That is because we've gone for more than a decade without a national housing policy. Housing is not much different than highways. You've got to have some sort of investment policy, except in America we have both public and private dollars going into housing.

I favor a homeless strategy that would give more funds to cities to design their own homeless programs and would emphasize the lowest possible cost in solving the problem, which is to take these buildings that the government owns -- all right, we foreclosed on all these savings and loan properties. HUD has foreclosed on a lot of buildings; other federal agencies. We own houses. Those houses ought to be rehabilitated and made available for homeless shelters. We ought to take people who are out of work and let them work in return for public assistance, have them rehabilitate these houses and then open them for the homeless. But it's a crying shame to have all these boarded-up houses in America and people sleeping on the streets. We need to put them together. (Applause.)

Q Yes. Governor Clinton, I'd like to know what you would do about getting some form of national health care plan passed in this country, with almost 47,000 working American families being without any kind of health care.

GOV. CLINTON: Million.

Q Million.

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Q Million.

GOV. CLINTON: Do you have health insurance?

Q Yes, I do currently, but I'm currently involved in negotiations, contract negotiations, that may see those taken away.

GOV. CLINTON: How many of you have had to pay more for your health insurance in the last two years? (Hands are raised.) Anybody lost their health insurance in the last there years? (Hands are raised.) Let me tell you, this may be the biggest personal problem most Americans face. Most Americans still have jobs. Most Americans have access to some kind of education. But almost every American family is terrified of losing their health insurance, not being able to pay the bills. How many of you are in a family where you couldn't change jobs because somebody in your family's got a -- what do they call it, a pre-existing health condition, so you might not be able to get new health insurance if you change jobs? Another problem for millions of Americans.

Now, we have to solve this problem. You need to know -- this is like something else we were talking about, like you and I were talking about this other issue. Your country is the only advanced nation in the world that permits this to go on. This is not rocket science. It's not like we can't do this. You are the only -- we are in the only country in the world that doesn't provide affordable health care to all Americans. Why? Because the special interests in Washington have a collusion, and they don't want it to happen. They always say it's going to cost too much money.

Here's my idea. Every American ought to have a comprehensive package of affordable health care. You ought to be able to get it either through your job or for the self-employed, the poor and for small businesses who can't buy insurance, the government ought to offer an affordable insurance package. And every American ought to be guaranteed a comprehensive package. Then the payment ought to be the same state by state whether the government provides it or whether the employer provides it. And everybody ought to be involved in the system. There ought to be some incentives for cost controls, but the main thing we have to do is to take on the big insurance companies and the health care bureaucracies, drug companies that are raising drugs at three times the rate of inflation. These things are unforgivable.

You need to know that your country spends, conservatively, $70 [billion] to $80 billion a year on health care totally unrelated -- unrelated -- to providing you health care, because we don't have a system. And let me say I -- listen, I'm very suspicious of government. I know that there are things government can't do. But no nation can solve this problem without the government taking the lead and controlling costs and guaranteeing health care. I will do

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Go ahead.

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-3 page# 1
dest=notvpol,elecus,cak,fns13684,fns10000,crime,drug,guncon,hmless,jbcrp
dest+=hlth,hlthcr,hcf,prc,fortr,trdpol,humrt,mexico,fretrdag,mideast
dest+=taxes,defbud,budgus
data

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Q Governor Clinton, there is a feeling that one of the reasons why our problems are not being resolved is because too many of our lawmakers spend too much time promoting themselves and they relax rather than working for the government. What would you do to discourage this and reverse the trend?

GOV. CLINTON: I'd do the following things: One, reform the campaign finance system. A lot of those people work hard, but they have to spend too much time catering to vested interest groups because of the cost of campaigns and because political action committees can give more money than people can. So don't let a PAC give a cent more than a person can. Two, lower the cost of congressional campaigns. Three, open up the airways. Say, if somebody's got a license to run a television station or a radio station, say, "You've got to give these people time for debates," so you can do what we're doing here, so TV can be an instrument of education, not a weapon of assassination. In other words, free up the political process.

Secondly, say to the Congress and the President we ought to have to live under the laws we make. If we pass a minimum wage law, we ought to live under it. If we pass a benefit law, we ought to live under it. If we make something a crime for somebody else to do, it ought to be a crime for us to do, people in public life. Those are important.

The third thing we need to do is to restrict lobbying activities when they're inappropriate; stop the revolving door from government to lobby, from government to lobby, especially for foreign lobbies, but for domestic too. Have restrictions on the impact that lobbyists can have on the system. Those things, I think, would make a big difference. We shouldn't have a government dominated by perks and privilege. It ought to be dominated by people, and people ought to be put first again. (Applause.)

Yes.

about the open drug traffic and stuff? Because I see it every day. My neighborhood [illegible] fested with it. It se[illegible] like nobody cares. It's like we're in [illegible] corner where nobody can [illegible]; like they say, "Out of sight, out of mind." I want to know what's going to be done about that.

GOV. CLINTON: The first thing I want you to believe is that something can be done about it. This drug business is a cancer that's eating America alive. And I want you to believe, in spite of

anything else I say, that I care a lot about it. I have a brother who is a recovering drug addict; nearly died by getting caught up in this. And I know there are things that can be done. You live in a neighborhood where people ignore it. Let me tell you why. Thirty years ago, there were three policemen for every crime reported. You know how many there are today? Three crimes for every policeman. This is not a big mystery. I mean, one of the things we need to do is to put more police back on the street so that your neighborhood has guaranteed policemen, and they're the same people every day so they know you and you know them and you can call them at home at night and you can say, "There's a drug dealer on the corner. Come get it done." Neighborhood policing.

The second thing you've got to do is to have something for these kids to do. If you're going to keep them out of gangs and off drugs, have something for them to do. First time they get in trouble, instead of sending them to the penitentiary or ignoring it, which is what usually happens now, put them in a community-based boot camp -- discipline, education, drug treatment -- and require them to do some community service work. Let people get to know a successful adult in the community. So more police, more community service, and community-based boot camps.

The third thing we've got to have is real close cooperation between the national and the local law enforcement officials so you know that everybody that the Justice Department can get off the street as quickly as we can get them off will be done. I'll give you that. I'll give you an attorney general that believes that every neighborhood is entitled to the same protection from drugs as the best neighborhoods in this country. I think that's important. (Applause.)

Go ahead.

Q Governor Clinton, the United States is still the most powerful country in the world economically and militarily. And we have a spate of domestic problems, but as the largest country, we still have international responsibilities. How would you go about balancing the two, our international and our domestic responsibilities?

GOV. CLINTON: I'm glad you care about it. Good for you. Because we can't withdraw from the world. I mean, one in five of

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strong abroad if you're not strong at home. You remember when President Bush [illegible] to Japan on that trade [illegible]ion recently? The whole thing ends [illegible] humiliation for us when [illegible] Japanese prime minister gets up. You remember what he said? He says, "I feel sympathy for the United States." God, it made me so mad. But he thinks we're weak at home. So the first thing we've got to do is to -- it's good for our foreign strength to invest in our own people and our own economy again.

The second thing we need to do is to say, "Okay, the Cold War is over, so we don't have to spend $100 billion a year anymore defending Europe." A lot of those countries are richer than we are. What we are going to do is to promote freedom and democracy and free-market economics. So, for example, I'd be for freedom for Haiti and I wouldn't send those people back until we put democracy back in Haiti. (Applause.)

I'd be for democracy in China. I wouldn't have done what Mr. Bush did and give all those trade preferences to China when they're locking their people up. (Applause.)

I'd be for expanded trade with Mexico and all these other countries, but only, only if they lifted their wage rates and their labor standards and they cleaned up their environment so we could both go up together instead of being dragged down. We have an incredible opportunity, because, you know, we used to have to make deals with people based on whether they were for or against Russia, all right, whether we liked them or not. That's not there anymore. We can just stand up for what we believe in. Same thing in the Middle East. You know, I don't agree with everything the Israeli government does, but it's still the only democracy in the Middle East. And I wouldn't do what Mr. Bush does, which is just hit on them to give over to the Arab position. I'd say, "Let's make peace. You all make peace, but I want to see less militarism, no nuclear weapons, and more democracy and freedom in the Middle East." That's what I would say. (Applause.)

Q My question is about Social Security. Being far away from retiring, when I'm 65, will there be a fund for me?

GOV. CLINTON: There will if we get this economy going again. Right now the Social Security system is, in fact, overfunded. That is, every year the taxes you pay are producing about $70 billion a year more than the benefits the retirees take out. That's -- and let me tell you the bad news. The bad news is, that money is applied against the deficit, which means everybody who makes $51,000 a year or less is making a bigger contribution to paying down the debt than everybody who makes more than $51,000, because that's where Social Security cuts off. It's just as wrong as it can be.

But anyway, the good news is, the fund is now stable, and it will continue to be stable if we don't loot it and if we get this

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pay in get out -- the only thing that can break it is if this economy collapse.

Yes, sir -- in the back.

Q The first question of the night you explained where the money would come from to put people back to work. Where would the money come from for a national health plan and to support our schools and colleges? (Applause.)

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-4-E page# 1
dest=notvpol,elecus,cak,fns13684,fns10000,crime,drug,guncon,hmless,jbcrp
dest+=hlth,hlthcr,hcf,prc,fortr,trdpol,humrt,mexico,fretrdag,mideast
dest+=taxes,defbud,budgus,afamer
data

GOV. CLINTON: Good question. Money for a national health plan first, because that's where most of the money is. First, you have to control costs. You've got to have a cost control. You've got to take on the health insurance companies, the health care bureaucracies. You've got to give people incentives to enroll in year-long plans where they pay a certain fee and they get all their needs taken care of, that they choose their doctors and providers. That's where the big money is. Then you have to require people to pay into the fund based on their ability to pay, like elderly and disabled people should be able to buy long-term care, but they would be charged based on their ability to pay. And employers would have to pay, but small business people would have a limit based on their revenues in small business. So everybody could afford to buy in.

It would cost some more money, but you'd save roughly -- this is amazing -- just on tax dollars alone, roughly $100 billion in the next four years if you could just bring health care costs in line with inflation. So if we all paid a little more in the front to cover everybody and then put the lid down on costs and stopped the insurance companies and the others from ballooning the costs, we'd save a lot of money.

On education, I propose to pay that by asking people who made money in the '80s but whose tax rates went down to pay their fair share. People over $200,000 I would ask to pay higher income taxes. People over a million dollars, I'd ask to pay a millionaire's surtax. They'd still be paying less than they were in 1980, but they'd be paying their fair share. In the '80s, we raised taxes on the middle class while their incomes went down, and we ought to reverse that. We ought to at least ask the wealthy to pay their fair share so we can invest in American education. (Applause.)

You had a question.

Q Governor Clinton, a short while ago you mentioned -- or

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police enforcement and the legal system was somewhat shaken with the Rodney King verdict. What would you do to make that everyone in society feels they can receive fairness and justice? (Applause.)

GOV. CLINTON: First, I respect you for saying that, because it's not about race, is it? I mean, everybody should have -- it was about race, but it shouldn't have been. I think first, the federal authorities should look into that case and see if there's anything they can do to try to bring justice. Secondly, people should be prosecuted if they break the law no matter whether they're in a

uniform or out and no matter what the color of their skin. The law ought to be the law, and there ought not to be any bias in it.

Thirdly, we ought to really train our law enforcement officials to work with the people in the communities so that they feel like they're friends again and they feel a different commonality. I mean, it is obvious that those police saw that man as an animal, not a person. And it was wrong. And we need to work harder to make sure that people understand each other as human beings. You'd be amazed how many black Americans tell me that they walk in a department store; people that work 50, 60 hours a week. Somebody's always looking at them to see if they're going to steal something. We need to get beyond these stereotypes. Remember, most people in Los Angeles didn't loot, didn't rob, didn't burn. They (played by?) the rules. And that's what we ought to sensitize people to.

Yes.

MODERATOR: Governor, excuse me. We have only about a minute left, so a very quick question and very quick answer.

Q , Governor, you've gone on the record as opposing the recently and shamefully, I think, defeated balanced budget amendment. If president, would you submit a balanced budget? And if so, how would you accomplish that?

GOV. CLINTON: If I were president, I would submit a balanced budget plan over a five-year period. I don't think you can go from $400 billion to zero in a year. In this recession, you'd have to raise taxes and cut benefits; you'd make the economy worse. The reason I opposed the balanced budget amendment is I thought it was a gimmick and a putoff so nobody would have to really make any decisions for six years, and because it did not make a distinction between investment and consumption. That is, most of you have borrowed money for homes, for cars, for businesses, right? If the government borrows money to put us to work and we'll get it back, that's okay. But we're eating our seed corn, as we say in the farming country. We're borrowing money to go to dinner at night. That's what's wrong. And I would support an amendment that would control that, and I will present a five-year balanced budget plan if I'm elected. (Applause.)

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last question tonight, people both in the studio audience and watching in the viewing audience who would like to ask Governor Clinton a question who would like more information. Here's a toll-free number that you can call: 1-800-551-5600, toll-free call with questions or for information.

Governor, about one minute left for a couple of closing thoughts from you.

GOV. CLINTON: Let me thank all of you who watched on

television tonight and all these people who have come to share their thoughts, and I'm sure they were your thoughts. I want you to know how much I enjoyed the program, how grateful I am, how much I hope we can do more of this. If you saw the 800 number and you have a question, call it in and we'll get you an answer.

The people here tonight are like most Americans. They've worked hard, they've played by the rules, and they've not been rewarded. I know that if I hadn't been a product of the American Dream, I'd never have been able to be born in a small town, worked my way through college and wind up running for president. Those are the opportunities I want for all Americans. We can bring America back if we'll invest in our people again.

Thank you very much. (Applause.)

END

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EXHIBIT C

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
)
District of Columbia)

AFFIDAVIT OF JOHN WEHRUNG

John Wehrung first being duly sworn, deposes and says:

1. I am John Wehrung, 10 Seventh Street, NE Washington, D.C. 20002.

2. On June 15, 1992 I called the "800" number (1-800-551-5600) referenced by Governor Bill Clinton in his nationwide "town hall meeting" televised on June 12, 1992.

3. A recorded message thanked me for the call and informed me of the following options:

A. To receive your free copy of Bill Clinton's "Plan for America's Future," Press 1.

B. If you believe that it's time for real change, help the Clinton campaign and make a contribution by pressing 2.

C. To leave a message for Governor Clinton, press 3.

4. After pressing "2" I was connected with an operator, who after requesting my zip code, telephone number and the remainder of my address, asked how

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much I wanted to contribute and whether by credit card or check.

District of Columbia, ss:

The above information is true and correct to the best of my knowledge and belief.

John Wehrung

Sworn and subscribed to by the said John Wehrung this 16th day of June, 1992.

Notary Public

Nicholas Lieder
Notary Public, District of Columbia
My Commission Expires April 30, 1997

My Commission Expires: _____

9704382259 3

EXHIBIT D

FEC FORM 3P, Page 1
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

REPORT OF RECEIPTS AND DISBURSEMENTS BY AN AUTHORIZED COMMITTEE OF A CANDIDATE FOR THE OFFICE OF PRESIDENT

HAND DELIVERED

NOTE: *This report is to be used by an authorized committee of a candidate seeking nomination or election to the Office of President or Vice President of the United States whether or not public funds are used.*

USE FEC MAILING LABEL OR TYPE OR PRINT

1. NAME OF COMMITTEE (in full): Clinton for President Committee

2. IDENTIFICATION NUMBER: C00253690

ADDRESS (number and street) ☐ Check if different than previously reported: P.O. Box 615

3. IS THIS REPORT OF RECEIPTS AND DISBURSEMENTS FOR: ☒ Primary ☐ General

CITY, STATE and ZIP CODE: Little Rock, AR 72203

4. TYPE OF REPORT ("X" appropriate box and complete, if applicable)

- ☐ Amendment for (Report) _____
- ☒ Monthly Report (month) April 1992
- ☐ April 15 Quarterly Report
- ☐ July 15 Quarterly Report
- ☐ October 15 Quarterly Report
- ☐ January 31 Year-end Report
- ☐ Termination Report
- ☐ Twelfth Day Before Election
- ☐ Thirtieth Day After Election

TYPE OF ELECTION

STATE | ELECTION DATE

COMMITTEE SUMMARY OF RECEIPTS AND DISBURSEMENTS

5. COVERING PERIOD — FROM April 1, 1992 — THROUGH April 30, 1992

SUMMARY	6. CASH ON HAND AT BEGINNING OF THE REPORTING PERIOD	(375,419.90)
	7. TOTAL RECEIPTS THIS PERIOD (From Line 22 Column A)	5,089,132.52
	8. SUBTOTAL (Add Line 6 and 7)	4,713,712.62
	9. TOTAL DISBURSEMENTS THIS PERIOD (From Line 30 Column A)	4,455,497.16
	10. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 9 from 8)	258,215.46
	11. DEBTS AND OBLIGATIONS OWED TO THE COMMITTEE (Itemize All on Schedule C or Schedule D)	
	12. DEBTS AND OBLIGATIONS OWED BY THE COMMITTEE (Itemize All on Schedule C or Schedule D)	2,764,981.40
	13. EXPENDITURES SUBJECT TO LIMITATION (From FEC Form 3P, Page 4)	14,699,555.88
NET YEAR-TO-DATE CONTRIBUTIONS AND EXPENDITURES	14. NET CONTRIBUTIONS (Other than Loans) (Subtract Line 28d Column B from 17e Column B)	8,518,587.43
	15. NET OPERATING EXPENDITURES (Subtract Line 20a Column B from 23 Column B)	13,590,066.19

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER: Bruce R. Lindsey

SIGNATURE OF TREASURER: [signature] DATE: 5/[illegible]/92

For further information, contact:
Federal Election Commission
Toll Free 800-424-9530
Local 376-3120

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC Form 3P are obsolete and should no longer be used.

FEC FORM 3P (2/83)

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DETAILED SUMMARY OF RECEIPTS AND DISBURSEMENTS
(Page 2, FEC FORM 3P)

NAME OF COMMITTEE (in Full): Clinton for President Committee

REPORT COVERING THE PERIOD: From: 04/01/92 Through: 04/30/92

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date	
I. RECEIPTS			
16. FEDERAL FUNDS (Itemize on Schedule A-P)	1,112,938.95	3,169,803.22	16
17. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees	2,430,134.72	8,533,298.45	17(a)
(b) Political Party Committees			17(b)
(c) Other Political Committees	285.00	3,488.00	17(c)
(d) The Candidate			17(d)
(e) TOTAL CONTRIBUTIONS (other than loans) (Add 17(a), 17(b), 17(c) and 17(d))	2,430,419.72	8,536,786.45	17(e)
18. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES			18
19. LOANS RECEIVED:			
(a) Loans Received From or Guaranteed by Candidate			19(a)
(b) Other Loans	1,230,113.34	2,653,293.03	19(b)
(c) TOTAL LOANS (Add 19(a) and 19(b))	1,230,113.34	2,653,293.03	19(c)
20. OFFSETS TO EXPENDITURES (Refunds, Rebates, etc.):			
(a) Operating	315,660.51	1,235,134.37	20(a)
(b) Fundraising		45,371.00	20(b)
(c) Legal and Accounting			20(c)
(d) TOTAL OFFSETS TO EXPENDITURES (Add 20(a), 20(b) and 20(c))	315,660.51	1,280,505.37	20(d)
21. OTHER RECEIPTS (Dividends, Interest, etc.)		8,022.28	21
22. TOTAL RECEIPTS (Add 16, 17(e), 18, 19(c), 20(d) and 21)	5,089,132.52	15,648,410.35	22
II. DISBURSEMENTS			
23. OPERATING EXPENDITURES	3,270,611.66	14,825,200.56	23
24. TRANSFERS TO OTHER AUTHORIZED COMMITTEES			24
25. FUNDRAISING DISBURSEMENTS	29,614.58	840,188.20	25
26. EXEMPT LEGAL AND ACCOUNTING DISBURSEMENTS	153,150.92	595,306.43	26
27. LOAN REPAYMENTS MADE:			
(a) Repayments of Loans Made or Guaranteed by Candidate			27(a)
(b) Other Repayments	1,000,000.00	1,000,000.00	27(b)
(c) TOTAL LOAN REPAYMENTS MADE (Add 27(a) and 27(b))	1,000,000.00	1,000,000.00	27(c)
28. REFUNDS OF CONTRIBUTIONS TO:			
(a) Individuals/Persons Other Than Political Committees	2,120.00	18,199.00	28(a)
(b) Political Party Committees			28(b)
(c) Other Political Committees			28(c)
(d) TOTAL CONTRIBUTION REFUNDS (Add 28(a), 28(b) and 28(c))	2,120.00	18,199.00	28(d)
29. OTHER DISBURSEMENTS			29
30. TOTAL DISBURSEMENTS (Add 23, 24, 25, 26, 27(c), 28(d) and 29)	4,455,497.16	17,278,894.19	30
III. CONTRIBUTED ITEMS (Stock, Art Objects, Etc.)			
31. ITEMS ON HAND TO BE LIQUIDATED (Attach List)			31

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1992

Benjamin L. Ginsberg, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 3546

Dear Mr. Ginsberg:

This letter acknowledges receipt on June 19, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Governor William Clinton, the Clinton for President Committee and the DNC Services Corporation/Democratic National Committee. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3546. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

George F. Rishel
Assistant General Counsel

Enclosure
Procedures

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1992

Robert T. Matsui, Treasurer
DNC Services Corporation/
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546

Dear Mr. Matsui:

The Federal Election Commission received a complaint which indicates that the DNC Services Corporation/Democratic National Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3546. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the DNC Services Corporation/Democratic National Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

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If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

George F. Rishel

George F. Rishel
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704382259 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1992

Robert A. Farmer, Treasurer
Clinton for President Committee
P.O. Box 615
Little Rock, Arkansas 72203

RE: MUR 3546

Dear Mr. Farmer:

The Federal Election Commission received a complaint which indicates that the Clinton for President Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3546. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Clinton for President Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

9704382259 9

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

George F. Rishel

George F. Rishel
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704382260 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 23, 1992

The Honorable William J. Clinton
1800 Center Street
Little Rock, Arkansas 72206

RE: MUR 3546

Dear Governor Clinton:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3546. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

97043822601

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

George F. Rishel

George F. Rishel
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9704382260 2

GCC 5064
RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM
JUL 6 1 59 PM '92

Democratic National Committee

June 29, 1992

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL -7 AM 10: 43

Jeffrey Long
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20003

RE: MUR 3546

Dear Mr. Long:

This letter is a request for a 20 day extension of the time period in which the Democratic National Committee (DNC) and its treasurer, Robert T. Matsui, may respond to the complaint filed by the Republican National Committee.

As the DNC staff is heavily involved with coordination and planning concerning the upcoming Democratic National Convention, it would be difficult for our response to be prepared and filed within the initial 15 day time period.

If the DNC's request for an extension is granted, its response would be submitted to you on or before July 29, 1992.

We have also enclosed the required statement of designation of counsel. If you have any questions concerning our request or the enclosed statement, please contact either of us at (202) 479-5113.

Sincerely,

Carol C. Darr
General Counsel

Eric London
Assistant Counsel

9704382260 3

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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STATEMENT OF DESIGNATION OF COUNSEL

MUR _____

NAME OF COUNSEL: Carol Darr/Eric London

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

TELEPHONE: (202) 479-5113

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.

_____ Date

Signature

RESPONDENT'S NAME: Robert T. Matsui, Treasurer/DNC Services Corp./DNC

ADDRESS: 430 South Capitol Street, S.E.
Washington, D.C. 20003

HOME PHONE: _____

BUSINESS PHONE: (202) 863-8000

9704382260 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 9, 1992

Eric London, Esquire
Assistant Counsel
Democratic National Committee
430 South Capitol, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and Robert A. Farmer, as
treasurer

Dear Mr. London:

This is in response to your letter dated June 29, 1992, which we received on July 8, 1992, requesting an extension until July 29, 1992 to respond to the complaint filed in the above referenced 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 July 29, 1992.

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

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

9704382605

OGC 5028

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL -2 PM 3:24

July 2, 1992

Mr. George F. Rishel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3546

Dear Mr. Rishel:

This letter is to confirm our telephone conversation in which I requested on behalf of the Clinton for President Committee ("Committee") an extension of time to file a responsive brief in the above referenced matter.

As you know, the Democratic National Convention commences the week of July 13. As the Committee's staff, including its attorneys, are presently consumed by Convention preparations, the Committee needs additional time to inspect its records and to interview appropriate campaign personnel with knowledge of the events relevant to this action.

Accordingly, the Committee requests an additional 20 days over the 15 days in which the Committee is required to file a responsive brief. As the General Counsel of the Committee did not receive the Commission's letter from Little Rock, Arkansas until Monday, June 29, we respectfully request an extension of time to August 3, 1992.

We appreciate your cooperation and understanding in granting us this extension.

Sincerely,

Philip Friedman
Deputy General Counsel

Enclosure

cc: Tony Harrington
Christine Varney

9704382606

Washington, DC/Mid-Atlantic Headquarters • 1317 F Street, N.W., Suite 902 • Washington, D.C. 20004 • Telephone (202) 393-3323 • FAX (202) 393-3329
National Campaign Headquarters • P.O. Box 615 • Little Rock, Arkansas 72203 • Telephone (501) 372-1992 • FAX (501) 372-2292

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 7, 1992

Philip Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
Clinton for President
Committee, Inc. and
Robert A. Farmer, as
treasurer

Dear Mr. Friedman:

This is in response to your letter dated July 2, 1992, which we received on July 2, 1992, requesting an extension until August 3, 1992, to respond to the complaint in the above referenced 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 August 3, 1992.

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

Sincerely,

Philip L. Wise
Attorney

9704382607

OGC5026

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL -2 PM 3:25

July 2, 1992

Mr. Lawrence Noble
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Clinton for President Committee, Inc.
(MUR 3546)

Dear Mr. Noble:

Enclosed please find a general Statement of Designation of Counsel for Robert A. Farmer, Treasurer and the Clinton for President Committee, Inc. in which Anthony S. Harrington, Christine Varney and the undersigned are designated as counsel.

Please be sure that all future complaints, petitions or other matters filed against the Committee be forwarded to the Committee's General Counsel, Mr. Anthony S. Harrington at the address indicated on the enclosed designation of counsel form.

Thank you for your attention to this matter.

Sincerely,

Philip S. Friedman

cc: Tony Harrington
Christine Varney

Enclosure

9704382260 8

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National Campaign Headquarters • P.O. Box 615 • Little Rock, Arkansas 72203 • Telephone (501) 372-1992 • FAX (501) 372-2292

Paid for by the Clinton for President Committee

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

92 JUL -2 PM 3:25

STATEMENT OF DESIGNATION OF COUNSEL

MUR: Designation of Counsel for all matters before the Federal Election Commission

NAME OF COUNSEL: Mr. Anthony S. Harrington
General Counsel: Clinton for President

Ms. Christine Varney
Chief Counsel: Clinton for President

Hogan and Hartson
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

Mr. Philip S. Friedman
Deputy General Counsel: Clinton for President

Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006
(202) 296-8600

The above named individuals are hereby designated as my counsel as Treasurer of the Clinton for President Committee Inc. and as counsel for the Clinton for President Committee, Inc. and are authorized to receive any notifications and other communications from the Commission and to act on my behalf and on behalf of the Clinton for President Committee Inc. before the Commission.

6/24/92
Date

Robert A. Farmer, Treasurer
Clinton for President
Committee, Inc.

RESPONDENTS' NAMES: Robert A. Farmer, Treasurer
Clinton for President Committee, Inc.

Clinton for President Committee, Inc.

ADDRESS: P.O. Box 615
Little Rock, Arkansas 72203

PHONE: (501) 372-1992

All correspondence should be directed to the committee's General Counsel, Mr. Anthony S. Harrington, at the address listed above.

9704382609

RECEIVED GCC 5112
FEDERAL ELECTION
COMMISSION
MAIL ROOM

JUL 9 10 25 AM '92

July 7, 1992

Mr. Phillip Wise
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL -9 PM 3:39

Re: MUR 3546

Dear Mr. Wise:

This letter is to confirm our telephone conversation in which I indicated Anthony S. Harrington, Christine Varney and Philip Friedman are also designated as counsel for Governor Bill Clinton in the above referenced matter. An amended Statement of Designation of Counsel, signed by Governor Clinton, will be submitted to you shortly after the Democratic National Convention.

If you have any questions or additional concerns, please feel free to contact me directly.

Sincerely,

Philip Friedman
Deputy General Counsel

Enclosure

cc: Tony Harrington
Christine Varney

9704382261 0

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National Campaign Headquarters • P.O. Box 615 • Little Rock, Arkansas 72203 • Telephone (501) 372-1992 • FAX (501) 372-2292

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F.E.C.
SECRETARIAT
92 JUN 25 AM 10: 34

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 25, 1992

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

SUBJECT: MUR 3546 - Clinton for President Committee and Democratic National Committee

On June 19, 1992, the Republican National Committee filed a complaint alleging that the Clinton for President Committee ("the Clinton Committee"), Governor Bill Clinton, and the Democratic National Committee ("the DNC") violated the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"). These allegations were based on the $400,000 payment by the DNC for a televised broadcast of the Clinton Committee "town meeting" which featured a toll free number for callers, who were given the option of contributing to the Clinton Committee's primary campaign fund. The complaint requested that the Commission initiate an expeditious investigation and, if necessary, seek injunctive relief under 26 U.S.C. § 9010(c) "in order to prevent taxpayers' monies from being applied to non-qualified campaign expenses and to assure compliance with the Candidate's Agreement signed personally by Clinton."

Legal And Factual Analysis

The Commission is empowered to initiate a civil suit for injunctive relief if it is unable to correct or prevent a violation of the Act. 2 U.S.C. §§ 437d(a)(6) and 437g(a)(6). In addition, the Fund Act provides that the Commission is authorized to seek any declaratory or injunctive relief "concerning any civil matter covered by the provisions of this subtitle or section 6096." The procedure for pursuing that immediate remedy is problematic since the Commission must normally wait 15 days before it takes action on a complaint. 2 U.S.C. § 437g(a)(1).

In considering whether injunctive relief should be sought, the Commission has used the criteria for obtaining a preliminary

9704382261 1

injunction as the appropriate standard. This standard examines the requested relief in these terms:

(1) whether there is a substantial likelihood that a violation of the Act has or is about to occur;

(2) whether the failure by the Commission to obtain an injunction will result in irreparable harm to the complainant or some other party;

(3) whether injunctive relief will not result in undue harm or prejudice to the interests of other persons; and

(4) whether the public interest would be served by such injunctive relief.

With these criteria in mind, we turn to Complainant's request for injunctive relief. The RNC has presented a transcript of the June 12, 1992, town hall broadcast, a copy of pages of the Clinton Committee's reports covering April 1992 showing it was substantially in debt, an affidavit from a person who called the toll free number featured during the town hall meeting, and a news report that the DNC was paying $400,000 for the broadcast. Taken together the RNC alleges these facts: (1) Governor Clinton appeared on the 30-minute nationwide television broadcast on June 12, 1992, to answer questions from the television audience, (2) the broadcast cost $400,000 and was paid for by the DNC, (3) Governor Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to President Bush, (4) listeners were invited to call a toll free number to ask a question or get more information and when callers phoned that number one option given to them was making a contribution, (5) the Clinton Committee was financially strapped and its cash flow prevented it from purchasing the television time, and (6) Governor Clinton has not filed a Statement of Organization to establish a general election committee although he has set up a compliance fund.

The RNC contends the television program was a primary election event because it solicited private contributions which can only be accepted by the primary election committee and because the television program would not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee, which in turn has violated 2 U.S.C. § 441a(f) by accepting such an excessive contribution. The RNC further alleges that in doing so Governor Clinton has breached his Candidate's Agreement.

In the alternative the RNC alleges that if the television program is treated as a general election event, the Clinton Committee violated 11 C.F.R. § 9034.4(a)(1) by making

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nonqualified primary campaign expenses when it paid for or incurred any obligation to pay related expenses associated with the program, such as travel, subsistence, and any advance or planning costs of the event. The RNC further argues that if the event is treated as a general election one, all contributions raised from the toll free number and program must be refunded because private contributions cannot be accepted for the general election. Moreover, the RNC contends that if the program is treated as a general election event, similar future events must also be treated as general election events whether paid for by the DNC or the Clinton Committee and would count against their respective limits for the general election.

Finally, the RNC posits that if the television program is deemed to have expressly advocated the defeat of the clearly identified candidate, the DNC violated 2 U.S.C. § 441d(a) by not including a complete disclaimer indicating whether it was authorized or not by the candidate.

In response to the related Petition to Deny Certification, the Clinton Committee has given some indication of its likely response to the complaint. The Clinton Committee asserts that all of the expenses related to the June 12 broadcast, including the candidate's and campaign staff's travel to Pittsburgh and the telemarketing program, were paid for by the DNC as a general election expense, chargeable to its coordinated party expenditure limitation. The Clinton Committee contends that the inclusion of the option to make a contribution as part of the telemarketing program "was in error." It adds that corrective action was taken immediately, but does not elaborate on what that action was. The Clinton Committee further asserts that it did not and will not receive any contributions in connection with the June 12 event. It argues that, on this basis, there has been no violation of the Act.

A preliminary review indicates that whether a substantial violation of the Act has occurred will require a more complete response from all of the respondents and further analysis. An investigation to ascertain the key facts may also be necessary. Thus, based on the information as it presently appears to be, it is difficult to say that the first requirement for injunctive relief is met. We also do not believe the other three criteria for seeking injunctive relief are met here. We do not believe the failure to seek such relief will result in irreparable harm to the complainant or other parties. Conversely, we do conclude that to seek injunctive relief would seriously harm or prejudice the interests of the Respondents and would not serve the pubic interest in that it would cause turmoil and disruption at a critical juncture in the 1992 presidential election and would inject the Commission into the process in a manner that could influence the outcome of the election.

Finally, with regard to the request for an expeditious investigation, we recommend that the Commission proceed as it

9704382261 3

would with any other enforcement matter. After the respondents have been given the statutory 15 days to respond to the complaint or have actually responded to it, this Office will prepare a report to the Commission making appropriate recommendations. This Office is, however, prepared to move forward with its report without undue delay as it is attempting to do with all complaint generated matters.

RECOMMENDATIONS

1. Decline at this time to seek injunctive relief.

2. Approve the appropriate letters.

Attachment
Response to Petition to Deny Certification

Staff Persons: George F. Rishel
Philip L. Wise
Jeffrey D. Long

9704382261 4

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee	)	MUR 3546
and Democratic National Committee.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 30, 1992, the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Decline at this time to seek injunctive relief.
2. Approve the appropriate letters, as recommended in the General Counsel's Memorandum dated June 25, 1992.

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

Attest:

6-30-92
Date

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

Received in the Secretariat: Thurs., June 25, 1992 10:34 a.m.
Circulated to the Commission: Thurs., June 25, 1992 4:00 p.m.
Deadline for vote: Tues., June 30, 1992 4:00 p.m.

dr

9704382615

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1992

Benjamin L. Ginsberg, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 3546

Dear Mr. Ginsberg:

On June 19, 1992, the Federal Election Commission received your letter, on behalf of the Republican National Committee, alleging that the Clinton for President Committee, Governor Bill Clinton, and the Democratic National Committee violated the Federal Election Campaign Act of 1971, as amended and the Presidential Primary Matching Payment Account Act.

Your letter seeks injunctive relief to prevent taxpayers' monies from being applied to non-qualified campaign expenses and to assure compliance with the Candidate's Agreement signed personally by Governor Bill Clinton. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny your request at this juncture. The Commission will notify you at such time when the entire file is closed in this matter.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9704382261 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1992

Robert T. Matsui, Treasurer
DNC Services Corporation
Democratic National Committee
430 S. Capitol Street, SE
Washington, DC 20003

RE: MUR 3546

Dear Mr. Matsui:

On June 19, 1992, the Federal Election Commission notified DNC Services Corporation/Democratic National Committee ("Committee") and you, as treasurer, of a complaint alleging that the Committee violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the complaint was forwarded to the Committee at that time.

The complainant seeks injunctive relief to prevent the Committee and you from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9704382261 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1992

Philip S. Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
Clinton for President
Committee and Robert A.
Farmer, as treasurer

Dear Mr. Friedman:

On June 19, 1992, the Federal Election Commission notified Clinton for President Committee ("Committee") and Robert A. Farmer, as treasurer, of a complaint alleging that the Committee violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the complaint was forwarded to the Committee at that time.

The complainant seeks injunctive relief to prevent the Committee and its treasurer from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

9704382618

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 10, 1992

Philip S. Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
William J. Clinton

Dear Mr. Friedman:

On June 19, 1992, the Federal Election Commission notified your client of a complaint alleging that he violated certain sections of the Federal Campaign Act of 1971, as amended. A copy of the complaint was forwarded to him at that time.

The complainant seeks injunctive relief to prevent your client from continuing to engage in allegedly improper activity. At this time there is insufficient evidence to warrant the Commission's seeking such relief. Accordingly, the Commission has decided to deny the complainant's request for injunctive relief at this juncture. The Commission will nonetheless proceed with the processing of the complaint pursuant to 2 U.S.C. § 437g(a).

If you have any further questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3400.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL 29 PM 4:10

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July 29, 1992

Mr. George F. Rishel
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3546

Dear Mr. Rishel:

Enclosed please find an original and three (3) copies of the response of Governor Bill Clinton and the Clinton for President Committee ("Committee") in the above referenced matter.

Should you have any questions, please call me directly at (202) 296-8600.

Sincerely,

Philip Friedman
Deputy General Counsel

Enclosure

cc: Tony Harrington
Christine Varney

Washington, DC/Mid-Atlantic Headquarters • 1317 F Street, N.W., Suite 902 • Washington, DC 20004 • Telephone (202) 393-3323 • FAX (202) 393-3329
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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE GOVERNOR BILL CLINTON, CLINTON FOR PRESIDENT COMMITTEE AND DEMOCRATIC NATIONAL COMMITTEE	MUR 3546

RESPONSE OF GOVERNOR BILL CLINTON
AND THE CLINTON FOR PRESIDENT COMMITTEE, INC.

Anthony H. Harrington, Esq.
Christine Varney, Esq.
Philip S. Friedman, Esq.

CLINTON FOR PRESIDENT COMMITTEE, INC.

August 3, 1992

9704382262 1

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

IN RE GOVERNOR BILL CLINTON, CLINTON FOR PRESIDENT COMMITTEE AND DEMOCRATIC NATIONAL COMMITTEE	MUR 3546

RESPONSE OF GOVERNOR BILL CLINTON
AND THE CLINTON FOR PRESIDENT COMMITTEE, INC.

On June 19, 1992, the Republican National Committee ("RNC") filed a complaint with the Federal Election Commission ("FEC" or "Commission") alleging that William J. Clinton, the Clinton for President Committee and the Democratic National Committee ("DNC") had violated the Federal Election Campaign Act of 1971 as amended (FECA), including 26 U.S.C. §§ 9030 et seq. and FEC regulations by the DNC's purchase of approximately $400,000 in television time for Governor Clinton to address a national "town hall meeting" audience.[1]

The RNC's complaint alleges that the Clinton primary campaign impermissibly used general election funds to raise primary election contributions and further commingled general election and primary election funds. As the accompanying sworn affidavit of David Watkins (attached hereto as Exhibit A), the

[1] On June 19, the RNC also submitted a petition to deny certification to the Clinton for President Committee of matching fund and general election payments in which the RNC alleged identical facts and legal arguments as those contained in the present complaint. On June 25, 1992, the Commission unanimously voted to deny the RNC's petition.

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Vice President of the Clinton for President Committee and the campaign's Deputy Campaign Manager attests, the allegations are wholly unfounded.[2]

Moreover, the clear lawful basis upon which the Clinton campaign coordinated with the DNC the expenses associated with the "town hall meeting" television broadcast of June 12, 1992 belie any suggestion of irregularities or FECA violations by either the Clinton campaign or the DNC.

The Commission has long noted that there is nothing in the FECA or its legislative history, Commission regulations or extensive case law that remotely indicates that coordinated party expenditures must be confined to the time period between a candidate's nomination and the general election. See Advisory Opinion 1984-15. Indeed, the Commission stated in Advisory Opinion 1984-15 that "[w]here a candidate appears assured of a party's presidential nomination, the general election campaign, at least from the political party's perspective, may begin prior to the formal nomination. Thus, national party expenditures in connection with that campaign are possible."

On June 2, 1992 the Democratic Party concluded the last of its presidential primary elections for 1992. Thus, as of June 12, 1992, there was no ambiguity in the fact that Governor Clinton had already captured the clear majority of the delegates

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[2]The original signed copy of Mr. Watkin's affidavit, incorporated by reference herein, was submitted to the Commission on June 24, 1992, as part of the Committee's response to the RNC's petition to deny certification of primary matching and general election funds.

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to the national nominating convention and was assured of the Democratic Party's presidential nomination. Accordingly, the Clinton campaign and the DNC determined that a nationally broadcast "town hall meeting" on June 12 would be a desirable and proper expenditure "in connection with the general election campaign." Since Governor Clinton intended to receive, pursuant to 26 U.S.C. § 9001 et. seq., public funding for his general election campaign there was no possibility of Clinton campaign accepting contributions from the DNC or others to pay for the televised town hall meeting event. Consequently, the Clinton campaign and the DNC determined that the only appropriate source of funds to pay for the event was coordinated party expenditure funds under 2 U.S.C. §441a(d).[3]

Consistent with this determination the DNC -- and only the DNC -- paid the production and broadcast costs associated with the June 12 television event as indicated by the appropriate disclaimer broadcast during the show, as well as the travel costs

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[3]The RNC compliant argues that if the town hall meeting is characterized by the Clinton Committee as a general election event, then all future similar events by the Clinton Committee must also be general election activities. While the argument is moot given the fact that no such similar events were held by the Clinton Committee and the general election has now commenced with Governor Clinton's nomination, the argument is also not supported by the statute. As the Commission noted in its Statement of Reasons denying the RNC's accompanying petition to deny certification of matching fund payments the Clinton Committee:

> the Commission's regulations permit candidates to make certain limited campaign expenditures for the general election prior to the nomination. 11 CFR § 9002.12(a). Such expenditures do not preclude a candidate's making subsequent expenditures in connection with the primary election.

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of campaign personnel to and from the town hall meeting in Pittsburg. These costs were paid by the DNC prior to filing of the present complaint. At no time during the broadcast did Governor Clinton or anyone else solicit contributions for the Clinton for President Committee or the DNC.

As the RNC's complaint correctly notes, an "800" number was flashed on the television screen several times during the course of the town hall meeting broadcast. The cost of this telemarketing program was also borne by the DNC. The purpose of this 800 number was to afford potential voters the opportunity of calling to obtain more information about Governor Clinton's policies and positions or to record a personal message for Governor Clinton.

The 800 number also initially gave callers the option of making a contribution to the Clinton campaign. This contribution option was in error. When the error was discovered, corrective action was taken promptly, well prior to the filing of the RNC's complaint. As a result of the corrective action the Clinton campaign did not receive a single contribution in connection with the town hall meeting event.

To summarize, the Clinton campaign has not and did not expend any funds in connection with the June 12, 1992 town hall meeting, including the costs of broadcasting, producing, telemarketing and traveling to the event. Moreover, Governor Clinton's campaign did not directly solicit contributions during the town hall meeting broadcast, nor did the campaign receive a

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single contribution in connection with the town hall meeting event.

On the basis of the foregoing, the Clinton for President Committee, Inc. respectfully requests that the Commission find no reason to believe that a violation of the FECA has occurred.

Respectfully submitted,

Anthony H. Harrington, Esq.
Christine Varney, Esq.
Philip S. Friedman, Esq.

CLINTON FOR PRESIDENT COMMITTEE, INC.

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Exhibit A

AFFIDAVIT OF DAVID WATKINS

I, David Watkins of Little Rock, Arkansas, am the Vice President of the Clinton for President Committee and Deputy Campaign Manager of the Clinton campaign. Among my responsibilities are the day-to-day supervision of the finances of the campaign.

I do hereby affirm and swear to the following:

1. I am personally familiar with the June 12, 1992 Town Hall meeting on which Bill Clinton appeared on nationwide network television to answer questions posed to him by a television audience for a 30 minute period.

2. All of the expenditures related to this event are being paid for by the Democratic National Committee and no expenditures were made in connection with the event by the Clinton campaign.

3. I am aware that during the aforementioned program, a 1-800 number was presented and that persons calling such number were offered the opportunity to request a copy of Governor Clinton's economic plan, or to leave a recorded message for Governor Clinton, or to make a contribution. For persons interested in making a contribution, the name and address of the caller and the amount pledged was taken by a live operator.

4. Immediately upon learning of the problematic solicitation contained in the 800 number text, corrective

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action was taken to eliminate any inadvertent ambiguities in the text of the message to make clear that the request for contributions was being made on behalf of the Democratic National Committee and any contribution made in response thereto would be received by it.

5. The Clinton for President Committee has not and will not accept any contributions resulting from this event. As no contributions will be accepted from this event, no contributions from this event will be included in any request for Presidential Primary Matching Funds pursuant to 26 U.S.C. § 9031 and 11 C.F.R. 9031 et. seq.

The above statements are true and correct to the best of my knowledge and belief.

David Watkins

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN to before me, a notary public, this 23rd day of June, 1992.

Monica C Bradley
Notary Public 6/23/92

My Commission Expires:

2/13/2001

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OGC 5947

Democratic National Committee

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 JUL 30 AM 11:25

July 29, 1992

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RE: MUR 3546

Dear Mr. Noble:

Enclosed is the response of DNC/Services Corporation/Democratic National Committee ("Committee"), and Robert T. Matsui, Treasurer, to the complaint filed against the Committee by the Republican National Committee on June 19, 1992.

If you have any additional questions concerning our response or any other matter concerning this complaint, please contact me at (202) 479-5112.

Sincerely,

Eric D. London
Assistant Counsel

cc: Lois G. Lerner

9204282529

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES OF AMERICA

Response to Complaint Filed in MUR 3546

Respondents: Robert T. Matsui, Treasurer
DNC Services Corporation/
Democratic National Committee

Complainant: Republican National Committee

INTRODUCTION

Robert T. Matsui, Treasurer, and DNC Services Corporation/ Democratic National Committee ("DNC") hereby file this response with the Federal Election Commission ("FEC") to the complaint filed against respondents by the Republican National Committee ("RNC") on June 19, 1992. In this complaint, the RNC alleged that the DNC's payment of the costs of a June 12, 1992 television program ("program") constituted an illegal primary election contribution to the Clinton for President Committee (or "Clinton Committee"), thereby violating 2 U.S.C. §441a(a)(2)(A). The RNC also alleged that the DNC violated the FECA's mandatory disclaimer provision, 2 U.S.C. §441d(a)(2) and (3).

In its response, the DNC argues that no excessive primary contributions were made to the Clinton Committee; rather, all expenditures made by the DNC in connection with the program were for the purpose of affecting the general election, and therefore, were legal under 2 U.S.C. §441a(d), which allows the national committee of a political party to make expenditures on behalf of its presidential nominee in the general election. Furthermore, all costs associated with this program, including production, broadcasting, and travel costs, were paid for by the DNC. The Clinton Committee incurred no costs in connection with this program.

The DNC challenges the allegation that it violated 2 U.S.C. §441d(a)(3), which requires a public political advertisement not authorized by a candidate to state the name of the person who paid for the communication and that the communication is unauthorized by any candidate or candidate's committee. Because the Clinton Committee authorized the making of the expenditure by the DNC, this section of the statute is inapplicable to the present situation. The DNC also denies the accusation that it violated 2 U.S.C. §441d(a)(2), which requires a public political advertisement authorized by a candidate to state the name of the person who paid for the communication and that the communication is authorized by the candidate or the candidate's committee. The DNC believes that it achieved substantial compliance with the requirements of 2 U.S.C. §441d(a)(2) in the program.

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DISCUSSION

I. The Program Was A §441a(d) Expenditure

The RNC argues that the DNC made an illegal contribution to the primary election Clinton Committee. While the RNC concedes in its complaint that national party committees may make coordinated party expenditures as described in 2 U.S.C. §441a(d) on behalf of its nominee prior to the formal selection of the nominee, it takes the position that the DNC's payment for the program could not be a coordinated expenditure for three reasons. First, the RNC argues that such expenditures by a national committee may not be coordinated with any candidate. Secondly, the RNC takes the position that the only permissible coordinated expenditures are political advertisements "attacking the opposition party candidate coupled with a partisan get-out-the-vote message geared toward the November general election." These two arguments are specious and disingenuous. Thirdly, the RNC argues that because of the solicitation in the "800" number accompanying the program, the entire program is by definition a primary expenditure. This position is also unsustainable. The DNC's treatment of the costs of this program as general election expenditures is permissible under both the statutory language of 2 U.S.C. §441a(d) and the FEC Advisory Opinion 1984-15.

With respect to the RNC's preposterous argument that coordinated expenditures may not, in fact, be coordinated, the statute and the FEC's position on it are clear. Nothing in the language of 2 U.S.C. §441a(d) or in Advisory Opinion 1984-15 prevents coordination between the national party and the party nominee for president in the making of such expenditures. The FEC states flatly in AO 1984-15 that "consultation or coordination with the candidate is permissible." Therefore, the DNC is allowed to make such an expenditure in connection with the Clinton campaign, and is allowed to coordinate with the Clinton campaign on it. The RNC's argument to the contrary is utterly without foundation.

In addition, nowhere in AO 1984-15 does the FEC limit such expenditures to the sole purpose of "attacking the opposition party candidate coupled with a partisan get-out-the-vote message." The only requirements, both in the statute and in the above-mentioned Advisory Opinion, is that the expenditures be "in connection with the general election campaign" of the party's nominee."

The FEC, in deciding whether an expenditure is "in connection with the general election campaign," stated in Advisory Opinion 1984-15 that the test is whether the expenditures "relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between" the two party's candidates. The DNC's program falls squarely within the parameters of the FEC's test.

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The expenditures made by the DNC for the program were designed to garner support for the likely Democratic Party nominee, Bill Clinton, and to diminish support for the likely Republican Party nominee in the general election campaign. This is obvious from the content of the program.

During the show, Governor Clinton discussed his positions on issues concerning the 1992 general election race, including education, the North American Free Trade Agreement, the economy, race relations, and the budget. In addition, Governor Clinton explicitly criticized the Bush record on taxes, worker's rights, gun control, U.S.-Japan relations, U.S.-China relations, Middle-East issues, and homelessness.

Nowhere in the program did Governor Clinton ever even mention -- much less criticize -- his former rivals in the Democratic primary race. Governor Clinton spoke of the "three people running for president," not the six major candidates who ran for the Democratic nomination.

Governor Clinton contrasted what he was doing in "this national town hall meeting" with "meetings like this on television with undecided voters in primary states from New Hampshire right through here in Pennsylvania." The clear import of his statement was that the June 12th program differed from previous programs in that it was addressing general election issues, as opposed to prior programs which addressed issues related to the Democratic primary campaign.

In the program, Governor Clinton stated that "I've got some answers" to the problems facing the country, problems that people care about in "this presidential race." He added that the Democratic strategy is to make television "an instrument of education, not a weapon of assassination," a clear reference to Republican's scurrilous media strategy in past and present presidential elections.

Finally, and most importantly, the Democratic presidential primary process for all intents and purposes had concluded. By June 2nd, 10 days before the airing of the June 12th program, Bill Clinton had garnered enough delegates to give him the Democratic nomination on the first ballot. For the RNC to argue that this program was "really" intended to influence the just completed primary election process flies in the face of political reality.

The final argument which the RNC makes against allowing the expenditures in connection with this program being treated as one under 2 U.S.C. §441a(d) is that the television audience was informed of a "800" number which, if dialed, gave the caller an option of contributing to the Clinton Committee. The DNC, however, never intended the program to be a fundraising project -- the toll-free number was incidental to the main purpose of the program.

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The purpose of the program was to disseminate the general election message of the Democratic Party's likely nominee. The "800" number gave the caller three options: to receive Bill Clinton's "Plan for America's Future; to leave a message for Governor Clinton; and, to make a contribution. The toll free number was not designed primarily as a fundraising device, but as a way to inform the viewing audience about the Democratic campaign message.

The solicitation in the toll-free number was erroneous, and was corrected immediately upon discovery. On the evening of June 14th, the General Counsel of the DNC, Carol C. Darr, was informed that the recording on the "800" number contained the message "help the Clinton campaign" rather than "help the Democratic National Committee." The following day, she contacted Paul Storch, President of Storch-Tele-Group, Inc., the firm which created and maintained the toll-free number, to inform him of the error and to order a change in the message given to callers. She was informed that because of the technology involved, it was impossible for the message to be changed immediately. Mr. Storch assured her that the message would be changed by the end of the day. When the erroneous message continued to be disseminated the next morning, she ordered the "800" number to be discontinued immediately. Again, owing to the technology involved, it took several hours to disconnect the telephone lines. At noon on June 16th, the number was turned off.

Furthermore, owing to the error that had been made with respect to the "800" number solicitation, the DNC decided not to accept any contributions in connection with this program into any of its accounts. Accordingly, none of the individuals who gave their credit card numbers had their credit cards debited, and none of the individuals who pledged to make a contribution by check were sent any fulfillment materials.

Thus, the RNC is mistaken in its assertion that impermissible contributions were received by the Clinton Committee. In fact, neither the Clinton Committee nor the DNC realized profits from the erroneous solicitation. No credit cards were debited, and no follow-up materials were sent to those offering to make a pledge. In taking these draconian actions as soon as the error was discovered, the DNC did every thing within its power to rectify the error.

II. The Clinton Committee Made No Expenditure In Connection With The Program

The RNC is similarly mistaken in its assertion that the Clinton Committee "paid for... related expenses associated with the 'town hall meeting,' such as travel, subsistence and any advance planning costs of the event" (RNC complaint, pp. 4-5). In fact, the DNC, not the Clinton Committee, paid all staff travel,

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production, and broadcast costs. These costs were paid within six days of the broadcast, well within the "commercially reasonable" time frame, and before the RNC's complaint was filed. The DNC incurred costs of $49,164.52 for the production of the program, $120,000 for telemarketing, and $380,000 for broadcasting. In addition, the DNC paid for the travel costs of the campaign staff, round-trip airfare from Washington to Pittsburgh, amounting to $2,967.30.

III. The DNC Did Not Violate The Disclaimer Requirements of 2 U.S.C. §441d(a)(2) Or (3)

The RNC states that the DNC violated the disclaimer provisions of 2 U.S.C. §441d(a) by failing to include in the disclaimer the fact that the program was "authorized" by the Clinton Committee. The RNC's assertion ignores the fact that Governor Clinton's continuous appearance during the entire 30-minute broadcast gave viewers unequivocal notice that the broadcast was approved by him.

The DNC believes that section of the statute is more directed towards authorized communications, paid for by a non-candidate committee, which attack a candidate's opponent without showing the picture of the candidate authorizing the expenditure. In that situation, a candidate obtains the benefits from an authorized expenditure, yet hides behind another committee which makes the expenditure. In the present situation, there was no possibility for confusion on the part of viewers concerning the fact that this program was broadcast with the consent of the Clinton Committee. Furthermore, viewers were notified that the program was "paid for by the DNC" by the disclaimer shown at the end of the program. Therefore, the disclaimer shown on the broadcast met the purpose of 2 U.S.C. §441d(a)(2).

CONCLUSION

As stated above, the respondent denies the violations alleged by the complainant. The expenditures made by the DNC were permissible under 2 U.S.C. §441a(d). The Clinton Committee did not incur any costs related to this program. Finally, the DNC did not violate the spirit of 2 U.S.C §441d(a).

Respectfully submitted,

Eric D. London
Assistant Counsel, DNC

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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR #3546
DATE COMPLAINT RECEIVED
BY OGC June 19, 1992
DATE OF NOTIFICATION TO
RESPONDENTS: June 23, 1992
STAFF MEMBER: Phillip L. Wise

COMPLAINANT: Republican National Committee

RESPONDENTS: William J. Clinton

Clinton for President Committee and Robert A. Farmer, as treasurer

Democratic National Committee and Robert T. Matsui, as treasurer.

RELEVANT STATUTES:
2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441d(a)
2 U.S.C. § 441a(d)
11 C.F.R. § 9034.4(a)(1)
11 C.F.R. § 9033.1(b)(9)
26 U.S.C. § 9003(b)(2)
26 U.S.C. § 9010(c)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: NONE

I. GENERATION OF MATTER

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). (Attachment 1). In this complaint the RNC alleged that Bill Clinton; Clinton for President Committee ("the Clinton Committee") and Robert A. Farmer, as treasurer; and the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(f),

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441d(a), 26 U.S.C. § 9003(b)(2), 11 C.F.R. §§ 9033.1(b)(9) and 9034.4(a)(1).

On July 29, 1992, President Clinton and the Clinton Committee responded to the complaint filed by the RNC. (Attachment 2). On July 30, 1992, the DNC responded to the above referenced complaint. (Attachment 3).

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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 this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to

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1/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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2 cents multiplied by the voting age population of the United States.[2/]

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the

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2/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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communication and state that the communication is not authorized by any candidate or candidate's committee.

Pursuant to 26 U.S.C. § 9003(b)(2), in order to be eligible to receive any payments under the "Presidential Election Campaign Fund", the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund.

Pursuant to 11 C.F.R. § 9033.1(b)(10), the candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. § 431 et seq.; 26 U.S.C. § 9031 et seq. and the Commission's regulations at 11 CFR parts 100-116, and 9031-9039.

Pursuant to 11 C.F.R. § 9034.4(a)(1), all contributions (for the presidential primary campaign) received by an individual, from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.[3/]

3/ Qualified campaign expenses would only be expenses made in connection with the campaign for nomination.

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B. **The Facts**

1. **The RNC'S Allegations**

On June 12, 1992, the DNC sponsored a televised town hall meeting at which President Clinton appeared to answer questions from the television audience. A news broadcast stated that the DNC spent $400,000.00 on this program. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive Bill Clinton's "Plan for America's Future"; leave a message for Bill Clinton; or, make a contribution.

The allegations by the RNC were based on the $400,000.00 payment by the DNC for the televised broadcast of the Clinton "town meeting", on June 12, 1992. The complaint requested that the Commission initiate an expeditious investigation and, if necessary, seek injunctive relief under 26 U.S.C. § 9010(c) "in order to prevent taxpayers' monies from being applied to non-qualified campaign expenses and to assure compliance with the Candidate's Agreement signed personally by Clinton."[4/]

The RNC has presented a transcript of the June 12, 1992, town hall broadcast; a copy of pages of the Clinton Committee's reports covering April 1992, showing it was substantially in debt; an affidavit from a person who called the toll free number featured during the town hall meeting; and a news report that the DNC was paying $400,000.00 for the broadcast. The RNC alleges: (1) Bill Clinton appeared on the 30-minute nationwide

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4/ On June 30, 1992, the Commission declined to seek injunctive relief.

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television broadcast on June 12, 1992, to answer questions from the television audience; (2) the broadcast cost $400,000 and was paid for by the DNC; (3) Bill Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to then President Bush; (4) listeners were invited to call a toll free number to ask a question or to get more information; (5) when callers phoned, one option given to them was "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution;" (6) the Clinton Committee was financially strapped, and its cash flow prevented it from purchasing the television time; and (7) Bill Clinton had not, prior to the date of the complaint in this matter, filed a Statement of Organization to establish a general election committee, although he had set up a compliance fund.

The RNC contends that the television program was a primary election event both because the program solicited private contributions which could only be accepted by the primary election committee and because the television program does not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee for the primary election campaign, and that the Clinton Committee in turn has violated 2 U.S.C. § 441a(f) by accepting such an excessive contribution. The RNC further alleges that in doing so Bill Clinton breached his Candidate's Agreement.

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In the alternative the RNC alleges that, if the television program is treated as a general election event, the Clinton Committee violated 11 C.F.R. § 9034.4(a)(1) "by making nonqualified primary campaign expenses when it paid for or incurred any obligation to pay related expenses associated with [the program], such as travel, subsistence, and any advance or planning costs of the event." The RNC argues further that, if the event is treated as a general election event, all contributions raised from the toll free number and program must be refunded because private contributions cannot be accepted for the general election campaign of a publicly-funded candidate. Moreover, the RNC contends that if the program is treated as a general election event, any similar subsequent events would have to be treated as general election events whether paid for by the DNC or by the Clinton Committee, and that the expenses for such events would count against their respective limits for the general election.

Finally, the RNC alleges that if the television program is deemed to have expressly advocated the defeat of a clearly identified candidate, the DNC violated 2 U.S.C. § 441d(a) by not including a complete disclaimer indicating whether it was authorized by the candidate.

2. The Clinton Responses

President Clinton and the Clinton Committee assert that the cost of this telemarketing program was borne by the DNC and that the DNC, the national party committee, could make 2 U.S.C. § 441a(d) expenditures for Clinton's general election

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campaign on the date of the nationally broadcast town hall meeting. In support of that argument counsel stated that the Democratic Party had concluded its presidential primary elections on June 2, 1992. The date of the nationally broadcast "town hall meeting" at issue in this matter was June 12, 1992. By the time of the "town hall meeting" Clinton had the clear majority of the delegates and appeared assured of the nomination.

Counsel, referencing Advisory Opinion 1984-15 (AO 84-15), argues that neither the FECA itself, the legislative history, the Commission's regulations, nor extensive case law have required that coordinated party expenditures must be confined to the time period between a candidate's nomination and the general election.

The Clinton campaign also asserts that it did not expend any funds in connection with the June 12, 1992, town hall meeting; and that Clinton's campaign did not directly solicit contributions during the town hall meeting broadcast. The Clinton Committee also noted that the campaign did not receive any contributions in connection with the town hall meeting event. The response states that the purpose of the 800 number was to afford potential voters the opportunity to obtain more information about Clinton's policies and positions or to record a personal message for Clinton. While acknowledging that one of

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the options given callers to the 800 number was to make a contribution to the Clinton campaign, the Clinton response asserts that the contribution option to the Clinton campaign was an error and that this error was promptly corrected before the RNC filed the complaint which initiated this matter.

3. **DNC'S Response**

The DNC also asserts that the Clinton Committee made no expenditures in connection with the television program. The DNC claims that it paid all staff travel, production, and broadcast costs. According to the DNC's response, it incurred $49,164.52 in production cost; $120,000.00 for telemarketing; $380,000.00 for broadcasting; and $2,967.30 for round-trip airfare, for a total of $552,131.52. The DNC argues that these expenditures were appropriate under 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention.

In support of this argument the DNC asserts that neither the language of 2 U.S.C. § 441a(d) nor the language in AO 1984-15 prevent coordinated expenditures between the national party and the party's nominee for president. The DNC states that the test established by the FEC in AO 84-15 is "whether the expenditures relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between the two party's candidates." The DNC claims its program falls squarely within the parameters of the FEC's test because: (1) the expenditures by the DNC for the program were to support the likely Democratic Party nominee and to diminish support for the likely Republican Party nominee in the general

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election campaign; (2) Bill Clinton discussed his position on issues concerning the 1992 general election; (3) Bill Clinton spoke about the three presidential candidates, and not about the six major candidates who competed for the Democratic nomination; and (4) by the time of the June 12, 1992, airing of the program the Democratic Presidential primary had essentially concluded.

With regard to the issue over the three options which callers heard when they dialed the "800" number, the DNC stated:

> The solicitation in the toll-free number was erroneous, and was corrected immediately upon discovery. On the evening of June 14th, the General Counsel of the DNC ... was informed .... The following day, she contacted ... the firm which created and maintained the toll-free number, to inform ... of the error and to order a change in the message given to callers.

According to the DNC, efforts to have the message changed were unsuccessful; therefore, the "800" number was ordered to be discontinued immediately. This line was disconnected at noon on June 16, 1992. The DNC asserts that no contributions made in connection with the program were accepted by either the Clinton Committee or the DNC.

The DNC also claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him.

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C. **The Analysis**

1. **Alleged violation of 2 U.S.C. § 441a(d)**

The threshold issue is whether the DNC could make general election expenditures on behalf of Mr. Clinton before Clinton was formally named the Democratic Party's presidential nominee. A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d). Neither the FECA, its legislative history, nor the Commission's regulations, require that coordinated party expenditures be confined to the time period between a candidate's nomination and the general election. Furthermore, if from the political party's perspective a candidate appears assured of a party's presidential nomination, the Commission has said that the general election campaign may begin prior to the formal nomination, and national party expenditures in connection with that campaign are possible. Advisory Opinion 1984-15 (AO 84-15). The Commission does not view the timing as controlling how such expenditures should be treated for limitation and reporting purposes. Expenditures for a candidate's general election may be made before the date of the primary election or nomination. See, Advisory Opinion 1984-15.

In order for an expenditure made before the primary or nomination to qualify as a section 441a(d) expenditure, it must

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be determined that the expenditures were made for the purpose of influencing the outcome of the general election. Id.[5/] In this case, when the town hall meeting occurred the Democratic primaries were over. During the program Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Therefore, it appears that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election.

Based on the Commission's reasoning in AO 84-15, it appears that the DNC could make general election coordinated expenditures on behalf of Bill Clinton and the Clinton Committee prior to the Democratic Convention. The presidential expenditure limitation for national party committees, such as the DNC, for 1992 was $10,331,702.92. See, Presidential Spending Limits Chart. (Attachment 4).

5/ In MUR 2270, one of the most recent MURs addressing this issue (which was merged with MURs 2231, 2233, and 2259), the question before the Commission was whether certain expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee for seven mailers, yard signs, a newspaper ad and a radio ad are subject to the Act's limitations at 2 U.S.C. § 441a(d). In MUR 2270 the Commission, considering both timing of the expenditures and purpose of the expenditures, found that expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee prior to the formal nomination of the Republican Senatorial nominee, which were made to influence the general election, were general election expenditures for the purpose of 2 U.S.C. § 441a(d).

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As indicated above, in responding to the complaint filed in this matter, the DNC stated that it incurred costs totaling $552,131.52 with regard to the television program at issue in this matter. A review of Schedule F of the Year End Report filed with the Commission by the DNC covering the period from November 24, 1992 through December 31, 1992 shows cumulative expenditures by the DNC on behalf of the Clinton campaign totaling $10,187,856.71.[6/] The reported total expenditures for the 1992 Clinton presidential campaign did not exceed the $10,331,702.92 presidential expenditure limitation for national party committees, such as the DNC. Based on the foregoing it does not appear that the DNC exceeded its coordinated expenditure limitation for the presidential general election campaign.

With regard to the 800 number solicitation option, however, it does not appear that the DNC could have used its' 2 U.S.C. § 441a(d) expenditure limit. Even though respondents claim the 800 number solicitation was a mistake, the fact remains that from June 12, 1992 to June 16, 1992, the DNC paid for a telemarketing program which included a solicitation for contributions for the Clinton campaign. Because contributions to a presidential candidate can only be collected in connection with the Primary, the solicitation portion of the telemarketing program should be treated as a primary contribution by the DNC to the Clinton campaign.

6/ This total includes the $552,131.52 expended by the DNC for the June 12, 1992 "town meeting."

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Under 2 U.S.C. § 441a(a)(2)(A) a multicandidate committee can only contribute $5,000.00 to a candidate's committee. The DNC reports that the total cost of the telemarketing portion of the town hall meeting program was $120,000.00. Dividing the total amount paid for the telemarketing ($120,000.00) by the number of options offered to callers (3) equals $40,000.00. Thus, $40,000.00 would constitute the amount of the contribution relating to the solicitation for primary election contributions.[7/] The reports for the primary filed by both the Clinton Committee and the DNC reported that the DNC made an aggregate of $2,253.00 in primary contributions to the Clinton Committee. Subtracting the reported primary contribution amount ($2,253.00) from the maximum contribution limit allowed multicandidate committees ($5,000.00) leaves a remaining possible contribution amount of $2,747.00. Subtracting the remainder of the contribution limit amount from the apparent amount expended with regard to the solicitation for primary election contributions ($40,000.00), results in an apparent excessive primary contribution of $37,253.00.

In investigating this matter further we will seek information with regard to the respondents' assertions that this solicitation resulted from error, including taking depositions of the vendor or vendors responsible for the 800 number

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7/ The DNC's assertions that no contributions were accepted or received and that corrective actions were taken immediately do not negate the fact that the committee received something of value from the DNC. Instead, these factors should only be considered as mitigation.

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telephone options.[8]

Accordingly, this Office recommends that the Commission find reason to believe the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A). This Office also recommends that the Commission authorize subpoenas for the deposition of Paul Storch, the president of Storch-Telle-Group, Inc.[9], the firm that the DNC claims created and maintained the toll-free number, as well as for documents from Paul Storch and the corporation.

2. Alleged violation of 2 U.S.C. § 441d(a)

As stated above, the DNC claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him. The DNC further stated,

> The DNC believes that section of the statute is more directed towards authorized communications, paid for by a non-candidate committee, which attack a

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8/ In the event the investigation uncovers evidence that the Clinton Committee helped plan or approve the solicitation of funds, this Office will make appropriate recommendations. If the Clinton Committee was involved in the solicitation, we would also need to revisit the decision to categorize the balance of the town hall meeting expenses as general. Due to the uncertainty of the outcome of this investigation this Office is making no recommendations with regard to the Clinton Committee at this time.

9/ In the DNC's response to the complaint the corporation is spelled "Storch-Tele-Group, Inc." In the DNC's report filed with the Commission the corporation is spelled "Storch-Tell-Group, Inc."

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> candidate's opponent without showing the picture of the candidate authorizing the expenditure. In that situation, a candidate obtains the benefits from an authorized expenditure, yet hides behind another committee which makes the expenditure. In the present situation, there was no possibility for confusion on the part of viewers concerning the fact that this program was broadcast with the consent of the Clinton Committee.

The DNC's assertions that the program carried a statement that it was paid for by the DNC, and that the continuous appearance of Bill Clinton on the program was an indication of his consent and/or authorization, do not satisfy the disclaimer requirements under 2 U.S.C. § 441d(a). The program did not contain the required statement that it was authorized by the candidate or his committee. (See MUR 2771 in which the Commission found probable cause to believe that the Democratic Senatorial Campaign Committee violated 2 U.S.C. § 441d(a)(2) when a televised commercial which ran on behalf of John P. Vinich during his 1988 senatorial campaign failed to state whether it was authorized by the candidate or his committee.) Therefore, this Office recommends that the Commission find reason to believe the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441d(a)(2).

3. Alleged violations by William J. Clinton

The RNC alleged that Mr. Clinton personally, along with the Clinton Committee, violated 2 U.S.C. § 441a(f), by accepting excessive primary contributions from the DNC with regard to expenditures for the June 12, 1992 television event. The RNC also alleged that Mr. Clinton violated his Candidate's

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Agreement by accepting the foregoing alleged excessive primary contribution.

The RNC has presented no evidence that Mr. Clinton was personally involved, controlled or directed any activities with regard to the production of the television event, including the "800" number solicitation option which resulted in the alleged excessive primary contribution. Such events are traditionally handled by committees and not candidates. In the absence of any evidence of personal involvement the Commission generally has not pursued the candidate for committee violations. Accordingly, this Office recommends that the Commission find no reason to believe that William J. Clinton violated any provision of the Act or the Commission's regulations.

IV. RECOMMENDATIONS

1. Find reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

2. Find no reason to believe the William J. Clinton violated any provision of the Act or the Commission's regulations.

3. Close the file as it pertains to William J. Clinton.

4. Approve the attached subpoena to Paul Storch and Storch-Telle-Group, Inc.

5. Approve the attached Factual and Legal Analyses.

6. Approve the appropriate letters.

7/7/93
Date

Lawrence M. Noble
General Counsel

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Attachments

1. Complaint
2. Clinton Committee's response
3. DNC's response
4. Presidential Spending Limits Chart
5. Factual and Legal Analysis
6. Subpoena

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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
COMMISSION SECRETARY

DATE: JULY 14, 1993

SUBJECT: MUR 3546 - FIRST GENERAL COUNSEL'S REPORT DATED JULY 7, 1993.

The above-captioned document was circulated to the Commission on Wednesday, July 7, 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	XXX
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for Tuesday, July 20, 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	)	
	)	MUR 3546
William J. Clinton;	)	
Clinton for President Committee and	)	
Robert A. Farmer, as treasurer;	)	
Democratic National Committee and	)	
Robert T. Matsui, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on July 27, 1993, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Find reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

2. Find no reason to believe that William J. Clinton violated any provision of the Act or the Commission's regulations in connection with the complaint filed in MUR 3546.

3. Close the file in MUR 3546 as it pertains to William J. Clinton.

(continued)

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4. Take no action at this time with respect to the Clinton for President Committee and Robert A. Farmer, as treasurer.

5. Approve the subpoena to Paul Storch and Storch-Telle-Group, Inc. as recommended in the General Counsel's report dated July 7, 1993.

6. Approve the Factual and Legal Analyses as recommended in the General Counsel's report dated July 7, 1993.

7. Approve the appropriate letters as recommended in the General Counsel's report dated July 7, 1993.

Commissioners Aikens, Elliott, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner McDonald was not present at the meeting.

Attest:

7-28-93
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 10, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul C. Storch, President
Storch-Telle-Group, Inc.
375 West Broadway
New York, New York 10012

RE: MUR 3546

Dear Mr. Storch:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to appear and give sworn testimony on September 22, 1993 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

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Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (800) 424-9530.

If you have any questions, please contact me at (800) 424-9530.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Paul C. Storch, President
Storch-Telle-Group, Inc.
375 West Broadway
New York, New York 10012

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to the taped information received by caller when the toll free 800 number was called as a result of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton. Notice is hereby given that the deposition is to be taken on September 22, 1993 in Room 657 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

Further, pursuant to 2 U.S.C. § 437d(a)(3), you and Storch-Telle-Group, Inc. are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, by August 27, 1993.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 6th day of August, 1993.

Scott E. Thomas
Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (2 pages)

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DOCUMENT REQUEST

1. Provide a copy of all contracts for the services of Storch-Telle-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

2. Provide a copy of all written instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Telle-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

3. Provide a copy of all taped instructions, directions, correspondence, or any other taped records about the services to be rendered by Storch-Telle-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

4. Provide copies of all checks received for the services rendered by Storch-Telle-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

5. Provide a copy of all notes written because of oral instructions, inquiries, directions, or any other oral communications about the services to be rendered by Storch-Telle-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

6. Provide a copy of all contracts with regard to the preparation and maintenance of the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

7. Provide a copy of all written instructions, directions, correspondence, or any other written records with regard to the preparation and maintenance of the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

8. Provide a copy of all taped instructions, directions, correspondence, or any other taped records with regard to the preparation and maintenance of the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

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9. Provide copies of all checks received with regard to the preparation and maintenance of the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

10. Provide a copy of all notes written because of oral instructions, inquiries, directions, or any other oral communications with regard to the preparation and maintenance of the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

11. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Telle-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor Bill Clinton.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 10, 1993

Philip S. Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
William J. Clinton

Dear Mr. Friedman:

On June 23, 1992, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 27, 1993, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that William J. Clinton violated any provision of the Act or the Commission's regulations in connection with the complaint filed in MUR 3546. Accordingly, the Commission closed its file in this matter as it pertains to William J. Clinton.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 10, 1993

Philip S. Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
Clinton for President
Committee and Robert A.
Farmer, as treasurer

Dear Mr. Friedman:

On June 23, 1992, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On July 27, 1993, the Commission decided to take no action at this time with respect to the Clinton for President Committee and Robert A. Farmer, as treasurer.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 10, 1993

Eric London, Esquire
Assistant Counsel
Democratic National Committee
430 South Capitol, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee and Robert T. Matsui, as treasurer

Dear Mr. London:

On June 23, 1992, the Federal Election Commission notified your clients, the Democratic National Committee and Robert T. Matsui, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on July 27, 1993, found that there is reason to believe the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), provisions of 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 your clients. 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 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 your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission

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either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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 matter to be made public.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual & Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic National Committee and Robert T. Matsui, as treasurer MUR: 3546

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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 this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

1/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to 2 cents multiplied by the voting age population of the United States.[2/]

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political

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2/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

B. **The Facts**

1. **The RNC'S Allegations**

On June 12, 1992, the DNC sponsored a televised town hall meeting at which President Clinton appeared to answer questions from the television audience. A news broadcast stated that the DNC spent $400,000.00 on this program. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive Bill Clinton's "Plan for America's Future"; leave a message for Bill Clinton; or, make a contribution.

The RNC has presented a transcript of the June 12, 1992, town hall broadcast; a copy of pages of the Clinton Committee's reports covering April 1992, showing it was substantially in debt; an affidavit from a person who called the toll free number featured during the town hall meeting; and a news report that the DNC was paying $400,000.00 for the broadcast. The RNC alleges: (1) Bill Clinton appeared on the 30-minute nationwide television broadcast on June 12, 1992, to answer questions from the television audience; (2) the broadcast cost $400,000 and was paid for by the DNC; (3) Bill Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to then President Bush; (4) listeners were invited to call a toll free number to ask a question or to get

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more information; (5) when callers phoned, one option given to them was "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution;" (6) the Clinton Committee was financially strapped, and its cash flow prevented it from purchasing the television time; and (7) Bill Clinton had not, prior to the date of the complaint in this matter, filed a Statement of Organization to establish a general election committee, although he had set up a compliance fund.

The RNC contends that the television program was a primary election event both because the program solicited private contributions which could only be accepted by the primary election committee and because the television program does not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee for the primary election campaign.

The RNC argues further that, if the event is treated as a general election event, all contributions raised from the toll free number and program must be refunded because private contributions cannot be accepted for the general election campaign of a publicly-funded candidate. Moreover, the RNC contends that if the program is treated as a general election event, any similar subsequent events would have to be treated as general election events whether paid for by the DNC or by the Clinton Committee, and that the expenses for such events would count against their respective limits for the general election.

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Finally, the RNC alleges that if the television program is deemed to have expressly advocated the defeat of a clearly identified candidate, the DNC violated 2 U.S.C. § 441d(a) by not including a complete disclaimer indicating whether it was authorized by the candidate.

2. DNC'S Response

The DNC asserts that the Clinton Committee made no expenditures in connection with the television program. The DNC claims that it paid all staff travel, production, and broadcast costs. According to the DNC's response, it incurred $49,164.52 in production cost; $120,000.00 for telemarketing; $380,000.00 for broadcasting; and $2,967.30 for round-trip airfare, for a total of $552,131.52. The DNC argues that these expenditures were appropriate under 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention.

In support of this argument the DNC asserts that neither the language of 2 U.S.C. § 441a(d) nor the language in AO 1984-15 prevent coordinated expenditures between the national party and the party's nominee for president. The DNC states that the test established by the FEC in AO 84-15 is "whether the expenditures relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between the two party's candidates." The DNC claims its program falls squarely within the parameters of the FEC's test because: (1) the expenditures by the DNC for the program were to support the likely Democratic Party nominee and to diminish support for the likely Republican Party nominee in the general

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election campaign; (2) Bill Clinton discussed his position on issues concerning the 1992 general election; (3) Bill Clinton spoke about the three presidential candidates, and not about the six major candidates who competed for the Democratic nomination; and (4) by the time of the June 12, 1992, airing of the program the Democratic Presidential primary had essentially concluded.

With regard to the issue over the three options which callers heard when they dialed the "800" number, the DNC stated:

> The solicitation in the toll-free number was erroneous, and was corrected immediately upon discovery. On the evening of June 14th, the General Counsel of the DNC ... was informed .... The following day, she contacted ... the firm which created and maintained the toll-free number, to inform ... of the error and to order a change in the message given to callers.

According to the DNC, efforts to have the message changed were unsuccessful; therefore, the "800" number was ordered to be discontinued immediately. This line was disconnected at noon on June 16, 1992. The DNC asserts that no contributions made in connection with the program were accepted by either the Clinton Committee or the DNC.

The DNC also claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him.

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C. The Analysis

1. Alleged violation of 2 U.S.C. § 441a(d)

The threshold issue is whether the DNC could make general election expenditures on behalf of Mr. Clinton before Clinton was formally named the Democratic Party's presidential nominee. A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d). Neither the FECA, its legislative history, nor the Commission's regulations, require that coordinated party expenditures be confined to the time period between a candidate's nomination and the general election. Furthermore, if from the political party's perspective a candidate appears assured of a party's presidential nomination, the Commission has said that the general election campaign may begin prior to the formal nomination, and national party expenditures in connection with that campaign are possible. Advisory Opinion 1984-15 (AO 84-15). The Commission does not view the timing as controlling how such expenditures should be treated for limitation and reporting purposes. Expenditures for a candidate's general election may be made before the date of the primary election or nomination. See, Advisory Opinion 1984-15.

In order for an expenditure made before the primary or nomination to qualify as a section 441a(d) expenditure, it must be determined the expenditures were made for the purpose of

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influencing the outcome of the general election. Id.[3/] In this case, when the town hall meeting occurred the Democratic primaries were over. During the program Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Therefore, it appears that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election.

Based on the Commission's reasoning in AO 84-15, it appears that the DNC could make general election coordinated expenditures on behalf of Bill Clinton and the Clinton Committee prior to the Democratic Convention. The presidential expenditure limitation for national party committees, such as the DNC, for 1992 was $10,331,702.92.

As indicated above, in responding to the complaint filed in this matter, the DNC stated that it incurred costs totaling

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3/ In MUR 2270, one of the most recent MURs addressing this issue (which was merged with MURs 2231, 2233, and 2259), the question before the Commission was whether certain expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee for seven mailers, yard signs, a newspaper ad and a radio ad are subject to the Act's limitations at 2 U.S.C. § 441a(d). In MUR 2270 the Commission, considering both timing of the expenditures and purpose of the expenditures, found that expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee prior to the formal nomination of the Republican Senatorial nominee, which were made to influence the general election, were general election expenditures for the purpose of 2 U.S.C. § 441a(d).

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$552,131.52 with regard to the television program at issue in this matter. A review of Schedule F of the Year End Report filed with the Commission by the DNC covering the period from November 24, 1992 through December 31, 1992 shows cumulative expenditures by the DNC on behalf of the Clinton campaign totaling $10,187,856.71.[4/] The reported total expenditures for the 1992 Clinton presidential campaign did not exceed the $10,331,702.92 presidential expenditure limitation for national party committees, such as the DNC. Based on the foregoing it does not appear that the DNC exceeded its coordinated expenditure limitation for the presidential general election campaign.

With regard to the 800 number solicitation option, however, it does not appear that the DNC could have used its' 2 U.S.C. § 441a(d) expenditure limit. Even though respondents claim the 800 number solicitation was a mistake, the fact remains that from June 12, 1992 to June 16, 1992, the DNC paid for a telemarketing program which included a solicitation for contributions for the Clinton campaign. Because contributions to a presidential candidate can only be collected in connection with the Primary, the solicitation portion of the telemarketing program should be treated as a primary contribution by the DNC to the Clinton campaign.

Under 2 U.S.C. § 441a(a)(2)(A) a multicandidate committee can only contribute $5,000.00 to a candidate's committee. The

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4/ This total includes the $552,131.52 expended by the DNC for the June 12, 1992 "town meeting."

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DNC reports that the total cost of the telemarketing portion of the town hall meeting program was $120,000.00. Dividing the total amount paid for the telemarketing ($120,000.00) by the number of options offered to callers (3) equals $40,000.00. Thus, $40,000.00 would constitute the amount of the contribution relating to the solicitation for primary election contributions. The reports for the primary filed by both the Clinton Committee and the DNC reported that the DNC made an aggregate of $2,253.00 in primary contributions to the Clinton Committee. Subtracting the reported primary contribution amount ($2,253.00) from the maximum contribution limit allowed multicandidate committees ($5,000.00) leaves a remaining possible contribution amount of $2,747.00. Subtracting the remainder of the contribution limit amount from the apparent amount expended with regard to the solicitation for primary election contributions ($40,000.00), results in an apparent excessive primary contribution of $37,253.00.

Therefore, there is reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

2. Alleged violation of 2 U.S.C. § 441d(a)

The DNC claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him. The DNC further stated,

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> The DNC believes that section of the statute is more directed towards authorized communications, paid for by a non-candidate committee, which attack a candidate's opponent without showing the picture of the candidate authorizing the expenditure. In that situation, a candidate obtains the benefits from an authorized expenditure, yet hides behind another committee which makes the expenditure. In the present situation, there was no possibility for confusion on the part of viewers concerning the fact that this program was broadcast with the consent of the Clinton Committee.

The DNC's assertions that the program carried a statement that it was paid for by the DNC, and that the continuous appearance of Bill Clinton on the program was an indication of his consent and/or authorization, do not satisfy the disclaimer requirements under 2 U.S.C. § 441d(a). The program did not contain the required statement that it was authorized by the candidate or his committee. (See MUR 2771 in which the Commission found probable cause to believe that the Democratic Senatorial Campaign Committee violated 2 U.S.C. § 441d(a)(2) when a televised commercial which ran on behalf of John P. Vinich during his 1988 senatorial campaign failed to state whether it was authorized by the candidate or his committee.)

Therefore, there is reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441d(a).

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Democratic National Committee

August 18, 1993

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: Pending Matters Under Review in which DNC Services Corp./Democratic National Committee (FEC ID: C00010603) is a Respondent

Dear Mr. Noble:

As you know, the undersigned now serve, respectively, as General Counsel and Deputy General Counsel of the Democratic National Committee. Accordingly, we respectfully request that all correspondence with respect to the following pending Matters Under Review, for which the Treasurer of the committee has previously designated the General Counsel as counsel of record, should now be addressed to the undersigned as counsel of record:

MUR 3546

Thank you for your attention to this matter.

Sincerely yours,

Joseph E. Sandler
General Counsel

Neil Reiff
Deputy General Counsel

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEPTEMBER 8, 1993

VIA FEDERAL EXPRESS

Paul C. Storch, President
Storch-Telle-Group, Inc.
4 Parkwood
Great Neck, New York 11023

RE: MUR 3546

Dear Mr. Storch:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued a subpoena which requires you to appear and give sworn testimony on September 22, 1993 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Notice of the Commission's subpoena for testimony and the production of documents was mailed to you on August 23, 1993. To date you have not responded. It is therefore, requested that you furnish the requested documents and inform this Office whether the proposed date for the deposition is agreeable with you.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

Within two days of your receipt of this reminder notification, please confirm your scheduled appearance with me at (800) 424-9530.

If you have any questions, please contact me at (800) 424-9530.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

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COMMISSION
MAIL COPY ROOM
SEP 16 10 10 AM '93

FEDER, KASZOVITZ, ISAACSON, WEBER & SKALA
ATTORNEYS AT LAW
450 SEVENTH AVENUE
NEW YORK, N.Y. 10123-0040
TELEPHONE: (212) 239-4610
TELECOPIER: (212) 564-2660

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LEONARD A. ISAACSON
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MURRAY L. SKALA
MARCEL WEBER
RICHARD J. GOTTLIEB

JAY D. LUKOWSKI*
EZIO SCALDAFERRI
SCOTT M. MILLER
LAWRENCE G. NUSBAUM
BRUCE ROBINS^Δ*
DEBBIE KAMINER

*ALSO ADMITTED IN N.J.
^ALSO ADMITTED IN CONN.

RUBEN SCHWARTZ°
SENIOR COUNSEL

RONALD I. SHAPSS
COUNSEL

TOBY M. SCHAFFER^Δ
COUNSEL

°ALSO ADMITTED IN FLORIDA, PENNSYLVANIA, WASHINGTON, D.C.

September 10, 1993

Federal Election Commission
999 East Street, N.W.
Washington, DC 20463

MUR 3546

Attn: Philip L. Wise, Esq.

Re: Paul C. Storch

Dear Mr. Wise:

This will serve to confirm our conversation wherein I informed you that we represent Paul Storch and our client has forwarded to us a copy of your letters dated August 10 and September 8, 1993 with attached subpoena.

As discussed, our client's appearance has been adjourned from February 22, 1993 to October 14, 1993.

Thank you for your courtesy and cooperation herein.

Very truly yours,

Marcel Weber

MW:ua

cc: Mr. Paul Storch

93 SEP 16 AM 10: 11

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Democratic National Committee

93 SEP 22 AM 10: 27

September 22, 1993

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3546

Dear Mr. Wise:

Respondent Democratic National Committee respectfully requests an extension of time in which to file its response to the reason to believe notification in the above-referenced MUR, which notification is dated August 10, 1993 but was served on the DNC by hand-delivery on September 10, 1993. The current deadline for our response is therefore this coming Friday, September 24, 1993.

We had planned this week to obtain critical documents and information from a vendor involved in the broadcast at issue in this MUR, but the vendor postponed his discussions with us and was unable to produce for us this week certain documents necessary for the preparation of our response. This vendor is no longer a contractor of the DNC and we are relying at this point on his voluntary cooperation. We expect to be able to obtain the needed documents and information sometime next week.

We therefore request an extension of fourteen (14) days, until Friday October 8, 1993, in which to file our response.

We would appreciate your advising us as soon as possible of whether it will be possible for the Commission to grant the requested extension. Thank you for your time and attention to this matter.

Sincerely yours,

Joseph E. Sandler

Joseph E. Sandler
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 23, 1993

Joseph E. Sandler, Esquire
General Counsel
Democratic National Committee
430 South Capitol, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and Robert T. Matsui, as
treasurer

Dear Mr. Sandler:

This is in response to your letter dated September 22, 1993, which we received on September 22, 1993, requesting an extension of 14 days until October 8, 1993 to respond to the Commission's reason to believe notification. 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 October 8, 1993.

Please be advised that your response must be filed on October 8, 1993, whether or not you feel that you have obtained all the necessary information to make a complete response. If you feel additional information is needed from the vendor, please identify such materials in your response.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 28, 1993

FACSIMILE AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Marcel Weber, Esquire
Feder, Kaszovitz, Isaacson, Weber & Skala
Attorneys At Law
450 Seventh Avenue
New York, N.Y. 10123-0040

RE: MUR 3546
Paul C. Storch

Dear Mr. Weber:

In our telephone conversation on or about September 22, 1993, I agreed to the request made in your letter dated September 10, 1993, that the planned deposition of your client be rescheduled to 10.00 a.m., October 14, 1993, at the Federal Election Commission, 999 E Street, N.W., Washington, D.C. I also informed you that before this Office could proceed with the deposition, your client must furnish the documents requested in the subpoena issued to Mr. Storch, on August 6, 1993. In addition, I requested that you inform me as to the form of transportation, Mr. Storch preferred for traveling to Washington, D.C. so that I may furnish him a ticket.

To date I have not received the requested documents and travel information. Please be advised that your client is under subpoena, therefore, both the requested documents and travel preference must be received in the Office of the General Counsel of the Federal Election Commission, by the close of business, September 30, 1993.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

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OGC 0062

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

93 OCT -4 PM 4:20

October 4, 1993

Mr. Phillip Wise
Office of the General Counsel
Federal Election Commission
999 E Street, NW, Room 657
Washington, DC 20463

RE: MUR 3546
Paul C. Storch

Dear Mr. Wise:

I am responding to your letter on behalf of my client, Paul Storch. Mr. Storch has reviewed his files pursuant to the FEC subpoena. Enclosed you will find the documents which he believes are responsive to the subpoena.

I would also like to confirm that you will be furnishing Mr. Storch with a plane ticket for October 14. However, as he will be arriving that morning, we request that the time of the deposition be changed. Any time after 11:30 a.m. would be convenient for us.

If you have any further questions, please contact me at (202)728-1010.

Sincerely,

Lyn Utrecht

Lyn Utrecht

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Documents Responsive to Paul Storch Subpoena for MUR 3546

Audio Communications, Inc. Hourly report. Printed 6/18/92 at 7:17 am. 1 page.
Audio Communications, Inc. Hourly report. Printed 6/17/92 at 3:07 pm. 1 page.
Audio Communications, Inc. Hourly report. Printed 6/15/92 at 7:38 pm. 1 page.
Audio Communications, Inc. Hourly report. Printed 6/15/92 at 12:23 am. 1 page.
Audio Communications, Inc. Hourly report. Printed 6/14/92 at 12:28 am. 1 page.
Audio Communications, Inc. Hourly report. Printed 6/13/92 at 4:49 am. 1 page.
Call Interactive Proprietary and Confidential Document. Run date 6/17/92. Batch date 6/16/92. 1 page.
Call Interactive Proprietary and Confidential Document. Run date 6/16/92. Batch date 6/15/92. 1 page.
Call Interactive Proprietary and Confidential Document. Run date 6/15/92. Batch date 6/14/92. 1 page.
Call Interactive Proprietary and Confidential Document. Run date 6/14/92. Batch date 6/13/92. 1 page.
Call Interactive Proprietary and Confidential Document. Run date 6/13/92. Batch date 6/12/92. 1 page.
Script for Clinton for President Program. 1 page.
Script for Clinton for President Program on Storch Tele-Group, Inc. letterhead. 1 page.
Handwritten note from Sue Abler to Paul Storch dated 6/16/92. 1 page.
Memo from Paul Storch to Eli Segal dated June 15, 1992. 1 page.
Memo from Paul Storch to Eli Segal dated June 9, 1992. 1 page.
Memo from Paul Storch to Eli Segal dated June 8, 1992. 1 page.
Letter from Carol C. Darr to Paul Storch dated June 17, 1992. 1 page.
Letter from Carol C. Darr to Paul Storch dated June 16, 1992. 1 page.
Fax cover sheet to Carol Darr dated 6/18/92. 1 page.
Letter from Paul Storch to Carol Darr dated June18, 1992. 2 pages.
Memo from Paul Storch dated June 10,1992. 1 page.
Letter from Paul Storch to Carol Darr dated June 25, 1992. 1 page.
Democratic National Committee invoice for $146,857.72 dated 6/16/92. 1 page.
Fax cover sheet to Carol Darr dated 7/8/92. 1 page.
Letter from Paul Storch to Carol Darr dated 7/8/92. 1 page.
Democratic National Committee invoice for $120,000.00 dated 6/16/92. 1 page.
Check from D.N.C. Services Corporation to Storch Tele-Group dated 7/8/92. 1 page.

9704382268 4

Audio Communications, Inc. Hourly Report. Printed 08-18-1992 at 07:17.38 AM

Application 0005005 on WEDNESDAY JUNE 17, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	0	0	0
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	0	0	0
8	0	0	0
9	0	0	0
10	0	0	0
11	1	1	0
12	0	0	0
13	0	0	0
14	0	0	0
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	1	1	0
Kill Messages	0		

15

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dio Communications, Inc. Hourly Report. Printed 06-17-1992 at 03:07.21 PM

plication 0005005 on TUESDAY JUNE 16, 1992; Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	1	20	19
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	44	69	29
8	64	106	43
9	0	0	0
10	0	0	0
11	0	0	0
12	0	0	0
13	0	0	0
14	0	0	0
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	109	195	91
Kill Messages	2		

9 7 0 4 3 8 2 2 6 8 6

udio Communications, Inc. Hourly Report. Printed 06-15-1992 at 07:38.07 PM

pplication 0005005 on MONDAY JUNE 15, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	5	24	19
1	6	9	3
2	1	1	0
3	0	0	0
4	8	8	0
5	21	24	5
6	33	46	13
7	38	47	12
8	41	56	20
9	38	78	42
10	42	55	14
11	33	52	20
12	35	49	14
13	29	43	14
14	10	17	8
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	342	[illegible]	184
Kill Messages	M		

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Audio Communications, Inc. Hourly Report. Printed 06-15-1992 at 12:23.12 AM

Application 0005005 on SUNDAY JUNE 14, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	6	8	2
1	2	1	0
2	0	0	0
3	1	1	0
4	2	2	0
5	8	14	6
6	10	13	3
7	15	18	3
8	26	28	2
9	30	56	26
10	70	102	33
11	34	50	16
12	13	21	1
13	21	25	4
14	13	19	0
15	19	17	1
16	20	39	20
17	17	21	5
18	16	36	20
19	8	12	4
20	10	30	20
21	7	10	3
22	6	7	2
23	9	8	9
Totals	365	533	189
Kill Messages	0	541	1
	13		

9704382268 8

Audio Communications, Inc. Hourly Report. Printed 06-14-1992 at 12:28.10 AM

Application 0005005 on SATURDAY JUNE 13, 1992, Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	27	67	40
1	28	29	3
2	11	15	5
3	21	32	11
4	32	59	27
5	67	104	40
6	162	233	73
7	142	174	38
8	162	228	66
9	147	231	86
10	190	266	81
11	105	142	40
12	81	94	13
13	69	85	21
14	61	99	43
15	63	74	16
16	50	91	44
17	33	59	27
18	26	27	2
19	28	54	27
20	17	23	8
21	8	17	9
22	7	10	3
23	7	12	5
Totals	1544	2217	735
Kill Messages	0		
	62		

9704382268 9

Audio Communications, Inc. Hourly Report. Printed 06-13-1992 at 04:49.58 AM

Application 0005005 on FRIDAY JUNE 12, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	0	0	0
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	0	0	0
8	1	0	0
9	1	0	0
10	1	1	0
11	0	0	0
12	1	1	0
13	0	0	0
14	23	26	2
15	749	1174	425
16	96	114	24
17	9379	17926	9199
18	831	1566	1049
19	294	450	168
20	269	449	180
21	3781	4936	1259
22	944	1542	615
23	64	107	48
Totals	16436	28586	12969
Kill Messages	819		

NGHOLD 1314

9704382269 0

[redacted]ERACTIVE PROPRIETARY AND CONFIDENTIAL [redacted]

ITE-628 CLIENT SUMMARY REPORT — CALL INTERACTIVE — RUN DATE 06/17/92 BATCH DATE 06/16/92 — PAGE 1

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP — REPORT VERSION NUMBER - 01

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINRS
CLINT	CLINTON CAMPAIGN	177	177	0	0	177	0	0	0	0	0	0	0
CLINTT	CLINTON CAMPAIGN - TRANSCRPTN	0	2	6	0	2	0	0	0	0	0	0	0
	CLIENT TOTALS	185	179	6	0	179	0	0	0	0	0	0	0

9704382269 1

CALL INTERACTIVE

ITE-B2B CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/16/92 PAGE 1
BATCH DATE 06/15/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - B1

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	-----COUNTERS---- CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	1,964	1,963	0	1	1,963	0	0	0	0	0	0	0
CLINTT	CLINTON CAMPAIGN - TRANSCRPTN	2,886	652	1,434	0	652	0	0	0	0	0	0	0
	CLIENT TOTALS	4,850	2,615	1,434	1	2,615	0	0	0	0	0	0	0

9704382269 2

CALL INTERACTIVE

CB CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/15/92 PAGE 1
BATCH DATE 06/14/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - 01

PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINRS
CLINTON CAMPAIGN	1,528	1,516	0	4	1,516	0	0	0	0	0	0	0
CLIENT TOTALS	1,528	1,516	0	4	1,516	0	0	0	0	0	0	0

9704382269 3

CALL INTERACTIVE

ITE-B2B CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/14/92 PAGE 1
BATCH DATE 06/13/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - 01

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	9,953	9,938	0	15	9,938	0	0	0	0	0	0	0
	CLIENT TOTALS	9,953	9,938	0	15	9,938	0	0	0	0	0	0	0

9704382269 4

ITE-92A CLIENT SUMMARY REPORT CALL INTERACTIVE RUN DATE 06/13/92 PAGE 1
BATCH DATE 06/12/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP REPORT VERSION NUMBER - B1

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	-----COUNTERS---- CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	88,283	88,898	0	113	88,898	0	0	0	0	0	0	0
	CLIENT TOTALS	88,283	88,898	0	113	88,898	0	0	0	0	0	0	0

9704382269 5

CALL INTERACTIVE

SCRIPT FOR CLINTON FOR PRESIDENT PROGRAM 1.800.551.5600

****JOHN, PLEASE NOTE THAT WE WANT TO TRY AND MAKE THE CALL UNDER 60 SECONDS SO PLEASE RECORD AT A SWIFT BUT UNDERSTANDABLE PACE.******

THANKS FOR CALLING.

17.7 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1. IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2. TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PRESS 3. PLEASE MAKE YOUR SELECTION NOW.

5.6 AT THE TONE PLEASE LEAVE YOUR NAME AND COMPLETE MAILING ADDRESS INCLUDING CITY, STATE AND ZIP CODE.

3.1 PLEASE HOLD ON, YOUR CALL IS BEING TRANSFERRED TO AN OPERATOR. FOR A CONT

~~[illegible]~~

~~[illegible]~~

3.0 AT THE TONE PLEASE LEAVE A SHORT MESSAGE FOR GOVE & CLINT.

4.7 ALL OPERATORS ARE CURRENTLY BUSY. PLEASE CONTINUE TO HOLD FOR THE NEXT AVAILABLE OPERATOR.

8.0 WE'RE SORRY ALL OPERATORS ARE STILL BUSY TAKING CONTRIBUTIONS FOR THE CLINTON CAMPAIGN ~~[illegible]~~. PLEASE TRY CALLING BACK LATER. THANK YOU FOR CALLING.

MENU OPTIONS AFTER CALLER GOES THROUGH SCRIPT ONCE

5.4 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1.

6.6 IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2.

5.4 TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PLEASE PRESS 3.

THANKS FOR CALLING THE DEM NAT COM

For: John Lee

From: Felix Cardillo

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Paul Storch	From Clete Bakes
Co.	Co. Sound Recorde
Dept.	Phone # 202/455-3000
Fax # 212/274-1971	Fax # 202/455-8261

9704382696

ATT: SUE ABLER
402-498-7530

STORCH-TELE-GROUP, INC.
875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

Script for Clinton For President Program 1.800.551.5600

Thanks for calling.
To receive your free copy of Bill Clinton's plan for America's future please press 1. if you agree that it's time for real change, help the Clinton campaign & make a contribution by pressing 2. to leave a message for Governor Clinton press 3. Please make your selection now.

If press 1...At the tone please leave your name & address
If press 2...Please hold on, your call is being transferred
If press 3...Please leave a 15 second message at the tone

Script for live operator

Thank you for calling Clinton For President. may I have your zip...name...How would you like to contribute, Check or credit card.
If by check, You will receive an envelope from the Clinton campaign within a week to 10 days in which to send in your contribution. Thank you for calling.

If by credit card, verify info. Thank you for calling.

9704382697

STORCH-TELE-GROUP, INC.
375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

6-16-97

Sue Ober,

As per our conversation please shut down the 1-800-551-5600 number.
Effective immediately.

Paul Osk

9704382698

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

This fax transmission contains only this page

June 15, 1992 10:55 AM

Memo From:Paul Storch
To:Eli Segal

Re:Nationwide fundraising/NBC show

As of 11:59 PM yesterday the following $$ have been pledged:

Calls	Contrib-check	Contrib-cr cd	Total Contrib
114.914	80.203	29.368	109.571
per contributor	46.71	71.91	52.01

average of $ .95 per caller-all callers
average of $52.01 per contributing caller

---

average of $ 1.20 per caller yesterday
average call time continues to decrease-cost per call
average contribution continues to increase-revenue per call

only 14% of all operator callers questioned "HELP" yesterday
I'm in touch with David Watkins regarding the credit cards
At this point only you are receiving numbers

I'll have thoughts regarding the integration of the DNC & Clinton 800 numbers on paper for you tomorrow. There are an array of possibilities.

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STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 9, 1992 04:05 PM

Memo From: Paul Storch

To: Eli Segal

RE: NBC half hour

I will call you at 4:30 PM today & conference in Frank Greer from Pittsburgh.

Following is the operation of the 800 number-we can make any changes.

Segment	Seconds	Message
1	15	Bill Clinton greeting .
2	8	Instructions-leave name, then hold on
3	21	Caller leaves name
4	8	Instructions-leave question/message
5	13	Caller leaves question/message
6	5	Instructions to make contribution
7	time out go to >>>>	Live operator,donate
	--	
	70 seconds total w/o contributing	

The single most important question is whether we ask viewers to call for the plan and leave message, or ask them to call to have their question aired on the next "America Speaks" show. Questions will tend to increase call volume while not necessarily increasing donations, comments/message will generate the more interested caller, hence keeping call volume lower and higher per caller donations. Keep in mind that we want to consider every caller a prospective Clinton voter and try to get him to accept the plan, leave message/question, and contribute.

I have contracted around the country to handle the volume the most cost effective way (a west coast caller will be answered on the west coast). Because of this, I need to get the script to several people and therefore don't have time as a luxury. I need Bill Clinton to record his greeting tomorrow.

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STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 8, 1992 09:30 PM

Memo From: Paul Storch

To: Eli Segal

RE: Friday, June 12th NBC half hour

I spoke with Frank Greer late this afternoon. I have several questions regarding the flow of the call. Currently, the 1-800-221-9735 number is the prototype. I changed the flow as per your request last week.

I'll be in Chicago tomorrow, Tuesday. I'll call from there.

I recommend the use of 1-800-551-5600 as it is easy to handle in the viewer's mind (all numbers with 5's are considered easy). I do need to know about the flow & time limitation, if any, of each call, and the choice of phone number as early as possible in the morning. If you do not like either of the numbers please let me know.

9704382701

Democratic National Committee

June 17, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

This letter follows up my letter to you yesterday, and our conversation this afternoon regarding the 800 number that was broadcast during Governor Bill Clinton's "Town Meeting" on June 12, 1992. I am writing to confirm your statement to me yesterday and reiterated this afternoon that, with respect to the callers who offered to make a donation, none of those callers' credit cards have been debited, nor will they be debited.

If you have any questions, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

9704382270 2

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

THIS FAX TRANSMISSION CONTAINS 3 *PAGES INCLUDING THIS ONE*

DATE 6.18.97

ATTENTION CAROL DARR

FAX 202.863.8140

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STORCH-TELE-GROUP, INC.
375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:Letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.551.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th.
No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.
At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.
The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs.
The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.
At the tone please leave your name and complete mailing address including city, state & zip code.
Please hold on your call is being transferred to an operator, you will not be disconnected.
At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

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The changes you requested replaced "Governor" or "Bill Clinton" or "Clinton" with "Democratic National Committee".
Also, the live operator greeting changed from "Thank you for calling Clinton for President" to "Thank you for calling The Democratic National Committee".

Please call me to discuss any further questions or comments you may have.

Sincerely,

Paul C. Storch,
President

PCS/zz

9704382706

STORCH-TELE-GROUP, INC.
875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 10, 1992

Memo From:Paul Storch

Re:Friday, June 12th, NBC half hour-800 #

The services to be provided by Storch-Tele-Group are outlined as follows:

Establish 1.800.551.5600 as phone-in line.
Program to be built to accept voice capture, leave-message option, & live operator option for contribution.
Mailing to be made from data base created by show.
Credit card contributions to be provided for as well.

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STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 25, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re: 1.800.551.5600

Dear Carol,

Enclosed please find an invoice for the above referred to phone number. As per your request, no fulfillment has taken place by my company. Therefore, the invoice rendered does not reflect the additional $.18 1/2 for that mailing. As per our conversation of earlier today, I'll speak with you tomorrow.

Regards,

Paul C. Storch,
President

PCS/zz

9704382270 8

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Unit Cost	Extension
115,636	Callers	1.27	$146,857.72

Total Due >>>>

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

THIS FAX TRANSMISSION CONTAINS 3 PAGES INCLUDING THIS ONE

DATE 7.8.92

ATTENTION CAROL DARR

FAX 202. 479.5193

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STORCH-TELE-GROUP, INC.
875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

July 8, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re: 1.800.551.5600

Dear Carol,

Enclosed please find an invoice for the above referred to phone number. I'll speak to you tomorrow about picking up the check in New York.

Sincerely,

Paul C. Storch,
President

PCS/zz

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STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Project cost
115,636	Callers	$120,000.00

Total Due >>>>

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC National, Washington, DC 20006

31215

July 8 19 92

15-120/540 D01

PAY One Hundred and Twenty Thousand Dollars and 00/100 DOLLARS $ 120,000.00

TO THE ORDER OF
Storch-Telle-Group, Inc.
375 West Broadway
New York, NY 10012

⑈031215⑈ ⑆054001204⑆ 262880 5⑈

D.N.C. SERVICES CORPORATION

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

DELUXE - FORM WVCP-3 V-7

1992 441a(d)
800# Telemarketing

D.N.C. SERVICES CORPORATION

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

DELUXE - FORM WVCP-3 V-7

1992 441a(d)
800# Telemarketing

9704382213

I, Carol Darr, have received from Janice Brooks, of Storch Tele-Group, Inc, eight diskettes containing names and addresses of the callers from the June 12, 1992 program, having delivered to her a DNC check (# 31215) for $120,000

Carol Darr
General Counsel
DNC
430 So. Capital Street SE
DC

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 5, 1993

FACSIMILE

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
Attorneys At Law
818 Connecticut Avenue, N.W.
Suite 110
Washington, D.C. 20006

RE: MUR 3546
Paul C. Storch

Dear Ms Utrecht:

This letter is to confirm the receipt of the documents submitted in response to the Commission's subpoena to your client. Your letter also requested that the deposition be scheduled after 11:30 a.m., which is acceptable to this Office. Accordingly, the planned deposition of your client has been rescheduled to 1.00 p.m., October 14, 1993, at the Federal Election Commission, 999 E Street, N.W., Washington, D.C.

I have requested from you the name of the Airport from which your client will depart in his travel to Washington, D.C. so that I may furnish him a ticket. To date I have not received the requested travel information. Please be advised that the requested travel preference must be received in the Office of the General Counsel of the Federal Election Commission, by the 4:00 p.m. today, to allow sufficient time to obtain the ticket and send it to your client. We have already delayed this deposition at your client's request, and wish to avoid any further delay.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

9704382714

OGC 0090

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 OCT -8 AM 9:49

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and Robert T. Matsui,	)	
as Treasurer	)	

MEMORANDUM IN SUPPORT OF NO PROBABLE CAUSE
AND DISMISSAL OF THE COMPLAINT

The Commission has found reason to believe that respondents Democratic National Committee ("the DNC") and Treasurer Robert T. Matsui have violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), in connection with the DNC's sponsorship and payment for the broadcast of a "town hall" meeting in June 1992 at which then-Governor Clinton appeared to answer questions from a television audience. During the broadcast, an "800" number was displayed, and callers to that number were given the option to receive a copy of Gov. Clinton's economic plan; to leave a message for Gov. Clinton; or to "help the Clinton campaign and make a contribution."

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SUMMARY

The General Counsel has taken the position that the DNC made a contribution to the Clinton primary campaign, i.e., the Clinton for President committee in the amount of that portion of the costs of the "800" telephone program attributable to the solicitation of contributions, and contends that such amount--when added to prior DNC contributions--exceeded the applicable $5,000 limit under § 441a(a)(2)(A). In fact, since no money was ever accepted from any

caller to the "800" program, and nothing of value was therefore provided to the Clinton for President committee, no contribution was made. But even if the mere existence of the aborted solicitation feature of the "800" program is regarded as a contribution by the DNC, the amount of that contribution--based on the proportion of callers actually selecting the contribution option--was only $2,160 which, when added to the DNC's prior contributions, resulted in a total contribution of less than $5,000.

The General Counsel acknowledges that, apart from the solicitation option of the "800" program, the DNC's payment for the broadcast represented a lawful expenditure by the DNC on behalf of its presidential nominee for the general election, pursuant to § 441a(d). (Factual and Legal Analysis at 8-9). The General Counsel contends, however, that the DNC violated § 441d(a) by failing to include an express statement that the program was authorized by Gov. Clinton or his committee. (Id. at 11). In view of the fact that Gov. Clinton appeared on this live broadcast during the entire broadcast, there could be no doubt in the mind of any viewer that he had authorized his own appearance. Accordingly, the objective of the statute was fully achieved and no violation should be found.

FACTUAL BACKGROUND

The relevant facts are set forth in the Factual and Legal Analysis and in the attached affidavit of Paul C. Storch, president of the telemarketing firm which operated the "800" program ("Storch

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Aff."). On June 12, 1992, there was broadcast a town hall meeting at which then-Governor Clinton appeared to answer questions from the television audience. (Factual and Legal Analysis at 3). The program was intended to convince the audience to vote for Gov. Clinton in the general election. (Id. at 8).

During the broadcast, an "800" number was periodically displayed. The "800" number was in operation as of the time the broadcast was aired on June 12, 1992. (Storch Aff. ¶ 4). Callers to the "800" number were given three options: (1) to receive a copy of Gov. Clinton's economic plan; (2) to "help the Clinton campaign and make a contribution;" or (3) to leave a message for Gov. Clinton. (Storch Aff. ¶ 5).

Offering the option to contribute to the Clinton for President campaign was an error and, when the DNC discovered it, the DNC requested that the telemarketing vendor change the script to reflect that contributions would go to the DNC. (Id. ¶ 6). When the changes could not be put into effect quickly enough, the DNC requested that the "800" number be shut down. It was in fact shut down as of approximately noon on June 16, 1992, and no further calls were accepted or received after that time. (Id. ¶ 7).

During the time the "800" number was in operation, a total of 115,636 calls were received. As of the last available measurement, which was at a time when 114,914 (nearly all) of the calls had been received, only 2,107, or 1.8%, were calls in which the caller selected the option of "help the Clinton campaign and make a contribution." All of the remaining callers--over 98%--only asked

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for a copy of the economic plan or wanted to leave a message for Gov. Clinton. (Storch Aff. ¶ 10).

No money whatsoever was ever received or collected even from the small percentage of callers who selected the option of making a contribution. Specifically, in the case of those persons who provided their credit card numbers, the credit card transactions were simply never processed; and in the case of persons who pledged a contribution and were told they would be invoiced and sent an envelope to return their contribution (see Storch Aff. Exhibit A), the invoice and envelope were never sent. (Storch Aff. ¶ 11).

DISCUSSION

I. THERE WAS NO VIOLATION OF THE CONTRIBUTION LIMIT

A. No Contribution Was Made to the Clinton for President Committee

The Act and Commission regulations define "contribution" to mean "any gift, subscription, loan, advance, or deposit of money, or anything of value, made by any person. . . . " 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). The Commission's regulations further provide that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge. . . ." is a contribution. 11 C.F.R. § 110.7(a)(1)(iii).

In this case, the DNC did not provide "anything of value" to the Clinton for President committee. Merely offering callers to the "800" number the option to make a contribution to the Clinton

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for President committee was absolutely worthless to that committee because no such contributions were in fact accepted or received. The solicitation process was deliberately aborted in mid-stream in such a way that it was, ultimately, simply not a fundraising activity at all. Specifically, as noted above, credit card transactions were not processed and persons who pledged were not billed. Thus there was no possibility of the "800" program receiving or collecting any funds for Clinton for President.

The Commission's regulations provide that a contribution which appears to be legal when received, but which the treasurer later realizes is illegal, may be refunded within 30 days and will not then count as an illegal contribution. 11 C.F.R. §103.3(b)(2). A committee, such as the DNC, which realizes that a potentially unlawful in-kind contribution is about to be made to a candidate, should similarly be able to stop the process in such a way that nothing of value is or could be received by the candidate, thus ensuring that the in-kind contribution is not consummated. That is exactly what happened in this case.

To be sure, where a solicitation violates Commission rules specifically governing solicitations, a violation can be found regardless of whether any money is collected or received. E.g., MUR 3024, General Counsel's Report, Jan. 25, 1991. In this case, however, there is no statute or rule which prohibits solicitation of a contribution over $5,000 by a multi-candidate committee to a candidate committee; under 2 U.S.C. § 441a(a)(2)(A), it is only the making of such a contribution which is unlawful. In this case,

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nothing of value was given by the DNC to the Clinton for President committee and, accordingly, no contribution was made at all.

B. Even if the Solicitation is Treated as a Contribution, the DNC's Contributions Were Under the Applicable Limit

Even if the mere existence of the solicitation feature of the "800" number program is regarded as a contribution by the DNC, the DNC did not contribute more than $5,000 to the Clinton for President committee. As the Factual and Legal Analysis correctly notes (at p. 9), the cost of the inbound telephone ("800" number) program was $120,000; see also Storch Aff. ¶ 9. The Factual and Legal Analysis calculates the amount of a DNC contribution by dividing the total cost of the telemarketing program ($120,000) by three--the number of options offered to callers.

While this approach was understandable given the General Counsel's lack of information regarding the actual number of callers who selected each option, it is now possible to make an accurate calculation based on such updated information. Basing the calculation on the actual number of callers selecting the contribution option is the proper approach since that is the maximum number of calls that could possibly have resulted in contributions--even if all the credit card transactions had been processed and all the pledges had been collected.

As the Storch Affidavit notes, as of the point when nearly all of the calls had been received, only 2,107 out of 114,914--or 1.8%--were calls in which the caller selected the option to "help the Clinton campaign and make a contribution." Storch Aff. ¶ 10.

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Applying the proportion of callers selecting the contribution option (1.8 %) to $120,000 produces a contribution value of $2,160. Since the DNC had a remaining possible contribution limit of $2,747 (Factual and Legal Analysis at p. 10), the DNC did not exceed the $5,000 limit in any event.

Thus, for the reasons explained above, there was no contribution made at all by the DNC to the Clinton primary campaign. But even if the aborted solicitation feature of the "800" program is regarded as a contribution, the amount of that contribution did not put the DNC in excess of the applicable $5,000 limit. Therefore, the DNC did not violate 2 U.S.C. § 441a(a)(2)(A) and the Commission should find no probable cause to believe that the DNC committed any such violation.

II. THERE WAS NO VIOLATION OF THE DISCLAIMER REQUIREMENT

The Commission has found probable cause to believe that the DNC violated 2 U.S.C. § 441d(a)(2), which provides that, whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication--

> if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee.

In this case, the broadcast clearly stated that it was paid for by the DNC. The General Counsel's objection is that the

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broadcast failed to include the additional "required statement" that it was authorized by Gov. Clinton or his committee. (Factual and Legal Analysis at p. 11).

But this was a live broadcast in which Gov. Clinton appeared continuously. It is absurd to suppose that any viewer could possibly imagine that Gov. Clinton had not authorized his own live appearance in the broadcast. The manifest purpose of section 441d(a)--that persons receiving a communication know who paid for it and who authorized it--was fully served in this case. To require that the "statement" called for by that section must be in words, rather than communicated by the candidate's own live, simultaneous appearance, would be a singularly ludicrous example of elevating form over substance.

For this reason, the Commission should find no probable cause to believe that the DNC violated 2 U.S.C. § 441d(a).

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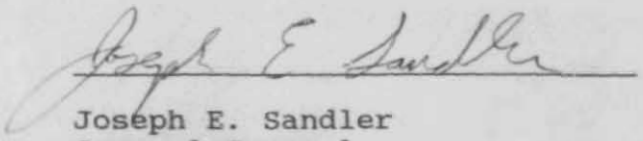
CONCLUSION

For the reasons stated above, the Commission should find no probable cause to believe that the DNC violated 2 U.S.C. § 441a(a)(2)(A) or § 441d(a), and should dismiss the complaint in this matter.

Respectfully submitted,



Joseph E. Sandler
General Counsel
Neil P. Reiff
Deputy General Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003
(202) 863-7110

Attorney for Respondents
Democratic National Committee and
Robert T. Matsui, as Treasurer

Dated: October 8, 1993

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RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
93 OCT -8 AM 9:49

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and Robert T. Matsui,	)	
as Treasurer	)	

State of New York
County of Nassau

AFFIDAVIT OF PAUL C. STORCH

Paul C. Storch, being first duly sworn, deposes and says:

1. I am president of Storch-Tele-Group Inc., a telemarketing firm headquartered in New York City, New York ("Storch-Tele-Group").

2. Storch-Tele-Group operated an in-bound ("800" number) telephone program in connection with the television broadcast, on June 12, 1992, of a town-hall meeting at which then-Governor Clinton appeared to answer questions from a television audience.

3. During that broadcast, there was displayed periodically on the screen the number "1-800-551-5600." My firm, Storch-Tele-Group, established that "800" number, prepared the recordings and scripts used in answering it and hired and supervised the vendor companies which received and answered the incoming calls.

4. The "800" number program was put into operation just before the broadcast, on June 12, 1993. Attached as Exhibit A hereto is a copy of the script that was used in answering incoming calls. (The handwritten note at the bottom referring to the DNC was added later and was not part of the original script).

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5. As noted in the script, callers were given three options: (i) to receive a copy of Governor Clinton's economic plan; (ii) to "help the Clinton campaign and make a contribution;" or (iii) to leave a message for Governor Clinton.

6. On June 15, 1992, I was contacted by Carol Darr, then General Counsel of the DNC. She indicated that she had been made aware the previous evening that callers to the "800" number were being asked for a contribution to "help the Clinton campaign." She requested that the scripts be changed immediately to reflect that contributions would go to the DNC, rather than to the Clinton campaign.

7. It was not technically possible to make the requested changes in the scripts before the following morning, the morning of June 16, 1992. When Ms. Darr learned that the changes had not been made so as to be effective that morning, she requested that the "800" number be disconnected. The number was disconnected at approximately noon on June 16, 1992 and no further calls to the number were accepted or received after that time.

8. Attached as Exhibits B and C are true copies of correspondence exchanged between Ms. Darr and myself, reflecting the course of events described above.

9. On June 25, 1992, Storch-Tele-Group submitted an invoice to the DNC, for the "800" number operation, in the amount of $146,857.72. There was a dispute between Storch-Tele-Group and the DNC about the amount of that invoice and it was then agreed, as a settlement, that $120,000 would be a fair payment for the services

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provided. On July 8, 1992, Storch-Tele-Group submitted an invoice to the DNC for $120,000. Attached as Exhibit D is a true and correct copy of the invoice submitted to the DNC on July 8, 1992. That invoice was paid in full by the DNC.

10. During the time the "800" number was in operation a total of 115,636 calls were received. My records indicate that, as of the point when 114,914 calls had been received, 2,107 were calls in which the caller selected the option of making a contribution, i.e., in which the caller pressed "2" to "help the Clinton campaign and make a contribution."

11. No money whatsoever was in fact collected from any of the persons who called the "800" number and selected the option to make a contribution, nor was any money collected in any other way in connection with or as a result of the "800" number. In the case of each person who provided his or her credit card number, the credit card transaction was not processed. No caller had his or her credit card charged with any contribution. In the case of each

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person who pledged to make a contribution and was told he or she would be sent an envelope, the envelope was never sent and the person was never billed for or otherwise contacted about the pledge.

Paul C. Storch

Sworn to and subscribed before me
this 6 day of October, 1993.

Mary Beth Lynch

MARY BETH LYNCH
Notary Public, State of New York
No. 5003731
Qualified in Nassau County
Commission Expires November 2, 1994

9 7 0 4 3 8 2 2 7 2 7

EXHIBIT A

9704382728

SCRIPT FOR CLINTON FOR PRESIDENT PROGRAM 1.800.551.5600

****JOHN, PLEASE NOTE THAT WE WANT TO TRY AND MAKE THE CALL UNDER 60 SECONDS SO PLEASE RECORD AT A SWIFT BUT UNDERSTANDABLE PACE.******

THANKS FOR CALLING.

17.7 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1. IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2. TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PRESS 3. PLEASE MAKE YOUR SELECTION NOW.

5.6 AT THE TONE PLEASE LEAVE YOUR NAME AND COMPLETE MAILING ADDRESS INCLUDING CITY, STATE AND ZIP CODE.

3.1 PLEASE HOLD ON, YOUR CALL IS BEING TRANSFERRED TO AN OPERATOR. FOR A CONT

[redacted]

3.0 AT THE TONE PLEASE LEAVE A SHORT MESSAGE FOR GOVE & CLINT

4.7 ALL OPERATORS ARE CURRENTLY BUSY. PLEASE CONTINUE TO HOLD FOR THE NEXT AVAILABLE OPERATOR.

8.0 WE'RE SORRY ALL OPERATORS ARE STILL BUSY TAKING CONTRIBUTIONS FOR THE CLINTON CAMPAIGN [redacted]. PLEASE TRY CALLING BACK LATER. THANK YOU FOR CALLING.

MENU OPTIONS AFTER CALLER GOES THROUGH SCRIPT ONCE

5.4 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1.

6.6 IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2.

3.4 TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PLEASE PRESS 3.

THANKS FOR CALLING THE DEM NAT COM

For: John Lee

From: Felix Cardillo

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Paul Storch	From Clete Baker
Co.	Co. Sound Recorder
Dept.	Phone # 202/455-3000
Fax # 212/274-1971	Fax # 202/455-8261

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STORCH-TELE-GROU[redacted] INC.
875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

ATT: SUE ADLER
402-498-7530

Script for Clinton For President Program 1.800.551.5600

Thanks for calling.
To receive your free copy of Bill Clinton's plan for America's future please press 1. if you agree that it's time for real change, help the Clinton campaign & make a contribution by pressing 2. to leave a message for Governor Clinton press 3. Please make your selection now.

If press 1...At the tone please leave your name & address
If press 2...Please hold on, your call is being transferred
If press 3...Please leave a 15 second message at the tone

Script for live operator

Thank you for calling Clinton For President. may I have your zip...name...How would you like to contribute, Check or credit card.
If by check. You will receive an envelope from the Clinton campaign within a week to 10 days in which to send in your contribution. Thank you for calling.

If by credit card, verify info. Thank you for calling.

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EXHIBIT B

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Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

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430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
Paid for by the Democratic National Committee Contributions to the Democratic National Committee are not tax deductible.
Printed on Recycled Paper

EXHIBIT C

9 7 0 4 3 8 2 2 7 3 3

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:Letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.551.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th.
No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.
At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.
The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs.
The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.
At the tone please leave your name and complete mailing address including city, state & zip code.
Please hold on your call is being transferred to an operator, you will not be disconnected.
At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

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June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:Letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.551.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th. No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.

At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.

The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs. The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.

At the tone please leave your name and complete mailing address including city, state & zip code.

Please hold on your call is being transferred to an operator, you will not be disconnected.

At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

The changes you requested replaced "Governor" or "Bill Clinton" or "Clinton" with "Democratic National Committee".
Also, the live operator greeting changed from "Thank you for calling Clinton for President" to "Thank you for calling The Democratic National Committee".

Please call me to discuss any further questions or comments you may have.

Sincerely,

Paul C. Storch,
President

PCS/zz

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EXHIBIT D

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STORCH-TELE-GROUP, INC.

876 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Project cost
115,636	Callers	$120,000.00
Total Due >>>>

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOVEMBER 1, 1993

CERTIFIED MAIL
RECEIPT REQUESTED

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
Attorneys At Law
818 Connecticut Avenue, N.W.
Suite 110
Washington, D.C. 20006

RE: MUR 3546
Paul C. Storch

Dear Ms Utrecht:

On October 14, 1993, your above referenced client was deposed by me at the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. Attached hereto is a check made out to Paul C. Storch in the amount of $40.00, which is the standard witness fee.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

Enclosure
Check #3007 40234908

United States Treasury 15-51/000 W 076,911,137

10 25 93 77 WASHINGTON, DC
772667 0 PAUL C STORCH
F E C WASH DC

Check No.
3007 40234908
95350001

Pay to the order of PAUL C STORCH

$******40*00

VOID AFTER ONE YEAR

PO NO 4AW003 WITNESS FEE

⑈30074⑈ ⑆000000518⑆ 40234908⑈ 011093

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RECEIPT REQUESTED

NOVEMBER 30, 1993

Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
Attorneys At Law
818 Connecticut Avenue, N.W.
Suite 110
Washington, D.C. 20006

RE: MUR 3546
Paul C. Storch

Dear Ms Utrecht:

On October 14, 1993, your above referenced client was deposed by me at the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. Attached hereto is a check made out to Paul C. Storch in the amount of $255.00, which is the cost of the airline ticket on the invoice submitted by your client.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

Enclosure
Check #3007 90769023

United States Treasury 15-51/000 W 077,536,911

Check No.

11 22 93 32 WASHINGTON, DC 3007 90769023
772743 0 PAUL STORCH 95350001

Pay to the order of PAUL STORCH F E C WASH DC

$****255*00

VOID AFTER ONE YEAR

PO NO 4AT058 FIN PY DC

⑈30074⑈ ⑆000000518⑆ 90769023⑈ 011193

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and Robert A. Farmer, as treasurer	)	MUR 3546
	)	
Democratic National Committee and Robert T. Matsui, as treasurer.	)	**SENSITIVE**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that William J. Clinton; Clinton for President Committee ("the Clinton Committee") and Robert A. Farmer, as treasurer; and the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(f), 441d(a), 26 U.S.C. § 9003(b)(2), 11 C.F.R. §§ 9033.1(b)(9) and 9034.4(a)(1).

On July 27, 1993, the Commission found reason to believe that the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a). On that same date the Commission also: found no reason to believe that William J. Clinton violated any provision of the Act or the Commission's regulations in connection with the complaint filed in MUR 3546; closed the file in MUR 3546 as it pertained to William J. Clinton; took no action at that time with respect to the Clinton Committee and Robert A. Farmer, as treasurer; approved the subpoena to Paul Storch and Storch-Tele-Group, Inc.; approved the Factual and Legal Analysis; and approved the appropriate

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letters. 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"). This report also recommends that the Commission authorize subpoenas. For the Commission's information, the prior certification has been attached hereto. (Attachment 1).

II. RECOMMENDED ACTIONS IN LIGHT OF FEC v. NRA

This Office recommends that the Commission, consistent with its November 9, 1993 decisions concerning compliance with the NRA opinion, and based on the original complaint and responses received thereto, revote the determinations: to find reason to believe that the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a); and approve the appropriate letters. This Office is not recommending that the Commission revote the determination to take no action at this time with respect to the Clinton Committee and Robert A. Farmer, as treasurer, nor the determination to approve the Factual and Legal Analysis to the DNC that is attached to the First General Counsel's Report dated July 7, 1993. Based on information obtained from the investigation into this matter, which will be discussed below, this Office now recommends that the Commission find reason to believe that the Clinton Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f); approve the Factual and Legal Analysis to the Clinton Committee, which is attached to this report (Attachment 2); approve the Factual and Legal Analysis to the DNC, which is attached to this

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report (Attachment 3); approve the subpoena to Eli J. Segal[1/] (Attachment 4); approve the subpoena to the Clinton Committee (Attachment 5); and approve the subpoena to a representative of the DNC. (Attachment 6).

III. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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.[2/]

Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to

---

1/ Eli Segal is presently Assistant to the President and Director Office of National Service. During the time relevant to this matter Mr. Segal was Chief of Staff of Clinton for President.

2/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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2 cents multiplied by the voting age population of the United States.[3/]

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized

---

3/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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by any candidate or candidate's committee.

Pursuant to 26 U.S.C. § 9003(b)(2), in order to be eligible to receive any payments under the "Presidential Election Campaign Fund", the candidates of a major party in a presidential election shall certify to the Commission, under penalty of perjury, that no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund.

Pursuant to 11 C.F.R. § 9033.1(b)(10), the candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. § 431 et seq.; 26 U.S.C. § 9031 et seq. and the Commission's regulations at 11 CFR parts 100-116, and 9031-9039.

Pursuant to 11 C.F.R. § 9034.4(a)(1), all contributions (for the presidential primary campaign) received by an individual, from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.[4/]

4/ Qualified campaign expenses would only be expenses made in connection with the campaign for nomination.

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B. **The Facts**

1. **The RNC'S Allegations**

On June 12, 1992, the DNC sponsored a televised town hall meeting at which President Clinton appeared to answer questions from the television audience. A news broadcast stated that the DNC spent $400,000.00 on this program. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive William J. Clinton's "Plan for America's Future"; leave a message for William J. Clinton; or, make a contribution.

The RNC has presented: a transcript of the June 12, 1992, town hall broadcast; a copy of pages of the Clinton Committee's reports covering April 1992, showing it was substantially in debt; an affidavit from a person who called the toll free number featured during the town hall meeting; and a news report that the DNC was paying $400,000.00 for the broadcast. The RNC alleges: (1) William J. Clinton appeared on the 30-minute nationwide television broadcast on June 12, 1992, to answer questions from the television audience; (2) the broadcast cost $400,000 and was paid for by the DNC; (3) William J. Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to then President Bush; (4) listeners were invited to call a toll free number to ask a question or to get more information; (5) when callers phoned, one option given to them was "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution;" (6) the Clinton Committee was financially

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strapped, and its cash flow prevented it from purchasing the television time; and (7) William J. Clinton had not, prior to the date of the complaint in this matter, filed a Statement of Organization to establish a general election committee, although he had set up a compliance fund.

The RNC contends that the television program was a primary election event both because the program solicited private contributions which could only be accepted by the primary election committee and because the television program does not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee for the primary election campaign, and that the Clinton Committee in turn has violated 2 U.S.C. § 441a(f) by accepting such an excessive contribution. The RNC further alleges that in doing so William J. Clinton breached his Candidate's Agreement.

In the alternative the RNC alleges that, if the television program is treated as a general election event, the Clinton Committee violated 11 C.F.R. § 9034.4(a)(1) "by making nonqualified primary campaign expenses when it paid for or incurred any obligation to pay related expenses associated with [the program], such as travel, subsistence, and any advance or planning costs of the event." The RNC argues further that, if the event is treated as a general election event, all contributions raised from the toll free number and program must

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be refunded because private contributions cannot be accepted for the general election campaign of a publicly-funded candidate. Moreover, the RNC contends that if the program is treated as a general election event, any similar subsequent events would have to be treated as general election events whether paid for by the DNC or by the Clinton Committee, and that the expenses for such events would count against their respective limits for the general election.

Finally, the RNC alleges that if the television program is deemed to have expressly advocated the defeat of a clearly identified candidate, the DNC violated 2 U.S.C. § 441d(a) by not including a complete disclaimer indicating whether it was authorized by the candidate.

2. <u>The Clinton Responses</u>

On July 29, 1992, President Clinton and the Clinton Committee responded to the complaint filed by the RNC. President Clinton and the Clinton Committee assert that the cost of this telemarketing program was borne by the DNC and that the DNC, the national party committee, could make 2 U.S.C. § 441a(d) expenditures for Clinton's general election campaign on the date of the nationally broadcast town hall meeting. In support of that argument counsel stated that the Democratic Party had concluded its presidential primary elections on June 2, 1992. The date of the nationally broadcast "town hall meeting" at issue in this matter was June 12, 1992. By the time of the "town hall meeting" Clinton had the clear majority of the delegates and appeared assured of the nomination.

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Counsel, referencing Advisory Opinion 1984-15 (AO 84-15), argues that neither the FECA itself, the legislative history, the Commission's regulations, nor extensive case law have required that coordinated party expenditures must be confined to the time period between a candidate's nomination and the general election.

The Clinton campaign also asserts that it did not expend any funds in connection with the June 12, 1992, town hall meeting; and that Clinton's campaign did not directly solicit contributions during the town hall meeting broadcast. The Clinton Committee also noted that the campaign did not receive any contributions in connection with the town hall meeting event. The response states that the purpose of the 800 number was to afford potential voters the opportunity to obtain more information about Clinton's policies and positions or to record a personal message for Clinton. While acknowledging that one of the options given callers to the 800 number was to make a contribution to the Clinton campaign, the Clinton response asserts that the contribution option to the Clinton campaign was an error and that this error was promptly corrected before the RNC filed the complaint which initiated this matter.

3. DNC'S Response

On July 30, 1992, the DNC responded to the complaint. The DNC also asserts that the Clinton Committee made no expenditures in connection with the television program. The DNC claims that it paid all staff travel, production, and broadcast costs. According to the DNC's response, it incurred $49,164.52

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in production cost; $120,000.00 for telemarketing; $380,000.00 for broadcasting; and $2,967.30 for round-trip airfare, for a total of $552,131.52. The DNC argues that these expenditures were appropriate under 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention.

With regard to the issue over the three options which callers heard when they dialed the "800" number, the DNC stated:

> The solicitation in the toll-free number was erroneous, and was corrected immediately upon discovery. On the evening of June 14th, the General Counsel of the DNC ... was informed .... The following day, she contacted ... the firm which created and maintained the toll-free number, to inform ... of the error and to order a change in the message given to callers.

According to the DNC, efforts to have the message changed were unsuccessful; therefore, the "800" number was ordered to be discontinued. This line was disconnected at noon on June 16, 1992, four days after the town meeting program. The DNC asserts that no contributions made in connection with the program were accepted by either the Clinton Committee or the DNC.

The DNC also claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him.

4. <u>Additional Information</u>

On October 14, 1993, a staff member from this Office deposed Paul C. Storch pursuant to a subpoena authorized by the

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Commission. Mr. Storch is the president of Storch-Tele-Group, Inc., the telecommunications company that provided the "800" number service in question in this matter. During this deposition Mr. Storch testified that Eli Segal, the then Chief of Staff of Clinton for President, personally instructed Mr. Storch on what messages were to be received by callers to the above-mentioned "800" number which flashed on the screen during the town hall meeting program. Furthermore, Mr. Storch testified that his agreement to render the telecommunication services for the town hall meeting had been with Mr. Segal, and that his company was to have been paid by the Clinton Committee. Nevertheless, even though he had not previously dealt with the DNC with regard to providing the "800" number service for this town hall meeting program, on June 15, 1992, three days after the program had run, the DNC contacted him and said the DNC was going to pay him. Mr. Storch also testified that all of the messages received by callers to the "800" number contained the exact information he was instructed to place therein by Eli Segal, including the message requesting a contribution to the Clinton Committee.

Mr. Storch testified that one of the purposes of the town hall meeting program was to get contributions for the Clinton Committee. Mr. Storch based his conclusion, in part, on the fact that he had performed a similar "800" number service for the campaign in pursuit of contributions during the Oregon primary, prior to this town hall meeting program. Mr. Storch also testified that there were constant communications between

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Eli Segal and him about the "800" number service for the town hall meeting program, and that during these communications Eli Segal told him he wanted callers to make contributions to the Clinton Committee. Mr. Storch testified that any caller seeking to make a contribution was to reach a live operator who would answer and accept pledges of contributions. Mr. Storch also furnished a copy of the script for the live operator which stated:

> [t]hank you for calling Clinton For President. May I have your zip...name...How would you like to contribute, check or credit card.
>
> If by check, you will receive an envelope from the Clinton campaign within a week to 10 days in which to send in your contribution. Thank you for calling.

If the contribution was to be made by credit card the script instructed the operator to verify the information and thank the contributor for calling. Mr. Storch stated that the Clinton Campaign asked that the option of making contributions by credit card be made available.

Although Mr. Storch testified that one of the purposes of the town hall meeting was to get contributions for the Clinton Committee, he also testified that he was not involved in planning this town hall meeting, and that his only responsibility was the "800" number.[5/]

5/ With regard to the 441d(a) violation, it appears that the DNC had always intended to be responsible for the town hall meeting. This is evidenced by the disclaimer which appeared at the end of the town hall meeting, which stated it was paid for by the DNC. This disclaimer, even though incomplete, appeared well before the DNC even became aware of the issue with respect

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C. **The Analysis**[6/]

In responding to the complaint filed in this matter, the DNC stated that it incurred costs totaling $552,131.52 with regard to the television program at issue in this matter. A review of Schedule F of the Year End Report filed with the Commission by the DNC covering the period from November 24, 1992 through December 31, 1992 shows cumulative expenditures by the DNC on behalf of the Clinton campaign totaling $10,187,856.71.[7/] The reported total expenditures for the 1992 Clinton presidential campaign did not exceed the $10,331,702.92 presidential expenditure limitation for national party committees, such as the DNC. Based on the foregoing it does not appear that the DNC exceeded its coordinated expenditure limitation for the presidential general election campaign.

With regard to the 800 number solicitation option, however, it does not appear that the DNC could have used its' 2 U.S.C. § 441a(d) expenditure limit. Even though respondents claim the 800 number solicitation was a mistake, the fact remains that from June 12, 1992 to June 16, 1992, the DNC paid for a

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(Footnote 5 continued from previous page)
to who should pay for the "800" number. It appears that the DNC decided to pay for the "800" number services only after the town hall meeting had occurred. This argument is supported by various facts, including Mr. Storch's sworn testimony and the reference in the telephone script to "Clinton for President."

6/ For a further discussion of this Office's reasons for recommending that the Commission revote reason to believe that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a) see the First General Counsel's Report dated July 7, 1993.

7/ This total includes the $552,131.52 expended by the DNC for the June 12, 1992 "town meeting."

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telemarketing program which included a solicitation for contributions for the Clinton campaign. Because contributions to a presidential candidate can only be collected in connection with the Primary, at this stage in the investigation we have concluded that at a minimum the entire cost of the telemarketing program appears to constitute a primary contribution by the DNC to the Clinton campaign.[8/]

Under 2 U.S.C. § 441a(a)(2)(A) a multicandidate committee can only contribute $5,000.00 to a candidate's committee. The DNC reports that the total cost of the telemarketing portion of the town hall meeting program was $120,000.00. Since it now appears that the purpose of the 800 number was to solicit contributions, at this stage in the investigation at a minimum, it appears that the total amount paid for the telemarketing ($120,000.00) would constitute the amount of the contribution relating to the solicitation for primary election contributions.[9/]

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8/ The "800 number" was flashed repeatedly on the screen during the town hall meeting. One of the subjects of further investigation will be the extent to which raising money was one of the DNC's purposes for even holding the town hall meeting. After deposing the appropriate representatives of the Clinton campaign and the DNC, this Office will be able to make further recommendations regarding the extent to which a portion of the cost of the town hall meeting may also have constituted a contribution by the DNC.

9/ The DNC's assertions that no contributions were accepted or received and that corrective actions were taken immediately do not negate the fact that the committee received something of value from the DNC. Instead, these factors should only be considered as mitigation.

Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. Accordingly, the Clinton Committee allowing the DNC to pay $120,000.00 for telemarketing services in which the Clinton Committee solicited contributions resulted in the acceptance of an excessive contribution in violation of 2 U.S.C. § 441a(f).

Furthermore, since the deposition testimony given by the vendor contradicts the written responses of the DNC and the Clinton Committee, with regard to the request for contributions received over the "800" number, this Office feels that it is necessary to depose Eli J. Segal, the DNC, and the Clinton Committee. These depositions will be helpful in determining to what extent the purpose of the town hall meeting may have been intended to solicit contributions for the Clinton Committee. Therefore, this Office recommends that the Commission authorize subpoenas to Eli J. Segal, a representative of the Clinton Committee, and a representative of the Democratic National Committee.

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IV. RECOMMENDATIONS

1. Find reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

2. Find reason to believe the Clinton for President Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f).

3. Approve the attached subpoenas to Eli J. Segal, the Clinton for President Committee and Robert A. Farmer, as treasurer, and a representative of the Democratic National Committee.

4. Approve the attached Factual and Legal Analyses.

5. Approve the appropriate letters.

4/13/94
Date

Lawrence M. Noble
General Counsel

Attachments
1. Prior Certification
2. The Clinton Committee's Factual and Legal Analysis
3. The DNC's Factual and Legal Analysis
4. Subpoena for Eli J. Segal
5. Subpoena for the Clinton Committee
6. Subpoena for DNC

Staff Assigned: Phillip L. Wise

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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
COMMISSION SECRETARY

DATE: APRIL 22, 1994

SUBJECT: MUR 3546 - GENERAL COUNSEL'S REPORT DATED APRIL 18, 1994.

The above-captioned document was circulated to the Commission on Tuesday, April 19, 1994 at 11:00 a.m.

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

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

This matter will be placed on the meeting agenda for Tuesday, May 3, 1994.

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	)	
	)	MUR 3546
Clinton for President Committee and	)	
Robert A. Farmer, as treasurer;	)	
Democratic National Committee and	)	
Robert T. Matsui, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on May 10, 1994, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 3546:

1. Find reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

2. Find reason to believe the Clinton for President Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f).

3. Approve the subpoenas to Eli J. Segal, the Clinton for President Committee and Robert A. Farmer, as treasurer, and a representative of the Democratic National Committee as recommended in the General Counsel's report dated April 18, 1994.

(continued)

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4. Approve the Factual and Legal Analyses as recommended in the General Counsel's report dated April 18, 1994.

5. Approve the appropriate letters as recommended in the General Counsel's report dated April 18, 1994.

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

Attest:

5-11-94
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

MEMORANDUM

TO: THE COMMISSION

FROM: LOIS G. LERNER
ASSOCIATE GENERAL COUNSEL

DATE: MAY 18, 1994

RE: Subpoenas in MUR 3546

On May 10, 1994 the Commission approved subpoenas for document requests and depositions in this matter. The form in which the subpoenas were approved would have required this Office to schedule the depositions at the same time it was requesting the documents, without having an opportunity to review the documents.

After further review of this matter this Office feels that the investigation would be more efficient if the requested documents are received and reviewed prior to scheduling any of the authorized depositions. Accordingly, absent objection from the Commission by close of business on May 19, 1994, we will send out subpoenas for the previously approved document requests. We will then send out separate subpoenas for the previously approved depositions after we have reviewed the documents.

Staff assigned: Abigail A. Shaine/Phillip L. Wise

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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
Secretary of the Commission

DATE: May 19, 1994

SUBJECT: Subpoenas in MUR 3546 - Memorandum to the Commission dated May 18, 1994.

The above-captioned matter was received in the Commission Secretariat at 1:03 p.m. on Wednesday, May 18, 1994 and circulated to the Commission on a 24-hour no objection basis at 4:00 p.m. on Wednesday, May 18, 1994.

There were no objections to the above-captioned matter.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 24, 1994

FEDERAL EXPRESS DELIVERY

Philip S. Friedman, Esq.
Ross & Hardies
8888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
Clinton for President
Committee and Robert A.
Farmer, as treasurer

Dear Mr. Friedman:

On June 23, 1992, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On July 27, 1993,the Commission decided to take no action at that time with respect to the Clinton for President Committee and Robert A. Farmer, as treasurer.

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, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). 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 May 10, 1994, the Commission voted to find reason to believe that the Clinton for President Committee ("Committee") and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. In addition, pursuant to its investigation of this matter, the Commission has issued the attached subpoena.

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You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents must be submitted to the General Counsel's Office on or before June 22, 1994. Any additional materials or statements you wish to submit should accompany the response to the subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18 (d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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.

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.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

Enclosure

Factual and Legal Analysis
Subpoena

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Clinton for President Committee and Robert A. Farmer, as treasurer MUR 3546

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Clinton for President Committee ("the Clinton Committee") and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f).

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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 this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this

1/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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section.

Pursuant to 11 C.F.R. § 9034.4(a)(1), all contributions (for the presidential primary campaign) received by an individual, from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.[2/]

B. The Facts

1. The RNC'S Allegations

On June 12, 1992, the DNC sponsored a televised town hall meeting at which President Clinton appeared to answer questions from the television audience. A news broadcast stated that the DNC spent $400,000.00 on this program. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive Bill Clinton's "Plan for America's Future"; leave a message for Bill Clinton; or, make a contribution.

The RNC has presented a transcript of the June 12, 1992, town hall broadcast; a copy of pages of the Clinton Committee's reports covering April 1992, showing it was substantially in debt; an affidavit from a person who called the toll free number featured during the town hall meeting; and a news report that the DNC was paying $400,000.00 for the broadcast. The RNC

2/ Qualified campaign expenses would only be expenses made in connection with the campaign for nomination.

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alleges: (1) William J. Clinton appeared on the 30-minute nationwide television broadcast on June 12, 1992, to answer questions from the television audience; (2) the broadcast cost $400,000 and was paid for by the DNC; (3) William J. Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to then President Bush; (4) listeners were invited to call a toll free number to ask a question or to get more information; (5) when callers phoned, one option given to them was "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution;" (6) the Clinton Committee was financially strapped, and its cash flow prevented it from purchasing the television time; and (7) William J. Clinton had not, prior to the date of the complaint in this matter, filed a Statement of Organization to establish a general election committee, although he had set up a compliance fund.

The RNC contends the television program was a primary election event because the program solicited private contributions which can only be accepted by the primary election committee and because the television program would not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee for the primary election campaign, and that the Clinton Committee in turn has violated 2 U.S.C. § 441a(f) by accepting such an excessive contribution.

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The RNC argues further that, if the event is treated as a general election event, all contributions raised from the toll free number and program must be refunded because private contributions cannot be accepted for the general election campaign of a publicly-funded candidate. Moreover, the RNC contends that if the program is treated as a general election event, any similar subsequent events would have to be treated as general election events whether paid for by the DNC or by the Clinton Committee, and that the expenses for such events would count against their respective limits for the general election.

2. The Clinton Responses.

President Clinton and the Clinton Committee assert that the cost of this telemarketing program was borne by the DNC and that the DNC, the national party committee, could make 2 U.S.C. § 441a(d) expenditures for Clinton's general election campaign on the date of the nationally broadcast town hall meeting. In support of that argument counsel stated that the Democratic Party had concluded its presidential primary elections on June 2, 1992. The date of the nationally broadcast "town hall meeting" at issue in this matter was June 12, 1992. By the time of the "town hall meeting" Clinton had the clear majority of the delegates and appeared assured of the nomination.

Counsel, referencing Advisory Opinion 1984-15 (AO 84-15), argues that neither the FECA itself, the legislative history, the Commission regulations, nor extensive case law have required that coordinated party expenditures must be confined to the time

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period between a candidate's nomination and the general election.

The Clinton campaign also asserts that it did not expend any funds in connection with the June 12, 1992, town hall meeting; and that Clinton's campaign did not directly solicit contributions during the town hall meeting broadcast. The Clinton Committee also noted that the campaign did not receive any contributions in connection with the town hall meeting event. The response states that the purpose of the 800 number was to afford potential voters the opportunity to obtain more information about Clinton's policies and positions or to record a personal message for Clinton. While acknowledging that one of the options given callers to the 800 number was to make a contribution to the Clinton campaign, the Clinton response asserts that the contribution option to the Clinton campaign was an error and that this error was promptly corrected before the RNC filed the complaint which initiated this matter.

3. Additional Evidence

During the preliminary investigation into this matter it was revealed that Eli Segal, the then Chief of Staff of Clinton for President, was personally involved in instructing what messages were to be received by callers to the above-mentioned "800" number, which flashed on the screen during the town hall meeting program. Evidence was also obtained that appears to indicated one of the purposes of the town hall meeting was to solicit contributions for the Clinton Committee. Furthermore, evidence obtained reveals that the telemarketing

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agreement to render "800" number services to the town hall meeting had been with the Clinton Committee. Nevertheless, even though the vendor had not previously dealt with the DNC with regard to this town hall meeting, on June 15, 1992, three days after the program had run, the DNC contacted him and said the DNC was going to pay him. The investigation also revealed that the message requesting a contribution to the Clinton Committee was not a mistake by the vendor.

C. The Analysis

Based on the Commission's reasoning in AO 84-15, the DNC could make general election coordinated expenditures on behalf of then Governor Clinton and the Clinton Committee prior to the Democratic Convention. Such expenditures are chargeable to the DNC's 2 U.S.C. § 441a(d) limitation for president for the 1992 general election.

However, the fact remains that from June 12, 1992 to June 16, 1992 the DNC paid for a telemarketing program which included a solicitation for contributions for the Clinton campaign. Because such funds can only be collected in connection with the Primary, we have concluded that at a minimum the entire cost of the telemarketing program appears to constitute a primary contribution by the DNC to the Clinton campaign.

Furthermore, the information obtained indicates that the contribution request option was not a mistake. This contradicts the written response of the the Clinton Committee,

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with regard to the request for contributions received over the "800" number.

Under 2 U.S.C. § 441a(a)(2)(A) a multicandidate committee can only contribute $5,000.00 to a candidate's committee. Therefore, there is reason to believe the Clinton for President Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting a contribution that appears to exceed the limit by at least $115,000.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Robert A. Farmer, Treasurer
Clinton for President Committee
P.O. Box 615
Little Rock, Arkansas 72203

Pursuant to 2 U.S.C. § 437d(a)(3), you are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, by June 22, 1994.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 24th day of May, 1994.

For the Commission,

Trevor Potter
Chairman

ATTEST:

for Delores Hardy
Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (1 page)

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DOCUMENT REQUEST

1. Provide a copy of all contracts for the services of Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

2. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

3. Provide copies of all checks for the services rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

4. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

5. Provide the names, addresses, and positions held by anyone who contacted Paul Storch or Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

6. Provide the names, addresses, and positions held by anyone from the DNC who contacted the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

7. Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the Clinton Committee and the DNC with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MAY 24, 1994

FEDERAL EXPRESS DELIVERY

Joseph E. Sandler, Esquire
General Counsel
430 South Capitol, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and Robert T. Matsui, as
treasurer

Dear Mr. Sandler:

On June 23, 1992 the Federal Election Commission notified your clients, The Democratic National Committee and Robert T. Matsui, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on July 27, 1993, found that there is reason to believe the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding was attached for your information.

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, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1151). 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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In this matter, on May 10, 1994, the Commission revoted to find reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents must be submitted to the General Counsel's Office on or before June 22, 1994. Any additional materials or statements you wish to submit should accompany the response to the subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18 (d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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.

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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.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

Enclosure

Factual and Legal Analysis
Subpoena

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Democratic National Committee and Robert T. Matsui, as treasurer

MUR: 3546

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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 this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

1/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to 2 cents multiplied by the voting age population of the United States.[2/]

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political

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2/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

B. The Facts

1. The RNC'S Allegations

On June 12, 1992, the DNC sponsored a televised town hall meeting at which President Clinton appeared to answer questions from the television audience. A news broadcast stated that the DNC spent $400,000.00 on this program. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive William J. Clinton's "Plan for America's Future"; leave a message for William J. Clinton; or, make a contribution.

The RNC has presented a transcript of the June 12, 1992, town hall broadcast; a copy of pages of the Clinton Committee's reports covering April 1992, showing it was substantially in debt; an affidavit from a person who called the toll free number featured during the town hall meeting; and a news report that the DNC was paying $400,000.00 for the broadcast. The RNC alleges: (1) William J. Clinton appeared on the 30-minute nationwide television broadcast on June 12, 1992, to answer questions from the television audience; (2) the broadcast cost $400,000 and was paid for by the DNC; (3) William J. Clinton responded to questions on issues raised during the primary campaign and made only one fleeting reference to then President Bush; (4) listeners were invited to call a toll free number to

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ask a question or to get more information; (5) when callers phoned, one option given to them was "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution;" (6) the Clinton Committee was financially strapped, and its cash flow prevented it from purchasing the television time; and (7) William J. Clinton had not, prior to the date of the complaint in this matter, filed a Statement of Organization to establish a general election committee, although he had set up a compliance fund.

The RNC contends that the television program was a primary election event both because the program solicited private contributions which could only be accepted by the primary election committee and because the television program does not meet the criteria for the type of general election spending the Commission has previously permitted prior to a candidate's nomination. The RNC alleges that the DNC has violated 2 U.S.C. § 441a(a)(2)(A) by making a $395,000 excessive contribution to the Clinton Committee for the primary election campaign.

The RNC argues further that, if the event is treated as a general election event, all contributions raised from the toll free number and program must be refunded because private contributions cannot be accepted for the general election campaign of a publicly-funded candidate. Moreover, the RNC contends that if the program is treated as a general election event, any similar subsequent events would have to be treated as general election events whether paid for by the DNC or by the Clinton Committee, and that the expenses for such events would

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count against their respective limits for the general election.

Finally, the RNC alleges that if the television program is deemed to have expressly advocated the defeat of a clearly identified candidate, the DNC violated 2 U.S.C. § 441d(a) by not including a complete disclaimer indicating whether it was authorized by the candidate.

2. DNC'S Response

The DNC asserts that the Clinton Committee made no expenditures in connection with the television program. The DNC claims that it paid all staff travel, production, and broadcast costs. According to the DNC's response, it incurred $49,164.52 in production cost; $120,000.00 for telemarketing; $380,000.00 for broadcasting; and $2,967.30 for round-trip airfare, for a total of $552,131.52. The DNC argues that these expenditures were appropriate under 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention.

In support of this argument the DNC asserts that neither the language of 2 U.S.C. § 441a(d) nor the language in AO 1984-15 prevent coordinated expenditures between the national party and the party's nominee for president. The DNC states that the test established by the FEC in AO 84-15 is "whether the expenditures relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between the two party's candidates." The DNC claims its program falls squarely within the parameters of the FEC's test because: (1) the expenditures by the DNC for the program were to support the likely Democratic Party nominee and to diminish

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support for the likely Republican Party nominee in the general election campaign; (2) William J. Clinton discussed his position on issues concerning the 1992 general election; (3) William J. Clinton spoke about the three presidential candidates, and not about the six major candidates who competed for the Democratic nomination; and (4) by the time of the June 12, 1992, airing of the program the Democratic Presidential primary had essentially concluded. With regard to the issue over the three options which callers heard when they dialed the "800" number, the DNC stated:

> The solicitation in the toll-free number was erroneous, and was corrected immediately upon discovery. On the evening of June 14th, the General Counsel of the DNC ... was informed .... The following day, she contacted ... the firm which created and maintained the toll-free number, to inform ... of the error and to order a change in the message given to callers.

According to the DNC, efforts to have the message changed were unsuccessful; therefore, the "800" number was ordered to be discontinued. This line was disconnected at noon on June 16, 1992, four days after the town meeting program. The DNC asserts that no contributions made in connection with the program were accepted by either the Clinton Committee or the DNC.

The DNC also claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him.

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3. Additional Evidence

During the preliminary investigation into this matter it was revealed that Eli Segal, the then Chief of Staff of Clinton for President, was personally involved in instructing what messages were to be received by callers to the above-mentioned "800" number, which flashed on the screen during the town hall meeting program. Evidence was also obtained that appears to indicate one of the purposes of the town hall meeting was to solicit contributions for the Clinton Committee. Furthermore, the telemarketing agreement to render "800" number services to the town hall meeting had been with the Clinton Committee. Nevertheless, even though the vendor had not previously dealt with the DNC with regard to this town hall meeting, on June 15, 1992, three days after the program had run, the DNC contacted him and said the DNC was going to pay him. The investigation also revealed that the message requesting a contribution to the Clinton Committee was not a mistake by the vendor.

C. The Analysis

1. Alleged violation of 2 U.S.C. § 441a(d)

The threshold issue is whether the DNC could make general election expenditures on behalf of Mr. Clinton before Clinton was formally named the Democratic Party's presidential nominee. A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d). Neither the FECA, its legislative history, nor the Commission's regulations, require

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that coordinated party expenditures be confined to the time period between a candidate's nomination and the general election. Furthermore, if from the political party's perspective a candidate appears assured of a party's presidential nomination, the Commission has said that the general election campaign may begin prior to the formal nomination, and national party expenditures in connection with that campaign are possible. Advisory Opinion 1984-15 (AO 84-15). The Commission does not view the timing as controlling how such expenditures should be treated for limitation and reporting purposes. Expenditures for a candidate's general election may be made before the date of the primary election or nomination. See, Advisory Opinion 1984-15.

In order for an expenditure made before the primary or nomination to qualify as a section 441a(d) expenditure, it must be determined the expenditures were made for the purpose of influencing the outcome of the general election. Id.[3/] In this case, when the town hall meeting occurred the Democratic primaries were over. During the program Clinton explained his

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3/ In MUR 2270, one of the most recent MURs addressing this issue (which was merged with MURs 2231, 2233, and 2259), the question before the Commission was whether certain expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee for seven mailers, yard signs, a newspaper ad and a radio ad are subject to the Act's limitations at 2 U.S.C. § 441a(d). In MUR 2270 the Commission, considering both timing of the expenditures and purpose of the expenditures, found that expenditures made by the Nevada Republican Party/Nevada Republican State Central Committee prior to the formal nomination of the Republican Senatorial nominee, which were made to influence the general election, were general election expenditures for the purpose of 2 U.S.C. § 441a(d).

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position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Therefore, it appears that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election.

Based on the Commission's reasoning in AO 84-15, it appears that the DNC could make general election coordinated expenditures on behalf of William J. Clinton and the Clinton Committee prior to the Democratic Convention. The presidential expenditure limitation for national party committees, such as the DNC, for 1992 was $10,331,702.92.

As indicated above, in responding to the complaint filed in this matter, the DNC stated that it incurred costs totaling $552,131.52 with regard to the television program at issue in this matter. A review of Schedule F of the Year End Report filed with the Commission by the DNC covering the period from November 24, 1992 through December 31, 1992 shows cumulative expenditures by the DNC on behalf of the Clinton campaign totaling $10,187,856.71.[4/] The reported total expenditures for the 1992 Clinton presidential campaign did not exceed the $10,331,702.92 presidential expenditure limitation for national party committees, such as the DNC. Based on the foregoing it

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4/ This total includes the $552,131.52 expended by the DNC for the June 12, 1992 "town meeting."

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does not appear that the DNC exceeded its coordinated expenditure limitation for the presidential general election campaign.

With regard to the 800 number solicitation option, however, it does not appear that the DNC could have used its' 2 U.S.C. § 441a(d) expenditure limit. Even though respondents claim the 800 number solicitation was a mistake, the fact remains that from June 12, 1992 to June 16, 1992, the DNC paid for a telemarketing program which included a solicitation for contributions for the Clinton campaign. Because such funds can only be collected in connection with the Primary, we have concluded that at a minimum the cost of the telemarketing program appears to be a primary contribution by the DNC to the Clinton campaign.

Under 2 U.S.C. § 441a(a)(2)(A) a multicandidate committee can only contribute $5,000.00 to a candidate's committee. The DNC reports that the total cost of the telemarketing portion of the town hall meeting program was $120,000.00. Thus, the DNC appears to have exceeded the maximum contribution limit allowed multicandidate committees ($5,000.00) by at least $115,000.

Therefore, there is reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

2. Alleged violation of 2 U.S.C. § 441d(a)

The DNC claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because

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Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him. The DNC further stated,

> The DNC believes that section of the statute is more directed towards authorized communications, paid for by a non-candidate committee, which attack a candidate's opponent without showing the picture of the candidate authorizing the expenditure. In that situation, a candidate obtains the benefits from an authorized expenditure, yet hides behind another committee which makes the expenditure. In the present situation, there was no possibility for confusion on the part of viewers concerning the fact that this program was broadcast with the consent of the Clinton Committee.

The DNC's assertions that the program carried a statement that it was paid for by the DNC, and that the continuous appearance of William J. Clinton on the program was an indication of his consent and/or authorization, do not satisfy the disclaimer requirements under 2 U.S.C. § 441d(a). The program did not contain the required statement that it was authorized by the candidate or his committee. (See MUR 2771 in which the Commission found probable cause to believe that the Democratic Senatorial Campaign Committee violated 2 U.S.C. § 441d(a)(2) when a televised commercial which ran on behalf of John P. Vinich during his 1988 senatorial campaign failed to state whether it was authorized by the candidate or his committee.)

Therefore, there is reason to believe that the Democratic National Committee and Robert T. Matsui, as treasurer, violated 2 U.S.C. § 441d(a).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: DNC Service Corporation/
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

Pursuant to 2 U.S.C. § 437d(a)(3), you are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, by June 22, 1994.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 23rd day of May, 1994.

For the Commission,

Trevor Potter

Trevor Potter
Chairman

ATTEST:

for Delores Hardy
Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (2 pages)

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DOCUMENT REQUEST

1. Provide a copy of all contracts for the services of Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

2. Provide a copy of all written and taped instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

3. Provide copies of all checks for the services rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

4. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

5. Furnish the names, addresses, and positions held by anyone who contacted Paul Storch or Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

6. Furnish the names, addresses, and positions held by anyone who contacted the Clinton Committee or any of its representatives with regard to the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Also, furnish the name and title of the person contacted from the Clinton Committee.

7. Furnish the names, addresses, and positions held by anyone who contacted the Clinton Committee or any of its representatives with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Also, furnish the name and title of the person contacted from the Clinton Committee.

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8. Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the DNC and the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 24, 1994

FEDERAL EXPRESS DELIVERY

Eli J. Segal
1535 28th Street, N.W.
Washington, D.C. 20007

RE: MUR 3546

Dear Mr. Segal:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to provide certain documents to the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney in connection with this investigation. If you intend to be so represented, please advise us of the name and address of your attorney.

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If you have any questions, please contact me at (202) 219-3690. If I am unavailable, please ask for Abigail A. Shaine, Assistant General Counsel.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Eli J. Segal
1535 28th Street, N.W.
Washington, D.C. 20007

Pursuant to 2 U.S.C. § 437d(a)(3), you are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, on or before June 22, 1994.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 23rd day of May, 1994.

For the Commission,

Trevor Potter
Chairman

ATTEST:

for Delores Hardy
Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (1 page)

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DOCUMENT REQUEST

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2. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

3. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

4. Provide the names, addresses, and positions held by all persons contacted by you from the DNC and the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

5. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records from the DNC and the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL

MAY 31 10 57 AM '94

NAME OF COUNSEL:

Anthony S. Harrington
Christine A. Varney
L. Anthony Sutin
HOGAN & HARTSON
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004-1109
(202) 637-5600

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The above named individuals are hereby designated as my counsel and are authorized to receive any notifications and other communications and to act on my behalf.

December 8, 1992
Date

RESPONDENTS' NAMES:

Clinton for President Committee
Robert Farmer, Treasurer

ADDRESS:

P.O. Box 615
Little Rock, Arkansas 72203

PHONE: (501) 372-1992

OGC # 1520

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 2 12 00 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	**MUR 3546**
and Robert T. Matsui,	)	
as Treasurer	)	

MOTION TO QUASH SUBPOENA

Pursuant to 11 C.F.R. § 111.15, Respondents Democratic National Committee (the "DNC") and Robert T. Matsui, as Treasurer, hereby move to quash the subpoena dated May 23, 1994 addressed to the respondents, on the ground that the subpoena was issued pursuant to a reason to believe finding, made on May 10, 1994, which is legally invalid.

An initial reason to believe finding in this case was made on July 27, 1993. As the Commission has effectively conceded, that initial finding was invalid because the composition of the Commission when it made that finding on July 27, 1993 was unconstitutional. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (Jan. 18, 1994). Nevertheless, the Commission proceeded to conduct an investigation based on that invalid finding. There was no legal authority to conduct that investigation.

The Commission has now "revoted", on May 10, 1994, to find reason to believe. The Commission did not, however, merely made the same finding it did before based on the same legal and factual analysis. Rather, it made a new finding--tripling the amount of the claimed violation--based on new information developed in the

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unauthorized investigation. This new finding, therefore, is also invalid. Thus the Commission, again, has no authority to conduct an investigation in this case.

BACKGROUND

This MUR was initiated by a complaint filed by the Republican National Committee on June 19, 1992, alleging that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), in connection with the DNC's sponsorship and payment for the broadcast of a "town hall" meeting in June 1992 at which then-Governor Clinton appeared to answer questions from a television audience. During the broadcast, an "800" number was displayed, and callers to that number were given the option to receive a copy of Gov. Clinton's economic plan; to leave a message for Gov. Clinton; or to "help the Clinton campaign and make a contribution." The RNC alleged that, because the program solicited contributions which could only be accepted by the primary campaign, the DNC had made an excessive contribution to the Clinton for President committee (i.e., the primary campaign), and that the DNC also violated 2 U.S.C. 441d(a) by failing to include in the disclaimer an indication of whether the program was authorized by the candidate (even though Gov. Clinton appeared live continually throughout the broadcast).

On June 23, 1992, the Commission notified the DNC of the complaint. On July 29, 1992, the DNC submitted its response to the complaint, pointing out that the substance of the program was a general election message; that offering callers to the 1-800 number the options of obtaining the candidate's economic plan or leaving

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a message for him constituted general election activities; and that the costs of the broadcast and the 1-800 program were therefore a permissible expenditure on behalf of the party's nominee for president under 2 U.S.C. § 441a(d). The DNC acknowledged that the contribution solicitation feature was a mistake, but noted that in fact no money was collected from anyone responding to that solicitation. The DNC further contended that no express statement of authorization was necessary in the disclaimer since Gov. Clinton himself appeared continuously throughout the broadcast.

On August 10, 1993, the Commission informed the DNC that it had voted, on July 27, 1993, to find reason to believe ("RTB") that the DNC had violated 2 U.S.C. § 441a(a)(2)(A) and 441d(a). In the Factual and Legal Analysis, the Commission found that the costs of the broadcast did constitute a lawful expenditure by the DNC on behalf of its nominee for president, pursuant to 2 U.S.C. § 441a(d). The Commission found, however, that since contributions to a presidential candidate can only be collected in connection with the primary, the costs of that portion of the 1-800 telemarketing program giving callers the option to "make a contribution" should be treated as a contribution by the DNC to the Clinton primary campaign.

The Commission reasoned that, since only one of the three caller options was to "make a contribution" only one-third of the costs of the telemarketing program should be considered a contribution by the DNC to the Clinton primary campaign. The total costs of the telemarketing program were $120,000 so the Commission

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found that one-third, or $40,000, should be considered a contribution. This would result in an excessive primary contribution by the DNC to the Clinton primary campaign, after taking into account prior contributions, of $37,253.

The Commission further found that the DNC violated 2 U.S.C. § 441d(a) by not including in the disclaimer an express statement that the broadcast was authorized by the Clinton campaign.

On October 8, 1993, the DNC submitted a response to this reason to believe finding. The response consisted of an Affidavit of Paul C. Storch, president of the company which operated the telemarketing program ("Storch Affidavit"), with attached exhibits; and a Memorandum in Support of No Probable Cause and Dismissal of the Complaint. The Storch Affidavit demonstrated that, as soon as the DNC discovered that callers were being asked to contribute to the Clinton primary campaign, the DNC requested that the scripts be changed to reflect that contributions would go to the DNC. When that could not be accomplished immediately, the DNC requested that the 1-800 number be shut down, and it was shut down. The Storch Affidavit further demonstrated that no money at all was received or collected from persons who called the 1-800 number and selected the option to make a contribution, and that the best available records indicated that the actual proportion of callers into the 1-800 number who selected the contribution option was 1.8%.

In its Memorandum, the DNC contended that since no money was ever accepted from any caller to the "800" program, and nothing of value was therefore provided to the Clinton primary committee, no

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contribution was made. We argued that even if the mere existence of the aborted solicitation feature of the "800" program is regarded as a contribution by the DNC, the amount of that contribution should be calculated--following the Commission's own methodology--based on the proportion of callers actually selecting the contribution option. That calculation resulted in a contribution of only $2,160 (1.8% of $120,000) which, when added to the DNC's prior contributions to the Clinton primary campaign, resulted in a total contribution of less than $5,000, within the legal limit of 2 U.S.C. § 441a(a)(2).

The DNC further argued that in view of the fact that Gov. Clinton appeared live continually throughout the entire broadcast, there could be no doubt in the mind of any viewer that he had authorized his own appearance; that the objective of 2 U.S.C. § 441d(a) had thus been fully achieved; and therefore that no violation should be found.

On May 25, 1994, the DNC received a letter from the Commission stating that, following the decision in FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (Jan. 18, 1994), in which the Court found the Commission's composition unconstitutional because its membership included congressional designees, the Commission "has taken several actions to comply with the court's decision." In this matter, the Commission indicated that it had, on May 10, 1994, after "reconstituting" itself as a six member body without the congressional designees, "revoted" to find reason to believe that

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the DNC had violated 2 U.S.C. §§ 441a(a)(2) and 441d(a). Attached to the letter were a subpoena and a new Factual and Legal Analysis.

The new Factual and Legal Analysis did not acknowledge or in any way respond to the DNC's October 8, 1993 submission to the first (July 27, 1993) RTB finding. Yet the new Factual and Legal Analysis differs from the one accompanying the Commission's July 27, 1993 RTB finding in two principal respects.

First, it includes, on page 7, an entire new section of "Additional Evidence" purporting to have been uncovered during the "preliminary investigation." None of this "Additional Evidence" appeared in either the RNC's complaint or the DNC's responses and, accordingly, it is apparent that the information was developed from document requests and/or subpoenas addressed to other parties during a full investigation following the first (July 27, 1993) RTB finding.[1]

Second, in the new Factual and Legal Analysis (at p. 10), the Commission found that the <u>entire</u> cost of the telemarketing program ($120,000) constituted a contribution by the DNC to the Clinton primary campaign--not just the $40,000 the Commission had previously found to constitute such a contribution based on the fact that only one of the three call-in options was to make a contribution to the "Clinton campaign." The new Factual and Legal Analysis contains no explanation at all of why the Commission

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[1] In that regard, the DNC is aware--from its own contacts with Paul Storch to obtain his affidavit and relevant documents for use in the DNC's own response--that Mr. Storch was deposed by the Commission and ordered to produce documents in connection with that deposition.

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essentially tripled the amount of the alleged violation.

ARGUMENT

The Commission's May 10, 1994 finding of reason to believe is based on a Factual and Legal Analysis incorporating information--the "Additional Evidence"--which clearly was developed from document requests and/or subpoenas addressed to other parties during an investigation following the first (July 27, 1993) RTB finding. And it further appears that this "Additional Evidence" must have formed part of the basis for the Commission's decision to triple the amount of the alleged violation, since the new Factual and Legal Analysis is otherwise identical to the first one and there are no other material differences in the facts set forth in the two Analyses.

It is clear that the Commission had no legal authority to conduct any investigation following the first (July 27, 1993) RTB finding. Under the Act, the Commission may conduct an investigation only after making a finding of reason to believe. 2 U.S.C. § 437g(a)(2). The Commission's regulations provide that the "Commission shall conduct an investigation in any case in which the Commission finds reason to believe. . . . " 11 C.F.R. § 111.10(a). As the Commission itself has acknowledged, "[i]n general, the Commission may conduct an investigation in any case in which it finds reason to believe that a violation of the Act or regulations has occurred or is about to occur." Notice of Proposed Rulemaking, Compliance Procedures, 58 Fed. Reg. 36764 at 36766 (July 8, 1993). See, to the same effect, FEC v. Citizens for Freeman, 602 F. Supp.

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1250, 1252 (D. Md.), appeal dismissed, 767 F.2d 911 (4th Cir. 1985) (subpoena may issue "once there has been a finding" of RTB).

In this case, the Commission has indicated that it "revoted" RTB pursuant to procedures adopted to "comply with the court's decision" in the NRA case. (Letter to DNC, May 24, 1994, p. 1). Thus the Commission has effectively conceded that its first (July 27, 1993) finding of RTB was invalid, and could be given no effect, under the NRA decision. In the absence of a valid RTB finding, there was no statutory authority to conduct any investigation. And, since the new (May 10, 1994) RTB finding is clearly based on that investigation--and indeed would have reached different conclusions about the amount of the violation in the absence of information developed in that investigation--that new, May 10, 1994 RTB finding is itself necessarily invalid. Accordingly, there is again no statutory authority for the Commission to proceed with any investigation, and the subpoena should be quashed.

This problem with the new RTB finding is not merely a technical defect, but a matter of fundamental fairness. The initial (July 27, 1993) RTB finding was either valid and has continuing effect, or else it was invalid and has no continuing effect. The Commission cannot have it both ways.

If that initial RTB finding were really valid, so that the subsequent investigation was valid and the information developed could be taken into account, then the new RTB finding is really a probable cause finding. But in that case the General Counsel's brief would describe the investigation, indicating who was deposed

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and asked for documents, and would clearly indicate the sources of the "Additional Evidence". The respondents would then be given a fair opportunity to respond. 11 C.F.R. § 110.16. Further, the General Counsel's brief would certainly address the factual and legal points made by the DNC in its October 8, 1993 submission, so that respondents would know the General Counsel's response to these points and could make their own further response accordingly.

If, on the other hand, the initial RTB finding was invalid and has no continuing effect--as we would contend and the Commission concedes--it is clearly improper for the Factual and Legal Analysis to include "Additional Evidence" developed during an unauthorized investigation based on that initial finding. Further, no sources are cited for this "evidence", thus depriving respondents of a fair opportunity to respond to the "evidence."

In this case, the Commission has tried to have it both ways. It has given effect to the initial RTB finding by taking into account information developed in the subsequent investigation, but then at the same time has also pretended that the initial RTB finding did not exist, by totally ignoring the DNC's response to it and failing to reveal the nature and scope of the investigation and the sources of the evidence. The May 10, 1994 RTB finding has thus been made in a manner which is inconsistent with the Commission's own procedural regulations and is fundamentally unfair.

CONCLUSION

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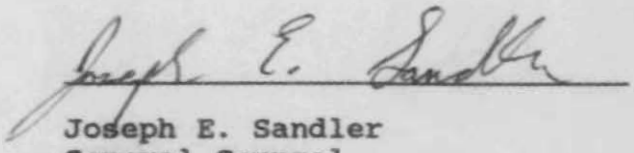
For the reasons set forth above, the Commission should find that the May 10, 1994 reason to believe finding is invalid and should quash the subpoena.

The Office of General Counsel is further requested to take notice that, inasmuch as this motion puts in issue the validity of the entire May 10, 1994 reason to believe finding and any investigation based on that finding, the DNC does not intend to respond to the May 10, 1994 finding until the Commission has ruled on this motion.

Respectfully submitted,



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Attorneys for Respondents
Democratic National Committee and
Robert T. Matsui, as Treasurer

Dated: June 2, 1994

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OGC#1522

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 3546
	)	
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COUNSEL
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MOTION TO QUASH

Respondents Clinton for President Committee and Robert A. Farmer as Treasurer (collectively, "CFP"), hereby move the Federal Election Commission pursuant to 11 CFR § 111.15(a) to quash the subpoena issued to them, dated May 24, 1994.

The grounds for this motion are as follows:

1. On June 19, 1992, the Republican National Committee filed a complaint alleging, inter alia, that CFP accepted an unlawful contribution from the Democratic National Committee in connection with the production of a televised "town hall" meeting in June 1992. During the broadcast, an "800" number was displayed. Viewers calling the number were invited to receive a copy of then-Governor Clinton's economic plan, to leave a message for him, or to "help the Clinton campaign and make a contribution." The RNC alleged that the solicitation for contributions meant that CFP impermissibly used general election funds to raise primary election contributions.

2. On July 29, 1992, CFP submitted its response to the complaint, demonstrating by affidavit that payment of the expenses associated with the "town hall" meeting by the DNC was fully consistent with Commission precedent, that the "800" number's contribution option was an error, promptly corrected when discovered, and that CFP did not receive a single contribution from the event.

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3. On July 27, 1993, the Commission "decided to take no action at this time" with respect to the allegations of the complaint against CFP. CFP submits that this determination, or a finding of "no reason to believe," was entirely appropriate given the purely technical violation associated with the erroneous telephone message from which no contributions were received by CFP.

4. On information and belief, at or about the same time, the Commission found reason to believe that co-respondent Democratic National Committee had violated the Federal Election Campaign Act of 1971, as amended, ("the Act") and commenced an investigation of the allegations of the complaint. On information and belief, subpoenas were issued by the Commission pursuant to that investigation prior to October 22, 1993.

5. On October 22, 1993, the United States Court of Appeals for the District of Columbia 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, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) ("the NRA decision")..

6. Since the date of the NRA decision, the Commission has taken various actions allegedly seeking to remedy the constitutional defects found by the court. Among those actions is the revoting of prior decisions involving open enforcement matters.

7. On May 10, 1994, contrary to the earlier decision to "take no action at this time," the Commission voted to find reason to believe that CFP violated the Act. In the Factual and Legal Analysis accompanying notification of this decision, which the transmittal letter states "formed a basis for the Commission's finding," there is a recitation of "additional evidence" that was obtained "during the preliminary investigation into this matter." Factual and Legal Analysis at 5-6. The

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"Analysis" section of the Factual and Legal Analysis also premises its conclusions on "the information obtained." Id. at 6.

8. On information and belief, the "additional evidence" and "information obtained" during the "preliminary investigation," all of which "formed a basis for the Commission's finding," was a product of the investigation prompted by and authorized pursuant to the Commission's finding of reason to believe that co-respondent Democratic National Committee violated the Act. Under the NRA decision, that finding and the ensuing investigation were constitutionally invalid. Absent a valid "reason to believe" finding, the Commission lacks statutory authority to conduct an investigation. 2 U.S.C. § 437g(a)(2); Conference Report, Federal Election Campaign Act Amendments of 1976, H. Rep. 94-1057 (94th Cong., 2d Sess.) at 49-50.

9. Absent the constitutionally tainted "additional evidence," there is no competent basis whatever upon which to premise a reason to believe finding against CFP, as vividly demonstrated by the Commission's 1993 decision to "take no action at this time." 1/

10. For these reasons, the May 10, 1994 "reason to believe" finding against these respondents was constitutionally defective. Accordingly, the May 24, 1994 subpoena issued pursuant to that finding also is invalid and should be quashed.

WHEREFORE, respondents Clinton for President Committee and

1/ Even if the "additional evidence" cited by the Commission is accurate (which these respondents do not concede at this time) and was permissibly considered, there is no factual or legal justification to reverse the Commission's decision "to take no action at this time" and to now find that a violation of the Act occurred.

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Robert A. Farmer, as Treasurer, respectfully request that the Commission quash the May 24, 1994 subpoena directed to them.

Respectfully submitted,

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L. Anthony Sutin
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Attorneys for Respondents Clinton for President Committee and Robert A. Farmer, as Treasurer

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

June 10, 1994

MEMORANDUM

TO: THE COMMISSION

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Shorter Voting Deadline for General Counsel's Report in MUR 3546

Pursuant to the Circulated Vote Provisions of Directive 52, the Office of the General Counsel is circulating the attached report on a 24 Hour Tally Vote basis. Respondents' response to the Commission's May 10, 1994 finding is due on June 22, 1994. Respondents' Motions to Quash Subpoenas was filed on June 2, 1994. This shorter voting deadline is requested in an effort to advise respondents of the Commission's decision with respect to these Motions as soon as possible prior to the June 22, 1994 response date.

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Clinton for President Committee and Robert A. Farmer, as treasurer	)	MUR 3546
	)	
Democratic National Committee and Robert T. Matsui, as treasurer	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Clinton for President Committee ("the Clinton Committee") and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f); and the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

On July 27, 1993, the Commission found reason to believe that the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a). On that same date the Commission authorized a subpoena for documents and a deposition directed at Paul C. Storch. The Commission also voted to take no action at this time with respect to the Clinton Committee and Robert A. Farmer, as treasurer. Notification of the Commission's findings was mailed to the Respondents, on August 10, 1993.

On October 26, 1993, the Commission reconstituted itself to conform to the Court's opinion in FEC v. NRA Political Victory Fund, et al., No. 91-5360 (D.C. Cir. Oct. 22, 1993) ("NRA"). On May 10, 1994, consistent with its procedures for revoting or

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of	)	
	)	
Clinton for President Committee and Robert A. Farmer, as treasurer	)	MUR 3546
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ratifying decisions pertaining to open enforcement matters the Commission voted to find reason to believe that the Clinton Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f); and the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). On that same date, the Commission approved subpoenas for testimony and documents directed toward the Clinton Committee and Robert A. Farmer, as treasurer, and a representative of the DNC.

On May 24, 1994, the notification of the Commission's reason to believe finding along with a Subpoena to Produce Documents was mailed to the Clinton Committee, and the DNC. On June 2, 1994, both the Clinton Committee, and the DNC filed a Motion To Quash Subpoena. (Attachments 1 and 2 respectively).

II. FACTUAL AND LEGAL ANALYSIS

Respondents' motions to quash the subpoena are premised on the decision in FEC v. NRA Political Victory Fund, 6 F.3d 821, 828 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (Jan. 18, 1994) ("the NRA decision). Counsel for both the Clinton Committee and the DNC argue that the subpoena is legally invalid because it was issued pursuant to a reason to believe finding that was based on information obtained from an illegally conducted investigation.

A. The DNC's Argument

In support of this argument counsel for the DNC avers that on July 27, 1993, when the initial reason to believe finding was made by the Commission such finding was invalid because the composition of the Commission was unconstitutional. Counsel for

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the DNC further states that the Commission nevertheless, proceeded to conduct an investigation based on that invalid finding. Counsel argues that, "[u]nder the Act, the Commission may conduct an investigation only (emphasis in original) after making a finding of reason to believe. 2 U.S.C. § 437g(a)(2)."

According to counsel this investigation which was based on the invalid July 27, 1993 reason to believe finding resulted in the May 10, 1994 reason to believe finding, a new Factual and Legal Analysis containing additional evidence which was discovered through the illegally conducted investigation, and the subpoena. Counsel concludes that:

> In the absence of a valid RTB finding, there was no statutory authority to conduct any investigation. And, since the new (May 10, 1994) RTB finding is clearly based on that investigation--and indeed would have reached different conclusions about the amount of the violation in the absence of information developed in that investigation--that new, May 10, 1994 RTB finding is itself necessarily invalid.

Based on the foregoing, Counsel for the DNC has requested that the Commission find that the May 10, 1994 reason to believe finding is invalid and should quash the subpoena.

B. The Clinton Committee's Argument

In addition to arguments similar to those presented by the DNC counsel in section I.A., counsel for the Clinton Committee contends that the evidence obtained after the initial reason to believe finding is constitutionally tainted and cannot

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be used as a basis to find reason to believe against the Clinton Committee.[1/]

C. Analysis

The basic premise of the Respondents' Motions To Quash is that the Commission cannot use information derived from an investigation which was authorized by the Commission prior to the NRA decision. As this Office has previously explained, the NRA decision does not on its face vitiate prior Commission action.[2/] Indeed, the Commission's prior reason to believe decision may be held valid on two separate grounds -- the de facto officer doctrine and the severability provision of the Federal Election Campaign Act, as amended, (the "Act").

The de facto officer doctrine provides that if a public officer holds office invalidly because of a defect of which both

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1/ The arguments presented by counsel in his motion to quash indicate that he is following a theory that the Commission's July 27, 1993 decision to take no action at that time against the Clinton Committee was a final disposition of this matter with regard to the Clinton Committee. The language in the Commission's notification letter to the Clinton Committee dated August 10, 1993, clearly shows that no final determination had been made with regard to the Clinton Committee's involvement in this matter.

2/ Harper v. Virginia Dep't. of Taxation, 113 S. Ct. 2511 (1993) (holding that new rule if applied to instant parties must be given full retroactive effect) does not preclude the use of pure prospectivity (application only to matters arising after announcement of the rule) in considering the remedy to be applied in other cases. Thus, the NRA court's implication that Harper compels other courts to apply its decision in other enforcement cases, slip op. at 14 -- which under Harper would necessarily give retroactive effect to the court's dismissal -- may not be correct. It may also be possible to argue that the decision in Harper would not require dismissal since the Commission is no longer acting as an eight- member commission with ex officio members.

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the officer and the public are unaware, the officer's acts nonetheless will be given effect even if they are otherwise invalid on substantive grounds. It is "well settled" that "'where there is an office to be filled and one acting under the color of authority fills the office and discharges its duties, his actions are those of an officer de facto and binding upon the public.'" Glidden Co. v. Zdanock, 370 U.S. 530, 535 (1962) (quoting McDowell v. United States, 159 U.S. 596, 602 (1895)). See also Andrade v. Lauer, 729 F.2d 1127, 1150 (D.C. Cir. 1984) ("Andrade I").[3/]

In fact, although not applying the doctrine,[4/] the NRA court acknowledged that the Supreme Court had relied upon the de facto officer doctrine, although not explicitly, in Buckley v. Valeo, 424 U.S. 1 (1976). In that case, the Supreme Court validated the Commission's past actions after finding that the Act's provision for the appointment of all the voting Commissioners was unconstitutional. Clearly, the de facto officer doctrine

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3/ The court in Andrade I did delineate a narrow exception to application of the de facto officer doctrine. Under Andrade I the "doctrine does not prevent a specific, focused attack on an action taken by a de facto officer if the plaintiffs bring their suit at or around the time the action is taken and if the government has reasonable notice under all the circumstances of the defect claimed." Andrade I at 1500. Because respondent failed to raise the constitutionality of the ex officios in either its response to the complaint, response to the original reason to believe findings, or pursuant to 2 U.S.C. § 437h, the exception is not applicable.

4/ The court decided simply to reverse the district court's judgment against NRA without regard to the merits because the court was "aware of no theory that would permit us to declare the Commission's structure unconstitutional without providing relief to the appellants in this case," NRA, slip. op. at 14.

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can be applied to the Commission's past actions. The application of this doctrine is even more appropriate here than in Buckley because all six Commissioners voting in this matter were de jure officers at the time of the original reason to believe vote.

Furthermore, the D.C. Circuit's opinion specifically recognized that the Act's severability clause (2 U.S.C. § 454) would permit the Commission to continue its administration of the Act in conformity with the NRA decision. Noting that the Act's "explicit severability clause" raises a "presumption that Congress would wish the offending portion of the statute -- creating the ex officio members of the Commission -- to be severed from the rest," the court concluded that no congressional action was required to reconstitute the Commission. Slip op. at 13.

> Congress is not even required after our decision, as it was after Buckley [v. Valeo, 424 U.S. 1 (1976)], to amend the statute. Since what remains of the FECA is not 'unworkable and inequitable,' id. at 252 (Burger, C.J., concurring in part and dissenting in part), the unconstitutional ex officio membership provision can be severed from the rest of the FECA.

Id. The Commission promptly voted to reconstitute itself, pending any further judicial action, as a six-member commission without ex officio members, thereby conforming with the court of appeal's decision.

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On May 11, 1994, the United States District Court For The District Of Columbia, commented in dicta on the impact of the NRA case on the Commission's ongoing investigations. National Republican Senatorial Committee v. Federal Election Commission (Civil Action No. 94-332 (TPJ))(appeal noticed D.C. Cir. May 31, 1994) (granting the Commission's motion to dismiss). In this case, which grew out of the Commission's investigation in MUR 3204, the National Republican Senatorial Committee ("NRSC") sought a declaratory judgment and preliminary and permanent injunctions to prohibit the Commission's investigation. The issue presented by the complainants in that case was whether the Commission could proceed to probable cause based on information obtained during an investigation authorized by the possibly constitutionally defective Commission. The NRSC argued that even though the Commission has been reconstituted, the original reason to believe findings were made while the Commission was constitutionally infirm and that, therefore, such findings are void ab initio and any investigative results are a nullity. In dismissing this action on grounds of ripeness, the court stated in pertinent part:

> It is important to note that NRSC is not contending that being investigated by the FEC is, in and of itself, per se a trespass upon its First or Fifth Amendment rights. It is only in the Commission's failure to accord it a "reason to believe" finding by a duly constituted Commission that the NRSC argues that it has been aggrieved. But a "reason to believe" finding as a condition precedent to an investigation, if indeed it is such at all, is hardly a matter of fundamental right.

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> . . . To require the Commission to return in this investigation (and presumably all others in progress) to recite a reason-to-believe litany before taking a probable cause vote would be as wasteful of its time and disruptive of Commission business as it would useless in relieving NRSC of any significant adversity.

In the investigation in this present matter, unlike MUR 3204, the newly constituted Commission has voted new reason to believe findings.

An additional argument can be made in response to the assertion that the use of information obtained from the Commission's earlier investigation in this matter is invalid under NRA. The Supreme Court has made clear that the Commission's investigative activities are not subject to separation of powers attacks that have been raised against its enforcement actions. In Buckley v. Valeo, 424 U.S. 1, 137 n.175 (1976), the Supreme Court determined that certain Commission actions were not jeopardized by the participation of voting members, appointed in varying degrees by Congress, stating:

> Insofar as the powers confided in the Commission are essentially of an investigative and informative nature, falling in the same general category as those powers which Congress might delegate to one if its own committees, there can be no question that the Commission as presently constituted may exercise them.

Id. at 137. Accord, McGrain v. Daugherty, 273 U.S. 135 (1927). Thus, the investigation authorized by the Commission and conducted by this Office in this MUR does not pose the separation of powers problem addressed in NRA.

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Even if past Commission actions in this matter are not considered valid in themselves, the Commission has adopted other corrective procedures out of an abundance of caution. In this matter the decision by the newly constituted Commission, on May 10, 1994, finding reason to believe that the Clinton Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f); and the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a); and approving subpoenas for testimony and documents directed toward the Clinton Committee and Robert A. Farmer, as treasurer, and a representative of the DNC did not impair any of respondents' due process rights. The decision was made by a six-member Commission without any participation of the ex officio members.[5/] Furthermore, respondents also have the opportunity to respond to the Commission's findings and all information on which such findings were based. As counsel knows, the Commission has publicly announced that, having reconstituted itself, this agency intends to enforce the federal election law without interruption. To grant these motions would have the opposite effect, resulting

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5/ On February 8, 1994, the United States District Court For The District Of Columbia, in Federal Election Commission v. National Republican Senatorial Committee (Civil Action No. 93-1612) pointed out that the NRA decision recognized that the unconstitutional ex officio provision could be severed from the rest of the Act; and stated that the Commission had acted in accordance with NRA when it resconstituted itself as a constitutionally structured six-member agency and that the Commission has also ratified its earlier finding that there was probable cause to believe a violation occurred and its subsequent decision to institute this action.

in a complete disruption of progress in enforcement matters. Nor has counsel provided a basis for treating this matter differently than other matters affected by the NRA decision. For this reason, together with all the other reasons set forth above, this Office recommends that the Commission deny respondents' motions to quash.

To the extent that Counsel is arguing that the "Fruit of The Poisonous Tree Doctrine" is applicable to the Commission's civil enforcement proceedings, and would bar further use of evidence obtained after the initial reason to believe finding, this decision suggests that the opposite is true. The Fruit of the Poisonous Tree Doctrine provides that evidence which is the direct result or immediate product of illegal conduct on the part of an official is inadmissible in a criminal trial against the victim of the conduct (or other person with standing) under the due process clause. See Weeks v. United States, 232 U.S. 382 (1914). The Supreme Court has held that the foregoing doctrine is not applicable in civil matters; Immigration and Naturalization Service v. Lopez-Mendoza Et Al., 486 U.S. 1032 (1984). This case involved the result of an illegal arrest. One of the respondents admitted his illegal entry after being arrested by an INS agent, and at the deportation hearing unsuccessfully contended the evidence of his admission should be suppressed as the fruit of an unlawful arrest. The Court held that, "[a] deportation proceeding is a purely civil action. . . Consistent with the civil nature of a deportation proceeding, various protections that apply in the context of a criminal trial

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do not apply. . ." Id. "We hold that evidence derived from such arrests need not be suppressed in an INS civil deportation hearing." Id. at 1051. See also U.S. v. $37,780 In United States Currency, F.2d 159 (2nd Cir. 1990). In this case, the Federal Government brought an action for civil forfeiture of a suitcase full of cash seized without probable cause, from an alleged drug dealer at an airport. The Court of Appeals held that, "[i]llegal seizure of property does not immunize property from forfeiture, and property itself cannot be excluded from forfeiture action nor can evidence obtained independently of illegal seizure."

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Deny the Clinton for President Committee and Robert A. Farmer, as treasurer's Motion to Quash Subpoena.

2. Deny the Democratic National Committee and Robert T. Matsui, as treasurer's Motion to Quash Subpoena.

3. Approve the appropriate letters.

Date 6/10/94

Lawrence M. Noble
General Counsel

Attachment
1. The Clinton Committee Motion to Quash
2. DNC Motion to Quash Subpoena

Staff assigned: Phillip L. Wise

9704382819

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and Robert A. Farmer, as treasurer;	)	MUR 3546
Democratic National Committee and Robert T. Matsui, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 14, 1994, the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Deny the Clinton for President Committee and Robert A. Farmer, as treasurer, Motion to Quash Subpoena.

2. Deny the Democratic National Committee and Robert T. Matsui, as treasurer, Motion to Quash Subpoena.

3. Approve the appropriate letters, as recommended in the General Counsel's Report dated June 10, 1994.

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

Attest:

6-14-94
Date

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

Received in the Secretariat:	Fri.,	June 10, 1994	3:22 P.M.
Circulated to the Commission:	Mon.,	June 13, 1994	11:00 A.M.
Deadline for vote:	Tues.,	June 14, 1994	4:00 P.M.

mck

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 15, 1994

VIA FACSIMILE AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joseph E. Sandler, Esquire
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and Robert T. Matsui, as
treasurer

Dear Mr. Sandler:

On June 14, 1994, the Federal Election Commission considered the Motion to Quash Subpoena filed by you on behalf of your clients, the Democratic National Committee and Robert T. Matsui, as treasurer. The Commission has rejected your clients' Motion. Accordingly, your clients must respond as instructed in the documents mailed to you on May 24, 1994.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

9704382821

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 15, 1994

VIA FACSIMILE AND
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

L. Anthony Sutin, Esquire
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Clinton for President
Committee and Robert A.
Farmer, as treasurer

Dear Mr. Sutin:

On June 14, 1994, the Federal Election Commission considered the Motion to Quash Subpoena filed by you on behalf of your clients, Clinton for President Committee and Robert A. Farmer, as treasurer. The Commission has rejected your clients' Motion. Accordingly, your clients must respond as instructed in the documents mailed to you on May 24, 1994.

If you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

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DEMOCRATIC ★ NATIONAL ★ COMMITTEE
David Wilhelm, Chairman

June 15, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Jun 16 10 01 AM '94

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attention: Phillip L. Wise, Esq.

Re: MUR 3546

Dear Mr. Wise:

Respondent Democratic National Committee ("DNC") hereby requests an extension of fifteen (15) days in which to respond to the Subpoena to Produce Documents and Order to Produce Written Answers and in which to file factual and legal materials in response to the Commission's finding of reason to believe, made on May 10, 1994, that the DNC violated the Federal Election Campaign Act, in the above-referenced MUR.

Although the Commission previously found reason to believe in this MUR and the DNC previously filed a response, the initial RTB finding was not accompanied by a subpoena. Additional time will be required to search the DNC's files for documents called for by the subpoena. In addition, the only persons with knowledge of the facts relevant to questions 5, 6 and 7 are former staff of the DNC and some additional time will be required to identify, contact and interview those staff.

For these reasons, we respectfully request an extension of fifteen (15) days. Our response is now due on June 22, 1994; if the requested extension is granted, our response would be due on July 7, 1994.

If you have any questions concerning the above or need further information, please contact the undersigned at 202-863-7110. Thank you very much for your time and attention to this request.

Sincerely yours,

Joseph E. Sandler

Joseph E. Sandler
General Counsel

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Democratic Party Headquarters • 430 South Capitol Street, S.E. • Washington, D.C. 20003 • 202.863.8000 • FAX: 202.863.8091
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 21, 1994

VIA FACSIMILE AND
REGULAR MAIL

Joseph E. Sandler, Esquire
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and Robert T. Matsui, as
treasurer

Dear Mr. Sandler:

This is in response to your letter dated June 15, 1994, which we received on June 16, 1994, requesting an extension until July 7, 1994 to respond to the Commission's findings and subpoena. 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 July 7, 1994.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

9704382824

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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BETHESDA, MD
McLEAN, VA

L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-5273

June 17, 1994

BY TELECOPY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

On June 15, 1994, I received notification from your office that the Commission rejected the Motion to Quash filed on behalf of the Clinton for President Committee and Robert A. Farmer, as treasurer.

Pursuant to the Commission's May 24, 1994 reason to believe notification, the Committee's deadline for response to the subpoena and submission of accompanying materials is June 22, 1994. We request an extension of time to respond until Monday, July 11, 1994. The grounds for this request are (1) Committee staff and counsel did not devote significant resources to responding to the subpoena and reason to believe finding during the pendency of the motion to quash, since that work would have been unnecessary if the motion had been granted, and (2) Committee staff and counsel also are devoting substantial time at present to the preparation of the response to the Interim Audit Report. The requested extension will enable the Committee to make a complete and thorough response to this MUR.

Thank you for your consideration.

Sincerely yours,

L. Anthony Sutin

FAX: (202) 637-5910 TELEX: 248870(RCA), 89673?(WU) CABLE: HOGANDER WASHINGTON

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 17, 1994

VIA FACSIMILE AND
REGULAR MAIL

L. Anthony Sutin, Esquire
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Clinton for President
Committee and Robert A.
Farmer, as treasurer

Dear Mr. Sutin:

This is in response to your letter dated June 17, 1994, which we received on June 17, 1994, requesting an extension until July 11, 1994 to respond to the Commission's findings and subpoena. 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 July 11, 1994.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUNE 24, 1994

FEDERAL EXPRESS DELIVERY

Eli J. Segal
1535 28th Street, N.W.
Washington, D.C. 20007

RE: MUR 3546

Dear Mr. Segal:

On May 24, 1994, the Federal Election Commission ("the Commission") had delivered to you the attached letter and subpoena for documents. The subpoena issued by the Commission required you to provide certain documents to the Office of the General Counsel, Federal Election Commission on or before June 22, 1994. To date you have not responded to the subpoena issued by the Commission. Therefore, it is again requested that you provide the information identified in the Commission's subpoena within five days of your receipt of this letter. If you do not comply at that time this Office will recommend that the Commission authorize us to institute a civil action for relief in the United States District Court.

If you have any questions, please contact me at (202) 219-3690. If I am unavailable, please ask for Abigail A. Shaine, Assistant General Counsel.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure

9704382827

HOGAN & HARTSON
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PARTNER
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RECEIVED
FEDERAL ELECTION
COMMISSION
JUN 29 3 43 PM '94
OFFICE OF GENERAL
COUNSEL

June 29, 1994

BY TELECOPY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

As you know, this firm is counsel to the Clinton for President Committee and Robert A. Farmer, as treasurer, in the above-captioned MUR.

I was advised yesterday evening by Mr. Eli J. Segal, former Chief of Staff of the Clinton for President Committee, that he had just received a Federal Express package that you had sent to his former address at 1535 28th Street, N.W. in Washington. The package contained your June 24 letter, which enclosed your May 24 letter and subpoena. As of today, Mr. Segal still has not received the original shipment of the May 24 letter which apparently also was sent to the old address.

This letter is to advise you that we also will represent Mr. Segal in this proceeding and, in light of the delayed receipt of the subpoena, to request that he be given an extension of time until July 11, 1994 to submit his response. This date is the same date on which the Committee's response to the subpoena is due and thus should not delay your consideration of this matter.

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HOGAN & HARTSON L.L.P.

Phillip L. Wise, Esq.
June 29, 1994
Page 2

Thank you for your consideration.

Sincerely yours,

L. Anthony Sutin

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 29, 1994

VIA FACSIMILE AND
REGULAR MAIL

L. Anthony Sutin, Esquire
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Eli J. Segal

Dear Mr. Sutin:

This is in response to your letter dated June 29, 1994, which we received on June 29, 1994, requesting an extension until July 11, 1994 to respond to the Commission's subpoena to your client, Eli J. Segal. 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 July 11, 1994.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 7 1 28 PM '94

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and Robert T. Matsui,	)	
as Treasurer	)	

MEMORANDUM IN SUPPORT OF NO PROBABLE CAUSE
AND DISMISSAL OF THE COMPLAINT

The Commission has found reason to believe that respondents Democratic National Committee ("the DNC") and Treasurer Robert T. Matsui have violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), in connection with the DNC's sponsorship and payment for the broadcast of a "town hall" meeting in June 1992 at which then-Governor Clinton appeared to answer questions from a television audience. During the broadcast, an "800" number was displayed, and callers to that number were given the option to receive a copy of Gov. Clinton's economic plan; to leave a message for Gov. Clinton; or to "help the Clinton campaign and make a contribution."

SUMMARY

First, the Commission's May 10, 1994 finding of reason to believe is invalid. An initial reason to believe finding in this case was made on July 27, 1993. As the Commission has effectively conceded, that initial finding was invalid because the composition of the Commission when it made that finding on July 27, 1993 was unconstitutional. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (Jan.

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18, 1994). Nevertheless, the Commission proceeded to conduct an investigation based on that invalid finding. There was no legal authority to conduct that investigation.

The Commission has now "revoted", on May 10, 1994, to find reason to believe. The Commission did not, however, merely make the same finding it did before based on the same legal and factual analysis. Rather, it made a new finding--tripling the amount of the claimed violation--based on new information developed in the unauthorized investigation. This new finding, therefore, is also invalid.

Second, the DNC did not in any event make an unlawful contribution to the Clinton for President committee, i.e., the Clinton primary campaign. The Factual and Legal Analysis takes the position that the entire cost of the telemarketing program constitutes a contribution to the Clinton primary campaign. In fact, since no money was ever accepted from any caller to the "1-800" number, and nothing of value was therefore provided to the Clinton for President committee, no contribution was made. But even if the mere existence of the aborted solicitation feature of the telemarketing program is regarded as a contribution by the DNC, the amount of that contribution should be based on the proportion of callers actually selecting the contribution option. Based on that proportion, the amount of the contribution was only $2,160 which, when added to the DNC's prior contributions, resulted in a total contribution of less than $5,000.

Finally, the Factual and Legal Analysis acknowledges that,

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apart from the solicitation option of the "800" program, the DNC's payment for the broadcast represented a lawful expenditure by the DNC on behalf of its presidential nominee for the general election, pursuant to § 441a(d). The Analysis contends, however, that the DNC violated § 441d(a) by failing to include an express statement that the program was authorized by Gov. Clinton or his committee. In view of the fact that Gov. Clinton appeared on this live broadcast during the entire broadcast, there could be no doubt in the mind of any viewer that he had authorized his own appearance. Accordingly, the objective of the statute was fully achieved and no violation should be found.

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FACTUAL BACKGROUND

The relevant facts are set forth in the Factual and Legal Analysis and in the affidavit of Paul C. Storch, president of the telemarketing firm which operated the "1-800" program ("Storch Aff."). [1] On June 12, 1992, there was broadcast a town hall meeting at which then-Governor Clinton appeared to answer questions from the television audience. (Factual and Legal Analysis at 3). The program was intended to convince the audience to vote for Gov. Clinton in the general election. (Id. at 8).

During the broadcast, a "1-800" number was periodically displayed. The "1-800" number was in operation as of the time the broadcast was aired on June 12, 1992. (Storch Aff. ¶ 4). Callers

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[1] The signed original of the Storch Affidavit was submitted by the DNC to the Commission as part of the DNC's October 8, 1993 response to the initial RTB finding. A copy of the Storch Affidavit is being re-submitted herewith.

to the "800" number were given three options: (1) to receive a copy of Gov. Clinton's economic plan; (2) to "help the Clinton campaign and make a contribution;" or (3) to leave a message for Gov. Clinton. (Storch Aff. ¶ 5).

Offering the option to contribute to the Clinton for President campaign was an error and, when the DNC discovered it, the DNC requested that the telemarketing vendor change the script to reflect that contributions would go to the DNC. (Id. ¶ 6). When the changes could not be put into effect quickly enough, the DNC requested that the "1-800" number be shut down. It was in fact shut down as of approximately noon on June 16, 1992, and no further calls were accepted or received after that time. (Id. ¶ 7).

During the time the "800" number was in operation, a total of 115,636 calls were received. As of the last available measurement, which was at a time when 114,914 (nearly all) of the calls had been received, only 2,107, or 1.8%, were calls in which the caller selected the option of "help the Clinton campaign and make a contribution." All of the remaining callers--over 98%--only asked for a copy of the economic plan or wanted to leave a message for Gov. Clinton. (Storch Aff. ¶ 10).

No money whatsoever was ever received or collected even from the small percentage of callers who selected the option of making a contribution. Specifically, in the case of those persons who provided their credit card numbers, the credit card transactions were simply never processed; and in the case of persons who pledged a contribution and were told they would be invoiced and sent an

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envelope to return their contribution (see Storch Aff. Exhibit A), the invoice and envelope were never sent. (Storch Aff. ¶ 11).

This MUR was then initiated by a complaint filed by the Republican National Committee on June 19, 1992, alleging that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), in connection with the DNC's sponsorship and payment for the "town hall" broadcast. On June 23, 1992, the Commission notified the DNC of the complaint. On July 29, 1992, the DNC submitted its response to the complaint.

On August 10, 1993, the Commission informed the DNC that it had voted, on July 27, 1993, to find reason to believe ("RTB") that the DNC had violated 2 U.S.C. § 441a(a)(2)(A) and 441d(a). In the Factual and Legal Analysis, the Commission found that the costs of the broadcast did constitute a lawful expenditure by the DNC on behalf of its nominee for president, pursuant to 2 U.S.C. § 441a(d). The Commission found, however, that since contributions to a presidential candidate can only be collected in connection with the primary, the costs of that portion of the 1-800 telemarketing program giving callers the option to "make a contribution" should be treated as a contribution by the DNC to the Clinton primary campaign.

The Commission reasoned that, since only one of the three caller options was to "make a contribution" only one-third of the costs of the telemarketing program should be considered a contribution by the DNC to the Clinton primary campaign. The total costs of the telemarketing program were $120,000, so the Commission

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found that one-third, or $40,000, should be considered a contribution. This would result in an excessive primary contribution by the DNC to the Clinton primary campaign, after taking into account prior contributions, of $37,253.

The Commission further found that the DNC violated 2 U.S.C. § 441d(a) by not including in the disclaimer an express statement that the broadcast was authorized by the Clinton campaign.

On October 8, 1993, the DNC submitted a response to this reason to believe finding. On May 25, 1994, the DNC received a letter from the Commission stating that, following the decision in FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (Jan. 18, 1994), in which the Court found the Commission's composition unconstitutional because its membership included congressional designees, the Commission "has taken several actions to comply with the court's decision." In this matter, the Commission indicated that it had, on May 10, 1994, after "reconstituting" itself as a six member body without the congressional designees, "revoted" to find reason to believe that the DNC had violated 2 U.S.C. §§ 441a(a)(2) and 441d(a). Attached to the letter were a subpoena and a new Factual and Legal Analysis.

DISCUSSION

I. THE COMMISSION'S MAY 10, 1994 RTB FINDING IS INVALID

The new Factual and Legal Analysis does not acknowledge or in any way respond to the DNC's October 8, 1993 submission to the

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first (July 27, 1993) RTB finding. Yet the new Factual and Legal Analysis differs from the one accompanying the Commission's July 27, 1993 RTB finding in two principal respects.

First, it includes, on page 7, an entire new section of "Additional Evidence" purporting to have been uncovered during the "preliminary investigation." None of this "Additional Evidence" appeared in either the RNC's complaint or the DNC's responses and, accordingly, it is apparent that the information was developed from document requests and/or subpoenas addressed to other parties during a full investigation following the first (July 27, 1993) RTB finding.[2]

Second, in the new Factual and Legal Analysis (at p. 10), the Commission found that the entire cost of the telemarketing program ($120,000) constituted a contribution by the DNC to the Clinton primary campaign--not just the $40,000 the Commission had previously found to constitute such a contribution based on the fact that only one of the three call-in options was to make a contribution to the "Clinton campaign." The new Factual and Legal Analysis contains no explanation at all of why the Commission essentially tripled the amount of the alleged violation.

The Commission's May 10, 1994 finding of reason to believe is thus based on a Factual and Legal Analysis incorporating information--the "Additional Evidence"--which clearly was developed

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[2] In that regard, the DNC is aware--from its own contacts with Paul Storch to obtain his affidavit and relevant documents for use in the DNC's own response--that Mr. Storch was deposed by the Commission and ordered to produce documents in connection with that deposition.

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from document requests and/or subpoenas addressed to other parties during an investigation following the first (July 27, 1993) RTB finding. And it further appears that this "Additional Evidence" must somehow have formed part of the basis for the Commission's decision to triple the amount of the alleged violation, since the new Factual and Legal Analysis is otherwise identical to the first one and there are no other material differences in the facts set forth in the two Analyses.

It is clear that the Commission had no legal authority to conduct any investigation following the first (July 27, 1993) RTB finding. Under the Act, the Commission may conduct an investigation only after making a finding of reason to believe. 2 U.S.C. § 437g(a)(2). The Commission's regulations provide that the "Commission shall conduct an investigation in any case in which the Commission finds reason to believe. . . . " 11 C.F.R. § 111.10(a). As the Commission itself has acknowledged, "[i]n general, the Commission may conduct an investigation in any case in which it finds reason to believe that a violation of the Act or regulations has occurred or is about to occur." Notice of Proposed Rulemaking, Compliance Procedures, 58 Fed. Reg. 36764 at 36766 (July 8, 1993). See, to the same effect, FEC v. Citizens for Freeman, 602 F. Supp. 1250, 1252 (D. Md.), appeal dismissed, 767 F.2d 911 (4th Cir. 1985) (subpoena may issue "once there has been a finding" of RTB).

In this case, the Commission has indicated that it "revoted" RTB pursuant to procedures adopted to "comply with the court's decision" in the NRA case. (Letter to DNC, May 24, 1994, p. 1).

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Thus the Commission has effectively conceded that its first (July 27, 1993) finding of RTB was invalid, and could be given no effect, under the NRA decision. In the absence of a valid RTB finding, there was no statutory authority to conduct any investigation. And, since the new (May 10, 1994) RTB finding is clearly based on that investigation--and indeed would presumably have reached different conclusions about the amount of the violation in the absence of information developed in that investigation--that new, May 10, 1994 RTB finding is itself necessarily invalid.

This problem with the new RTB finding is not merely a technical defect, but a matter of fundamental fairness. The initial (July 27, 1993) RTB finding was either valid and has continuing effect, or else it was invalid and has no continuing effect. The Commission cannot have it both ways.

If that initial RTB finding were really valid, so that the subsequent investigation was valid and the information developed could be taken into account, then the new RTB finding is really a probable cause finding. But in that case the General Counsel's brief would describe the investigation, indicating who was deposed and asked for documents, and would clearly indicate the sources of the "Additional Evidence". The respondents would then be given a fair opportunity to respond. 11 C.F.R. § 110.16. Further, the General Counsel's brief would certainly have addressed the factual and legal points made by the DNC in its October 8, 1993 submission, so that the DNC would know the General Counsel's positions with respect to these points. We could then have made our own further

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response accordingly.

If, on the other hand, the initial RTB finding was invalid and has no continuing effect--as we would contend and the Commission concedes--it is clearly improper for the Factual and Legal Analysis to include "Additional Evidence" developed during an unauthorized investigation based on that initial finding. Further, no sources are cited for this "evidence", thus depriving respondents of a fair opportunity to respond to the "evidence."

In this case, the Commission has tried to have it both ways. It has given effect to the initial RTB finding by taking into account information developed in the subsequent investigation, but then at the same time has also pretended that the initial RTB finding did not exist, by totally ignoring the DNC's response to it and failing to reveal the nature and scope of the investigation and the sources of the evidence. The May 10, 1994 RTB finding has thus been made in a manner which is inconsistent with the Commission's own procedural regulations and is fundamentally unfair.

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II. THERE WAS NO VIOLATION OF THE CONTRIBUTION LIMIT

A. No Contribution Was Made to the Clinton for President Committee

In any event, it remains true that the DNC made no contribution to the Clinton primary campaign. The Act and Commission regulations define "contribution" to mean "any gift, subscription, loan, advance, or deposit of money, or anything of value, made by any person. . . . " 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). The Commission's regulations further provide that

"the provision of any goods or services without charge or at a charge which is less than the usual and normal charge. . . ." is a contribution. 11 C.F.R. § 110.7(a)(1)(iii).

In this case, the DNC did not provide "anything of value" to the Clinton for President committee. Merely offering callers to the "1-800" number the option to make a contribution to the Clinton for President committee was absolutely worthless to that committee because no such contributions were in fact accepted or received. The solicitation process was deliberately aborted in mid-stream in such a way that it was, ultimately, simply not a fundraising activity at all. Specifically, as noted above, credit card transactions were not processed and persons who pledged were not billed. Thus there was no possibility of the "800" program receiving or collecting any funds for Clinton for President.

The Commission's regulations provide that a contribution which appears to be legal when received, but which the treasurer later realizes is illegal, may be refunded within 30 days and will not then count as an illegal contribution. 11 C.F.R. §103.3(b)(2). A committee, such as the DNC, which realizes that a potentially unlawful in-kind contribution is about to be made to a candidate, should similarly be able to stop the process in such a way that nothing of value is or could be received by the candidate, thus ensuring that the in-kind contribution is not consummated. That is exactly what happened in this case.

To be sure, where a solicitation violates Commission rules specifically governing solicitations, a violation can be found

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regardless of whether any money is collected or received. E.g., MUR 3024, General Counsel's Report, Jan. 25, 1991. In this case, however, there is no statute or rule which prohibits solicitation of a contribution over $5,000 by a multi-candidate committee to a candidate committee; under 2 U.S.C. § 441a(a)(2)(A), it is only the making of such a contribution which is unlawful. In this case, nothing of value was given by the DNC to the Clinton for President committee and, accordingly, no contribution was made at all.

In this regard, it is irrelevant that a senior Clinton campaign official may have been "personally involved" in determining was messages were to be received by callers to the 1-800 number (Factual and Legal Analysis at 7). As the Commission acknowledges, the "town hall" broadcast itself was a permissible general election expenditure by the DNC on behalf of the Clinton campaign pursuant to 2 U.S.C. § 441a(d). Id. at 9. Since coordination between the DNC and the campaign with respect to such expenditures is entirely lawful and permissible, it was entirely appropriate for a senior campaign official to be involved in the determination of the content of those messages.

Nor is it relevant that one of the original purposes of the broadcast may have been to solicit contributions to the Clinton primary campaign, or that a decision for the DNC to pay for the telemarketing program may have been made after the broadcast. As the Commission has found, the broadcast itself was a general election activity and it was permissible for the DNC to pay for it. And, whatever the original purpose or motivation of the

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telemarketing program, the fact is that the program was used only to allow callers to receive a copy of the economic plan or to leave messages for Governor Clinton. Both of these were permissible general election activities, as the Commission implicitly recognized in its original Factual and Legal Analysis (on which the July 27, 1993 RTB finding was based), which questioned only the solicitation portion of the telemarketing program. With respect to that solicitation feature, no contributions to the Clinton primary campaign were in fact collected as a result of the telemarketing program and nothing of value was in fact received by that primary campaign from the DNC.

Finally, the Factual and Legal Analysis suggests that the solicitation feature of the telemarketing program "was not a mistake by the vendor." That suggestion has no conceivable relevance. The solicitation feature should not have been included. Its inclusion was a mistake and it makes no difference whose mistake it was. What matters is that the mistake was corrected--the 1-800 number was shut down--before any contributions were collected or received, and that steps were taken to guarantee that no contributions would ever be collected or received. The correction of the mistake, in this way, ensured that the Clinton primary campaign received nothing of value from the DNC's payment for the broadcast and telemarketing program, and thus no contribution was made by the DNC or received by the Clinton campaign.

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B. Even if the Solicitation is Treated as a Contribution, the DNC's Contributions Were Under the Applicable Limit

Even if the mere existence of the solicitation feature of the "800" number program is regarded as a contribution by the DNC, the DNC did not contribute more than $5,000 to the Clinton for President committee.

As the Factual and Legal Analysis correctly notes (at p. 10), the cost of the telemarketing program was $120,000; see also Storch Aff. ¶ 9. Since only one of the three options was to contribute to the Clinton primary campaign, the original Factual and Legal Analysis (accompanying the commission's July 27, 1993 RTB) calculated the amount of a DNC contribution by dividing the total cost of the telemarketing program ($120,000) by three.

The new Factual and Legal Analysis, without explanation, abandons this approach and treats the entire cost of the telemarketing program as a contribution by the DNC to the Clinton primary campaign. This makes no sense, since two of the three options offered to callers had no relation to contributing money. Nothing in the "Additional Evidence" provides any basis for changing the Commission's original allocation approach. Neither the involvement of Clinton campaign officials nor the possibility that one of the original reasons for the program may have been to solicit contributions changes the hard, simple fact that only one of the three options offered to callers was to contribute to the primary campaign.

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The original Factual and Legal Analysis proposed the correct methodology but applied it to incomplete information. The only rational method of allocating the value of the telemarketing program is indeed to divide the costs among the three options, but that division should be based on the actual number of callers choosing the contribution option, since that is the maximum number of calls that could possibly have resulted in contributions--even if all the credit card transactions had been processed and all the pledges had been collected.

As the Storch Affidavit notes, as of the point when nearly all of the calls had been received, only 2,107 out of 114,914--or 1.8%--were calls in which the caller selected the option to "help the Clinton campaign and make a contribution." Storch Aff. ¶ 10. Applying the proportion of callers selecting the contribution option (1.8 %) to $120,000 produces a contribution value of $2,160. Since the DNC had a remaining possible contribution limit of $2,747 (Factual and Legal Analysis for July 27, 1993 RTB at p. 10), the DNC did not exceed the $5,000 limit.

Thus, for the reasons explained above, there was no contribution made at all by the DNC to the Clinton primary campaign. But even if the aborted solicitation feature of the "800" program is regarded as a contribution, the amount of that contribution did not put the DNC in excess of the applicable $5,000 limit. Therefore, the DNC did not violate 2 U.S.C. § 441a(a)(2)(A) and the Commission should find no probable cause to believe that the DNC committed any such violation.

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III. THERE WAS NO VIOLATION OF THE DISCLAIMER REQUIREMENT

The Commission has found probable cause to believe that the DNC violated 2 U.S.C. § 441d(a)(2), which provides that, whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication--

> if paid for by other persons but authorized by a candidate, an authorized political committee of a candidate or its agents, shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee.

In this case, the broadcast clearly stated that it was paid for by the DNC. The violation identified by the Factual and Legal Analysis (at p. 11) is that the broadcast failed to include the additional "required statement" that it was authorized by Gov. Clinton or his committee. (Id.).

But this was a live broadcast in which Gov. Clinton appeared continuously. It is absurd to suppose that any viewer could possibly imagine that Gov. Clinton had not authorized his own live appearance in the broadcast. The manifest purpose of section 441d(a)--that persons receiving a communication know who paid for it and who authorized it--was fully served in this case. To require that the "statement" called for by that section must be in words, rather than communicated by the candidate's own live, simultaneous appearance, would be a singularly ludicrous example of elevating form over substance.

For this reason, the Commission should find no probable cause to believe that the DNC violated 2 U.S.C. § 441d(a).

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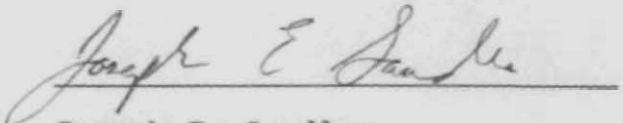
CONCLUSION

For the reasons stated above, the Commission should find no probable cause to believe that the DNC violated 2 U.S.C. § 441a(a)(2)(A) or § 441d(a), and should dismiss the complaint in this matter.

Respectfully submitted,



Joseph E. Sandler
General Counsel
Neil P. Reiff
Deputy General Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003
(202) 863-7110

Attorney for Respondents
Democratic National Committee and
Robert T. Matsui, as Treasurer

Dated: July 7, 1994

9704382847

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and Robert T. Matsui,	)	
as Treasurer	)	

State of New York
County of Nassau

AFFIDAVIT OF PAUL C. STORCH

Paul C. Storch, being first duly sworn, deposes and says:

1. I am president of Storch-Tele-Group Inc., a telemarketing firm headquartered in New York City, New York ("Storch-Tele-Group").

2. Storch-Tele-Group operated an in-bound ("800" number) telephone program in connection with the television broadcast, on June 12, 1992, of a town-hall meeting at which then-Governor Clinton appeared to answer questions from a television audience.

3. During that broadcast, there was displayed periodically on the screen the number "1-800-551-5600." My firm, Storch-Tele-Group, established that "800" number, prepared the recordings and scripts used in answering it and hired and supervised the vendor companies which received and answered the incoming calls.

4. The "800" number program was put into operation just before the broadcast, on June 12, 1993. Attached as Exhibit A hereto is a copy of the script that was used in answering incoming calls. (The handwritten note at the bottom referring to the DNC was added later and was not part of the original script).

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5. As noted in the script, callers were given three options: (i) to receive a copy of Governor Clinton's economic plan; (ii) to "help the Clinton campaign and make a contribution;" or (iii) to leave a message for Governor Clinton.

6. On June 15, 1992, I was contacted by Carol Darr, then General Counsel of the DNC. She indicated that she had been made aware the previous evening that callers to the "800" number were being asked for a contribution to "help the Clinton campaign." She requested that the scripts be changed immediately to reflect that contributions would go to the DNC, rather than to the Clinton campaign.

7. It was not technically possible to make the requested changes in the scripts before the following morning, the morning of June 16, 1992. When Ms. Darr learned that the changes had not been made so as to be effective that morning, she requested that the "800" number be disconnected. The number was disconnected at approximately noon on June 16, 1992 and no further calls to the number were accepted or received after that time.

8. Attached as Exhibits B and C are true copies of correspondence exchanged between Ms. Darr and myself, reflecting the course of events described above.

9. On June 25, 1992, Storch-Tele-Group submitted an invoice to the DNC, for the "800" number operation, in the amount of $146,857.72. There was a dispute between Storch-Tele-Group and the DNC about the amount of that invoice and it was then agreed, as a settlement, that $120,000 would be a fair payment for the services

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provided. On July 8, 1992, Storch-Tele-Group submitted an invoice to the DNC for $120,000. Attached as Exhibit D is a true and correct copy of the invoice submitted to the DNC on July 8, 1992. That invoice was paid in full by the DNC.

10. During the time the "800" number was in operation a total of 115,636 calls were received. My records indicate that, as of the point when 114,914 calls had been received, 2,107 were calls in which the caller selected the option of making a contribution, i.e., in which the caller pressed "2" to "help the Clinton campaign and make a contribution."

11. No money whatsoever was in fact collected from any of the persons who called the "800" number and selected the option to make a contribution, nor was any money collected in any other way in connection with or as a result of the "800" number. In the case of each person who provided his or her credit card number, the credit card transaction was not processed. No caller had his or her credit card charged with any contribution. In the case of each

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person who pledged to make a contribution and was told he or she would be sent an envelope, the envelope was never sent and the person was never billed for or otherwise contacted about the pledge.

Paul C. Storch

Sworn to and subscribed before me
this 6 day of October, 1993.

Mary Beth Lynch

MARY BETH LYNCH
Notary Public, State of New York
No. 5003731
Qualified in Nassau County
Commission Expires November 2, 1994

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EXHIBIT A

9704382285 2

SCRIPT FOR CLINTON FOR PRESIDENT PROGRAM 1.800.551.5600

****JOHN, PLEASE NOTE THAT WE WANT TO TRY AND MAKE THE CALL UNDER 60 SECONDS SO PLEASE RECORD AT A SWIFT BUT UNDERSTANDABLE PACE.******

THANKS FOR CALLING.

17.7 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1. IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2. TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PRESS 3. PLEASE MAKE YOUR SELECTION NOW.

5.6 AT THE TONE PLEASE LEAVE YOUR NAME AND COMPLETE MAILING ADDRESS INCLUDING CITY, STATE AND ZIP CODE.

3.1 PLEASE HOLD ON, YOUR CALL IS BEING TRANSFERRED TO AN OPERATOR. For a con

[redacted]

[redacted]

3.0 AT THE TONE PLEASE LEAVE A SHORT MESSAGE FOR CONT & CLINT

4.7 ALL OPERATORS ARE CURRENTLY BUSY. PLEASE CONTINUE TO HOLD FOR THE NEXT AVAILABLE OPERATOR.

8.0 WE'RE SORRY ALL OPERATORS ARE STILL BUSY TAKING CONTRIBUTIONS FOR THE CLINTON CAMP. [redacted]. PLEASE TRY CALLING BACK LATER. THANK YOU FOR CALLING.

MENU OPTIONS AFTER CALLER GOES THROUGH SCRIPT ONCE

5.4 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1.

6.6 IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2.

5.4 TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PLEASE PRESS 3.

THANKS FOR CALLING THE DEM NAT COM

For: John Lee
from: Felix Cardullo

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Paul Storch	From Clete Baker
Co.	Co. Sound Recorder
Dept.	Phone # 202/455-3000
Fax # 212/274-1971	Fax # 202/455-8266

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TORCH-TELE-GR[illegible], INC.
875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

ATT: SUE [illegible]
402-498-7530

Script for Clinton For President Program 1.800.551.5600

Thanks for calling.
To receive your free copy of Bill Clinton's plan for America's future please press 1. if you agree that it's time for real change, help the Clinton campaign & make a contribution by pressing 2. to leave a message for Governor Clinton press 3. Please make your selection now.

If press 1...At the tone please leave your name & address
If press 2...Please hold on, your call is being transferred
If press 3...Please leave a 15 second message at the tone

Script for live operator

Thank you for calling Clinton For President. May I have your zip...name...How would you like to contribute, Check or credit card.
If by check, You will receive an envelope from the Clinton campaign within a week to 10 days in which to send in your contribution. Thank you for calling.

If by credit card, verify info. Thank you for calling.

9704382284

EXHIBIT B

9704382855

Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
Paid for by the Democratic National Committee Contributions to the Democratic National Committee are not tax deductible.
Printed on Recycled Paper

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EXHIBIT C

9704382857

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:Letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.551.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th.
No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.
At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.
The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs.
The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.
At the tone please leave your name and complete mailing address including city, state & zip code.
Please hold on your call is being transferred to an operator, you will not be disconnected.
At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

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The changes you requested replaced "Governor" or "Bill Clinton" or "Clinton" with "Democratic National Committee".
Also, the live operator greeting changed from "Thank you for calling Clinton for President" to "Thank you for calling The Democratic National Committee".

Please call me to discuss any further questions or comments you may have.

Sincerely,

Paul C. Storch,
President

PCS/zz

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EXHIBIT D

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STORCH-TELE-GROUP, INC.

876 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Project cost
115,636	Callers	$120,000.00
Total Due >>>>

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and Robert T. Matsui,	)	
as Treasurer	)	

RESPONSE TO DOCUMENT REQUEST

Respondent DNC Services Corporation/Democratic National Committee ("DNC") hereby responds to the Commission's Subpoena dated May 23, 1994, as follows:

Document Request No. 1

Provide a copy of all contracts for the services of Storch-Tele-Group, Inc., with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response

There are no responsive documents in the possession, custody or control of the DNC.

Document Request No. 2

Provide a copy of all written and taped instructions, directions, correspondence or any other written records about the services to be rendered by Storch-tele-Group, Inc., with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response

All responsive documents are being produced herewith, except that the DNC objects to production of certain documents on the grounds that such documents are protected by the attorney-client

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privilege and/or work product doctrine. Such documents are identified in the attached log.

Document Request No. 3

Provide copies of all checks for the services rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response

All responsive documents are being produced herewith.

Document Request No. 4

Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response

All responsive documents are being produced herewith.

Document Request No. 5

Furnish the names, addresses, and positions held by anyone who contacted the Paul Storch or Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response

Carol Darr, then General Counsel of the DNC.

Her current address is:

Carol Darr, Deputy General Counsel
U.S. Department of Commerce
14th & Constitution Ave., N.W.
Washington, D.C. 20230

Document Request No. 6

Furnish the names, addresses, and positions held by anyone who contacted the Clinton Committee or any of its representatives with

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regard to the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Also, furnish the name and title of the person contacted from the Clinton Committee.

Response

Carol Darr, then General Counsel of the DNC, whose current address is provided in the response to Document Request No. 5, above.

The person contacted from the Clinton Committee was Anthony S. Harrington, General Counsel. His current address is:

Hogan & Hartson
555 13th Street, N.W.
Washington, D.C. 20004

Document Request No. 7

Furnish the names, addresses and positions held by anyone who contacted the Clinton Committee or any of its representatives with regard to the June 12, 1992, television "town hall meting" of then Governor William J. Clinton. Also, furnish the name and title of the person contacted from the Clinton Committee.

Response

Persons contacting the Clinton Committee or any of its representatives with regard to the television "town hall meeting":

Ronald H. Brown, then Chairman, DNC
Current address: Secretary of Commerce
U.S. Department of Commerce
14th St. & Constitution Ave., N.W.
Washington, D.C. 20230

Joan Baggett, then Chief of Staff, DNC
Current address: Assistant to the President and Director, Office of Political Affairs
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

Carol Darr, then General Counsel, DNC. Her current address is

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provided in the response to Document Request No. 5, above.

Clinton Campaign representatives contacted:

Eli Segal, then Chief of Staff, Clinton for President Committee
Current address: Chief Executive Officer
Corporation for National and Community Service
1100 Vermont Avenue, N.W.
Washington, D.C. 20525

Anthony S. Harington, then General Counsel

Current address provided in response to Document Request No. 6, above.

Mandy Grunwald, then media consultant to Clinton Campaign
Current address: Grunwald, Eskew & Donilon
1250 24th St., N.W.
Wahington, D.C. 20037

Document Request No. 8

Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the DNC and the Clinton Committee with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response

All responsive documents are being produced herewith, except that the DNC objects to production of certain documents on the grounds that such documents are protected by the attorney-client privilege and/or work product doctrine. Such documents are identified in the attached log.

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LOG OF DOCUMENTS WITHHELD

1. Memorandum from Kathy Harmon, director of direct mail division, DNC, to Carol Darr, General Counsel, DNC, dated June 19, 1992 re: call from Paul Storch and need for legal advice. Grounds for objection: Attorney-client privilege.

2. Memorandum from Carol Darr, General Counsel, DNC, to Ron Brown, DNC Chairman, Joan Baggett, DNC Chief of Staff and Ginny Terzano, DNC Communications Director, dated June 18, 1992 re: Talking points on legality of DNC's paying for a general election broadcast for Bill Clinton while Clinton campaign continues to make primary election expenditures. Grounds for objection: Attorney-client privilege and attorney work product.

3. Draft of document described in no. 2, same date. Grounds for objection: attorney-client privilege and attorney work product.

4. Memorandum from Kathy Harmon, director of direct mail division, to Carol Darr, General Counsel, DNC, copy to Rob Stein, Co-Finance Director, DNC, dated June 19, 1992, re: request for legal advice re use of names from telemarketing program. Grounds for objection: Attorney-client privilege.

5. Memorandum from Neil Reiff, compliance director, through Carol Darr, General Counsel, DNC, to Brian Foucart, Deputy Chief of Staff, DNC, dated June 5, 1992 re: disclaimers for 441a(d) media. Grounds for objection: attorney-client privilege.

6. Notes of Carol Darr, General Counsel, DNC, re town meeting broadcast and telemarketing program, undated. Grounds for objection: Attorney work-product.

9704382866

Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

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430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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Printed on Recycled Paper

Democratic National Committee

June 17, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

This letter follows up my letter to you yesterday, and our conversation this afternoon regarding the 800 number that was broadcast during Governor Bill Clinton's "Town Meeting" on June 12, 1992. I am writing to confirm your statement to me yesterday and reiterated this afternoon that, with respect to the callers who offered to make a donation, none of those callers' credit cards have been debited, nor will they be debited.

If you have any questions, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

9704382268

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
Paid for by the Democratic National Committee. Contributions to the Democratic National Committee are not tax deductible.
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FAX SETUP SHEET FAX SETUP SHEET FAX SETUP SHEET FAX SETUP SHEET

STORCH-TELE-GROUP STORCH-TELE-GROUP STORCH-TELE-GROUP STORCH-TELE-GROUP

THIS FAX TRANSMISSION CONTAINS 31 PAGES INCLUDING THIS ONE

DATE 09.28.93

ATTENTION Lyn Utrecht

FROM Paul Storch

FAX 202.728.4044

9704382869

STORCH-TELE-GROUP, INC.
878 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Unit Cost	Extension
115,636	Callers	1.27	$146,857.72

Total Due >>>>

D.N.C. SERVICES CORPORATION
GENERAL FUN[redacted]
430 SOUTH CAPITOL ST[redacted]E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC [redacted] Washington, DC 20006

31215

July 8 19 92

15-120/540 D01

PAY One Hundred and Twenty Thousand Dollars and 00/100 DOLLARS $ 120,000.00

TO THE ORDER OF
Storch-Telle-Group, Inc.
375 West Broadway
New York, NY 10012

⑈031215⑈ ⑆054001204⑆ 262880 5⑈

D.N.C. SERVICES CORPORATION

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.
DELUXE • FORM WVCP-3 V-7

1992 441a(d)
800# Telemarketing

D.N.C. SERVICES CORPORATION

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.
DELUXE • FORM WVCP-3 V-7

1992 441a(d)
800# Telemarketing

9704382287

I, Carol Darr, have received from Janice Brooks, of Storch Tele-Group, Inc., eight diskettes containing names and addresses of the callers from the June 12, 1992 program, having delivered to her a DNC check (# 31215) for $120,000

Carol Darr
General Counsel
DNC
430 So. Capital Street SE
DC

Audio Communications, Inc. Hourly Report. Printed 06-15-1992 at 12:23.12 AM

Application 0003005 on SUNDAY JUNE 14, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	6	2	2
1	2	1	0
2	0	0	0
3	1	1	0
4	2	2	0
5	8	14	6
6	10	13	3
7	15	18	3
8	26	28	2
9	30	56	26
10	70	102	32
11	34	50	16
12	13	31	18
13	21	25	4
14	13	19	6
15	19	17	2
16	20	39	20
17	17	21	5
18	16	36	20
19	8	12	4
20	10	30	20
21	7	10	3
22	6	7	2
23	9	8	9
Totals	365	~~533~~ 541	180
Kill Messages	~~9~~ 13		

9704382287 2

Audio Communications, Inc. Hourly Report. Printed 06-14-1992 at 12:28.10 AM

Application 0005005 on SATURDAY JUNE 13, 1992: Combined System(s)

Hour	Calls	Total Mins	Add'l Mins
0	27	67	40
1	28	29	1
2	11	15	4
3	21	32	11
4	32	59	27
5	67	104	40
6	162	233	71
7	142	174	38
8	162	220	66
9	147	231	84
10	190	266	81
11	105	142	40
12	81	94	18
13	69	85	21
14	61	99	43
15	63	74	16
16	50	91	44
17	33	59	27
18	26	27	2
19	28	54	27
20	17	23	8
21	8	17	9
22	7	10	3
23	7	12	5
Totals	1544	2217	735
Kill Messages	0		
	62		

9704382287 3

Audio Communications, Inc. Hourly Report. Printed 06-13-1992 at 04:49.58 AM

Application 0005003 on FRIDAY JUNE 12, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	0	0	0
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	0	0	0
8	1	0	0
9	1	0	0
10	1	1	0
11	0	0	0
12	1	1	0
13	0	0	0
14	23	26	2
15	749	1164	420
16	96	114	24
17	9379	17926	9199
18	831	1566	1049
19	294	450	168
20	267	443	180
21	3781	4936	1259
22	944	1542	615
23	64	107	43
Totals	16436	28586	12969
Kill Messages	819		

Highest 1314

97043822874

ITE-620 CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/17/92 PAGE 1
BATCH DATE 06/16/92

CLIENT NUMBER - 15273 NAME - STORCK TELE-GROUP

REPORT VERSION NUMBER - 01

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINRS
CLINT	CLINTON CAMPAIGN	177	177	0	0	177	0	0	0	0	0	0	0
CLINTT	CLINTON CAMPAIGN - TRANSCRPTN	8	2	6	0	2	0	0	0	0	0	0	0
	CLIENT TOTALS	185	179	6	0	179	0	0	0	0	0	0	0

9704382875

ITS-B2B CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/16/92 PAGE 1
BATCH DATE 06/15/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - B1

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	-----COUNTERS---- CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	1,964	1,963	0	1	1,963	0	0	0	0	0	0	0
CLINTT	CLINTON CAMPAIGN - TRANSCRPTN	2,886	652	1,434	0	652	0	0	0	0	0	0	0
	CLIENT TOTALS	4,850	2,615	1,434	1	2,615	0	0	0	0	0	0	0

9704382287 6

CLIENT SUMMARY REPORT — CALL INTERACTIVE — RUN DATE 06/15/92 BATCH DATE 06/14/92 — PAGE 1

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP — REPORT VERSION NUMBER - 01

PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP IDS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINRS
CLINTON CAMPAIGN	1,528	1,516	0	4	1,516	0	0	0	0	0	0	0
CLIENT TOTALS	1,528	1,516	0	4	1,516	0	0	0	0	0	0	0

CALL INTERACTIVE

9/04/82 8/7

ITE-B2B CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/14/92 PAGE 1
BATCH DATE 06/13/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - B1

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROD CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	9,953	9,938	0	15	9,938	0	0	0	0	0	0	0
	CLIENT TOTALS	9,953	9,938	0	15	9,938	0	0	0	0	0	0	0

9704382287 8

ITE-928 CLIENT SUMMARY REPORT

CALL INTERACTIVE

RUN DATE 06/13/92 PAGE 1
BATCH DATE 06/12/92

CLIENT NUMBER - 15273 NAME - STORCH TELE-GROUP

REPORT VERSION NUMBER - 01

PROD CODE	PRODUCT DESCRIPTION	TOTAL CALLS	COMPLETED CALLS	PROB CALLS	INCOMPLETE CALLS	ITEM QTY	SHIP TOS	CREDIT CARDS	AUTH CALLS	COUNTERS CNTR1	CNTR2	CNTR3	NO OF WINES
CLINT	CLINTON CAMPAIGN	00,203	00,090	0	113	00,090	0	0	0	0	0	0	0
	CLIENT TOTALS	00,203	00,090	0	113	00,090	0	0	0	0	0	0	0

9704382879

SCRIPT FOR CLINTON FOR PRESIDENT PROGRAM 1.800.551.5600

****JOHN, PLEASE NOTE THAT WE WANT TO TRY AND MAKE THE CALL UNDER 60 SECONDS SO PLEASE RECORD AT A SWIFT BUT UNDERSTANDABLE PACE.******

THANKS FOR CALLING.

7.7 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1. IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2. TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PRESS 3. PLEASE MAKE YOUR SELECTION NOW.

5.6 AT THE TONE PLEASE LEAVE YOUR NAME AND COMPLETE MAILING ADDRESS INCLUDING CITY, STATE AND ZIP CODE.

3.1 PLEASE HOLD ON, YOUR CALL IS BEING TRANSFERRED TO AN OPERATOR. FOR A CONT

[redacted]

3.0 AT THE TONE PLEASE LEAVE A SHORT MESSAGE FOR CONTR 2 CLINT.

4.7 ALL OPERATORS ARE CURRENTLY BUSY. PLEASE CONTINUE TO HOLD FOR THE NEXT AVAILABLE OPERATOR.

8.0 WE'RE SORRY ALL OPERATORS ARE STILL BUSY TAKING CONTRIBUTIONS FOR THE CLINTON CAMPAIGN [redacted]. PLEASE TRY CALLING BACK LATER. THANK YOU FOR CALLING.

MENU OPTIONS AFTER CALLER GOES THROUGH SCRIPT ONCE

5.4 TO RECEIVE YOUR FREE COPY OF BILL CLINTON'S PLAN FOR AMERICA'S FUTURE PLEASE PRESS 1.

6.6 IF YOU AGREE THAT IT'S TIME FOR REAL CHANGE, HELP THE CLINTON CAMPAIGN AND MAKE A CONTRIBUTION BY PRESSING 2.

3.4 TO LEAVE A MESSAGE FOR GOVERNOR CLINTON PLEASE PRESS 3.

THANKS FOR CALLING THE DEM NAT COM

For: John Lee

From: Felix Cardullo

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Paul Storch	From Clete Bakes
Co.	Co. Sound Recorde
Dept.	Phone # 202/455-3000
Fax # 212/274-1971	Fax # 202/455-8261

9704382880

ATT: SUE ABLER
402-498-7530

SEARCH-TELE-GROUP, INC.
375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

Script for Clinton For President Program 1.800.551.5600

Thanks for calling.
To receive your free copy of Bill Clinton's plan for America's future please press 1. if you agree that it's time for real change, help the Clinton campaign & make a contribution by pressing 2. to leave a message for Governor Clinton press 3. Please make your selection now.

If press 1...At the tone please leave your name & address
If press 2...Please hold on, your call is being transferred
If press 3...Please leave a 15 second message at the tone

Script for live operator

Thank you for calling Clinton For President. may I have your zip...name...How would you like to contribute, Check or credit card.
If by check, You will receive an envelope from the Clinton campaign within a week to 10 days in which to send in your contribution. Thank you for calling.

If by credit card, verify info. Thank you for calling.

9704382-8881

STORCH-TELE-GROUP, INC.
575 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

6-16-97

Sue Ober,

As per our conversation please short down the 1-800-551-5600. number.
Effective immediately.

Paul CSK

9704382882

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

This fax transmission contains only this page

June 15, 1992 10:55 AM

Memo From:Paul Storch
To:Eli Segal

Re:Nationwide fundraising/NBC show

As of 11:59 PM yesterday the following $$ have been pledged:

Calls	Contrib-check	Contrib-cr cd	Total Contrib
114.914	80.203	29.368	109.571
per contributor	46.71	71.91	52.01

average of $ .95 per caller-all callers
average of $52.01 per contributing caller

---

average of $ 1.20 per caller yesterday
average call time continues to decrease-cost per call
average contribution continues to increase-revenue per call

only 14% of all operator callers questioned "HELP" yesterday
I'm in touch with David Watkins regarding the credit cards
At this point only you are receiving numbers

I'll have thoughts regarding the integration of the DNC & Clinton 800 numbers on paper for you tomorrow. There are an array of possibilities.

9704382883

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 9, 1992 04:05 PM

Memo From: Paul Storch

To: Eli Segal

RE: NEXT half hour

I will call you at 4:30 PM today & conference in Frank Greer from Pittsburgh.

Following is the operation of the 800 number-we can make any changes.

Segment	Seconds	Message
1	15	Bill Clinton greeting .
2	8	Instructions-leave name, then hold on
3	21	Caller leaves name
4	8	Instructions-leave question/message
5	13	Caller leaves question/message
6	5	Instructions to make contribution
7	time out go to >>>>	Live operator,donate
	--	
	70 seconds total w/o contributing	

The single most important question is whether we ask viewers to call for the plan and leave message, or ask them to call to have their question aired on the next "America Speaks" show. Questions will tend to increase call volume while not necessarily increasing donations, comments/message will generate the more interested caller, hence keeping call volume lower and higher per caller donations. Keep in mind that we want to consider every caller a prospective Clinton voter and try to get him to accept the plan, leave message/question, and contribute.

I have contracted around the country to handle the volume the most cost effective way (a west coast caller will be answered on the west coast). Because of this, I need to get the script to several people and therefore don't have time as a luxury. I need Bill Clinton to record his greeting tomorrow.

9704382284

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 8, 1992 09:30 PM

Memo From: Paul Storch

To: Eli Segal

RE: Friday, June 12th NBC half hour

I spoke with Frank Greer late this afternoon. I have several questions regarding the flow of the call. Currently, the 1-800-221-9735 number is the prototype. I changed the flow as per your request last week.

I'll be in Chicago tomorrow, Tuesday. I'll call from there.

I recommend the use of 1-800-551-5600 as it is easy to handle in the viewer's mind (all numbers with 5's are considered easy). I do need to know about the flow & time limitation, if any, of each call, and the choice of phone number as early as possible in the morning. If you do not like either of the numbers please let me know.

9704382885

Democratic National Committee

June 17, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

This letter follows up my letter to you yesterday, and our conversation this afternoon regarding the 800 number that was broadcast during Governor Bill Clinton's "Town Meeting" on June 12, 1992. I am writing to confirm your statement to me yesterday and reiterated this afternoon that, with respect to the callers who offered to make a donation, none of those callers' credit cards have been debited, nor will they be debited.

If you have any questions, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

9704382286

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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9704382287

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

THIS FAX TRANSMISSION CONTAINS 3 *PAGES INCLUDING THIS ONE*

DATE 6.18.97

ATTENTION CAROL DARR

FAX 202.863.8140

9704382288 8

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:Letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.551.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th.
No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.
At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.
The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs.
The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.
At the tone please leave your name and complete mailing address including city, state & zip code.
Please hold on your call is being transferred to an operator, you will not be disconnected.
At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

9704382289

The changes you requested replaced "Governor" or "Bill Clinton" or "Clinton" with "Democratic National Committee".
Also, the live operator greeting changed from "Thank you for calling Clinton for President" to "Thank you for calling The Democratic National Committee".

Please call me to discuss any further questions or comments you may have.

Sincerely,

Paul C. Storch,
President

PCS/zz

9704382290

STORCH-TELE-GROUP, INC.
375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 10, 1992

Memo From:Paul Storch

Re:Friday, June 12th, NBC half hour-800 #

The services to be provided by Storch-Tele-Group are outlined as follows:

Establish 1.800.551.5600 as phone-in line.
Program to be built to accept voice capture, leave-message option, & live operator option for contribution.
Mailing to be made from data base created by show.
Credit card contributions to be provided for as well.

9704382891

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

INVOICE

Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Date 06.16.92

Att:Carol Darr

Invoice # DNC 06341
Program:1.800.551.5600

Total	Description	Unit Cost	Extension
115,636	Callers	1.27	$146,857.72

Total Due >>>>

Democratic National Committee

FASCIMILE COVER MESSAGE

FAX PHONE #: (202) 863-8140

DATE 6/16/92

TO Paul Storch

COMPANY

FAX NUMBER 212-274-1971

FROM Carol Darr

DEMOCRATIC NATIONAL COMMITTEE
FINANCE DIVISION
430 SOUTH CAPITOL STREET, NW
WASHINGTON, DC 20003

COMMENTS

We are sending a total of 2 pages including this cover sheet. If there are any missing or problem pages, please contact Pat at (202) 863-8192.

9704382289 3

Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

9704382289 4

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TRANSMISSION REPORT

DEMOCRATIC COMMITTEE

DATE	TIME	REMOTE TERMINAL IDENTIFICATION	MODE	TIME	RESULTS	TOTAL PAGES	DEPT. CODE
[illegible]	[illegible]	[illegible]	GOST	01'23"	04	04	

212- 274 - 1919
spoke to
6pm - Paul Storch directly - he
confirmed he received FAX.

Pat Swanson

FEDERAL EXPRESS

USE THIS AIRBILL FOR SHIPMENTS WITHIN THE CONTINENTAL U.S.A., ALASKA AND HAWAII.
USE THE INTERNATIONAL AIR WAYBILL FOR SHIPMENTS TO PUERTO RICO AND ALL NON U.S. LOCATIONS.
QUESTIONS? CALL 800-238-5355 TOLL FREE.

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PACKAGE TRACKING NUMBER
3212265943

1227N 3212265943

SENDER'S COPY

1 Sender's Federal Express Account Number: 1083-6742-3
Date: 6/16/92

From (Your Name) Please Print: Carol Darr, Esq.
Your Phone Number (Very Important): (202) 863-8192
Department/Floor No.:
Company: DEMOCRATIC NATL COMMITTEE
Street Address: 430 S CAPITOL ST SE
City: WASHINGTON State: DC ZIP Required: 20003

2 To (Recipient's Name) Please Print: Paul Storch
Recipient's Phone Number (Very Important): (212) 274-1919
Department/Floor No.:
Company: Search Tele Group Inc.
Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip Codes.): 375 West Broadway
City: New York, State: NY ZIP Required: 10012

YOUR INTERNAL BILLING REFERENCE INFORMATION (First 24 characters will appear on invoice.)

H IF HOLD FOR PICK-UP, Print FEDEX Address Here
Street Address
City State ZIP Required

3 PAYMENT 1 ☐ Bill Sender 2 ☐ Bill Recipient's FedEx Acct. No. 3 ☐ Bill 3rd Party FedEx Acct. No. 4 ☐ Bill Credit Card
5 ☐ Cash/Check Acct./Credit Card No. Exp. Date

4 SERVICES (Check only one box)

Priority Overnight (Delivery by next business morning)†
11 ☐ YOUR PACKAGING
16 ☐ FEDEX LETTER *
12 ☐ FEDEX PAK *
13 ☐ FEDEX BOX
14 ☐ FEDEX TUBE

Standard Overnight (Delivery by next business afternoon)
51 ☐ YOUR PACKAGING
56 ☐ FEDEX LETTER *
52 ☐ FEDEX PAK *
53 ☐ FEDEX BOX
54 ☐ FEDEX TUBE

Economy Two-Day (Priority by second business day)†
30 ☐ ECONOMY

Government Overnight (Reduced or authorized users only)
46 ☐ GOV'T LETTER
41 ☐ GOV'T PACKAGE

Freight Service (for Extra Large or any package over 150 lbs)
70 ☐ OVERNIGHT FREIGHT ** (Confirmed reservation required)
80 ☐ TWO-DAY FREIGHT **

† Delivery commitment may be late in some areas
*Declared Value Limit $100.
**Call for delivery schedule.

5 DELIVERY AND SPECIAL HANDLING (Check services required)
1 ☐ HOLD FOR PICK-UP (Fill in Box H)
2* ☐ DELIVER WEEKDAY
3 DELIVER SATURDAY (Extra charge) (Not available in all locations) ☐
4 ☐ DANGEROUS GOODS (Extra charge)
5 ☐
6 ☐ DRY ICE ____ Lbs.
7 ☐ OTHER SPECIAL SERVICE
8 ☐
9 ☐ SATURDAY PICK-UP (Extra charge)
10 ☐
11 ☐
12 ☐ HOLIDAY DELIVERY (If offered) (Extra charge)

6 PACKAGES | WEIGHT (In Pounds Only) | YOUR DECLARED VALUE (See right)
Total | Total | Total

DIM SHIPMENT (Chargeable Weight): ☐ _____ lbs.
L x W x H = ____

Received At:
1 ☐ Regular Stop 3 ☐ Drop Box
2 ☐ On-Call Stop 4 ☐ B.S.C. 5 ☐ Station

SERVICE CONDITIONS, DECLARED VALUE AND LIMIT OF LIABILITY

Use of this airbill constitutes your agreement to the service conditions in our current Service Guide, available upon request. See back of sender's copy of this airbill for information. Service conditions may vary for Government Overnight Service. See U.S. Government Service Guide for details.

We will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, and document your actual loss for a timely claim. Limitations found in the current Federal Express Service Guide apply. Your right to recover from Federal Express for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the declared value specified in this bill. Recovery cannot exceed actual documented loss. The maximum Declared Value for FedEx Letter and FedEx Pak packages is $100.00.

In the event of untimely delivery, Federal Express will at your request and with some limitations, refund all transportation charges paid. See Service Guide for further information.

Sender authorizes Federal Express to deliver this shipment without obtaining a delivery signature and shall indemnify and hold harmless Federal Express from any claims resulting therefrom.

7 Release Signature:
FedEx Emp. No. Date/Time

Federal Express Use
Base Charges
Declared Value Charge
Other 1
Other 2
Total Charges

REVISION DATE 4/91
PART #137204 NCREC 7/91
FORMAT #082
082
© 1990-91 FEC.
PRINTED IN U.S.A.

Carol — I just received this. More trouble re: 800#. Call me. K

501-399-3748
FAX- 399-3764

TO: Kathy Harmon

FR: Melvin Whitfield

RE: Copy for Direct Mail

DT: 17, June 1992

Please be advised that the enclosed copy for Night of Nomination mailings have been approved by the Clinton campaign.

When these packages are complete, please forward samples to the Clinton campaign headquarters.

You may use the campaign headquarters telephone number to response to calls not answered by your 1-800# program. This number is (501) 372-1992.

Regarding the "tapes" for the telemarketing effort, Eli will provide them to me when they become available.

I am also enclosing samples of the prospect mailings by Strategic Political Response. If you need any additional information or statistics, please let me know.

I am currently working on fulfillment for the 1-800# T.V. spot that ran on Friday, the Convention-gram package due to mail on June 24 by AB Data, and the next pre-convention prospect mailing scheduled for early July.

I don't think I'll be in D.C. this weekend ..... the campaign can't pay for it. Give me a call.

Thanks.

encls:

9704382896

Great American Media, Inc.

TO: Democratic National Committee

FROM: Great American Media, Inc.

DATE: June 17, 1992

RE: Invoice # GAM92-224P

Production

1/2 Hour NBC Network TV Show including studio and crew for live to tape broadcast at WQED Public Television in Pittsburgh for Friday, June 12th National Broadcast.

Audience Recruitment from independent research firm	7,200.00
Bio Roll-in Edit	1,920.73
Lead-in Announcer including P&W	657.34
Moderator including P&W	509.40
Satellite and Transponder including Redundant feed per NBC request	2,930.00
Stage Rental, including 5 cameras, director, 4 wireless mics, 4 mic handlers, technical director, assistant director, camera crew and audio crew, set construction and sign painting, bleacher rental and construction, music transfer, music rights, live closed captioning, craft services and security	32,945.33
Expenses including Airfare, Car Rental	3,001.72
Invoice Total	**49,164.52**

2626 Pennsylvania Avenue, NW • Suite 301 • Washington, DC 20037

9704382897

Democratic National Committee

June 17, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

This letter follows up my letter to you yesterday, and our conversation this afternoon regarding the 800 number that was broadcast during Governor Bill Clinton's "Town Meeting" on June 12, 1992. I am writing to confirm your statement to me yesterday and reiterated this afternoon that, with respect to the callers who offered to make a donation, none of those callers' credit cards have been debited, nor will they be debited.

If you have any questions, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

9704382898

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
Paid for by the Democratic National Committee. Contributions to the Democratic National Committee are not tax deductible.
Printed on Recycled Paper

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

July 1, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Dear Carol,

As per your request, following is a detailed listing of my cost for the Friday, June 12th NBC half hour show. Costs per call are to nearest 3rd decimal place.

Description	Cost	Cost per call
Call time		.42
Transcription		.38
Messages		.11
Total above	$105,250.00	.91
Live Operator	14,070.00	.121
Setup	6,000.00	.052
Studio time	1,600.00	.014
Labels	5,203.00	.045
Software devel	8,255.00	.071
Hardware	5,666.00	.049
FedEx/legal/misc	813.00	.007
Total Cost	$146,857.00	$1.27

If you have any further questions please call.

Regards,

Paul C. Storch,
President

PCS/zz

cc:Lyn Utrecht

9704382899

MEMO TO: ELI SEGAL

FROM: KATHY HARMON

cc: Rob Stein, Carol Darr, Melissa Moss

DATE: JUNE 17, 1992

RE: FOLLOW-UP TO PHONE CONVERSATION

* *

Just wanted to let you know where things stand since our conversation earlier today, particularly the 800# items you passed on to me.

First, regarding the 6/12 town meeting 800#. As I think you were aware when we spoke, our General Council Carol Darr has been in touch with Paul Storch re: the legal problems surrounding the 800# program (vis a vis 441(a)d). She will determine if we can fulfill pledges, process credit cards, acknowledge contributions, etc. If I get her OK, I'll work with Paul Storch or others to get the job done, as you requested. We'll keep you posted.

If it's legal to use the names of 800# respondents who request information, we will consider testing in either a direct mail or phone effort. We'll obtain the names from Paul Storch.

Let me recommend how we might move 800#'s forward for the general election period in a comprehensive, well planned way. To make the most of future opportunities, we should take a more strategic approach.

Before I can move any of this forward, we should establish some core assumptions for what we're trying to achieve. We could begin by convening a combined DNC/campaign meeting to discuss the known media opportunities, our joint goals for persuasion and fund raising, develop a general election 800# strategy, and ensure compliance with 441(a)d. (Carol Darr tells me that 441(a)d does allow us to do 800# fund raising via TV during the general election period -- however, the perception of persuasion versus fund raising is a key issue that needs further attention on a case by case basis.)

Once we've cleared that hurdle, we should hold a message and creative development with people like Miles and Jon Rubin, Rob Stein, Carl Wagner, Stan Greenberg, Frank Greer, Frank O'Brien, Polly Agee, Roger Craver, and other direct response gurus, as well as Mark Steitz, Paul Tully, Rahm, Amy, you, me, and any other appropriate people.

From that point on, my staff and I can oversee implementation and management of the chosen 800# provider. Let me know how you'd like to proceed on this.

9704382290 0

On to the other matters we discussed. Regarding the DSCC's request for Governor Clinton to sign a letter to DSCC donors, as I mentioned by phone, it's not a problem for us, as long as we orchestrate timing carefully. I have asked my staff to notify Phyllis Graham to move ahead and to avoid the month of July, our convention window.

Thanks again for approving DNC use of the campaign's 50,000 non-direct mail names and the anticipated 50,000 new donor names during the general election period. We will integrate them into our schedule in such a way that your debt retirement efforts will not be jeopardized. We'll work through Melvin Whitfield to obtain the donor tape.

We'll speak soon.

97043822901

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

THIS FAX TRANSMISSION CONTAINS 3 PAGES INCLUDING THIS ONE

DATE: 18 9V

ATTENTION CAROL DAIR

FAX 663. 8170

9704382290 2

STORCH-TELE-GROUP, INC.

375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 25, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re: 1.800.551.5600

Dear Carol,

Enclosed please find an invoice for the above referred to phone number. As per your request, no fulfillment has taken place by my company. Therefore, the invoice rendered does not reflect the additional $.18 1/2 for that mailing. As per our conversation of earlier today, I'll speak with you tomorrow.

Regards,

PCS

Paul C. Storch,
President

PCS/zz

9704382290 3

STORCH-TELE-GROUP, INC.

875 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

June 18, 1992
Carol C. Darr, Esq.
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, DC 20003

Re:letters dated 06.16.92 & 06.17.92, copies enclosed

Dear Ms. Darr:

The 1.800.351.5600 number broadcast during Governor Clinton's "town Meeting" on Friday, June 12, 1992 was turned down at approximately noon on June 16th.
No fulfillment materials have been sent out. No written materials will be sent out without prior written consent and payment from the DNC. Also, no credit cards have been, nor will be debited unless I am informed in writing to the contrary.
At approximately 5:15 PM, Monday, June 15th you requested a change in the scripting of both the recorded messages and the live operator. These changes were made to reflect the sponsorship of the 800 number by the DNC.
The only area in which you err is in your reference to my not making the changes in a timely fashion. I informed you that we were in the process of rerecording the segments and we would subsequently have to redigitize the voice. I also informed you that the changes should be effective several hours hence. Under ordinary circumstances a change must be ordered and recorded before 1:00 PM to take effect 12:01 AM the next day. In as much as your request was urgent in nature I pushed the process along and the change was completely effected some twelve hours sooner than ordinarily expected. The network equipment in place to handle the extraordinary call volume I expected and received is very complex and processes must be gone through to insure the integrity of all programs.
The costs involved in making these sudden and emergency changes were quite high.

As per your request following are the various phrases used in the scripting during a call: Thanks for calling. To receive your free copy of Bill Clinton's plan for America's future please press 1. If you agree that it's time for real change, help the Clinton campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3. Please make your selection now.
At the tone please leave your name and complete mailing address including city, state & zip code.
Please hold on your call is being transferred to an operator, you will not be disconnected.
At the tone please leave a short (some equipment said 25 second) message for Governor Clinton.

9704382290 4

The changes you requested replaced "Governor" or "Bill Clinton" or "Clinton" with "Democratic National Committee".
Also, the live operator greeting changed from "Thank you for calling Clinton for President" to "Thank you for calling The Democratic National Committee".

Please call me to discuss any further questions or comments you may have.

Sincerely,

Paul C. Storch,
President

PCS/zz

9704382290 5

FEDERAL EXPRESS

QUES[illegible] CALL 800-238-5355 TOLL FREE

4169309412

AIRBILL PACKAGE TRACKING NUMBER 4169309412

4169309412

RECIPIENT'S COPY

1 Date 6.25.92

From (Your Name) Please Print: PAUL STORCH

Your Phone Number (very important): (212) 274-1717

Department/Floor No.

Company: STORCH TELE GROUP

Street Address: 375 WEST BROADWAY

City: NEW YORK State: NY ZIP Required: 10012

2 To (Recipient's Name) Please Print: CAROL DARR

Recipient's Phone Number (very important): (202) 863-8500

Department/Floor No.

Company: DEMOCRATIC NATIONAL COMMITTEE

Exact Street Address (We Cannot Deliver to P.O. Boxes or P.O. Zip Codes.): 430 SOUTH CAPITOL STREET SE.

City: WASHINGTON State: DC ZIP Required: 20003

YOUR INTERNAL BILLING REFERENCE INFORMATION (optional) (First 24 characters will appear on invoice.)

H IF HOLD FOR PICK-UP, Print FEDEX Address Here

Street Address

City State ZIP Required

3 PAYMENT 1 [X] Bill Sender 2 [ ] Bill Recipient's FedEx Acct. No. 3 [ ] Bill 3rd Party FedEx Acct. No. 4 [ ] Bill Credit Card

[ ] Cash/Check

4 SERVICES (Check only one box)

Priority Overnight (Delivery by next business morning)
- 11 [ ] YOUR PACKAGING
- 16 [X] FEDEX LETTER *
- 12 [ ] FEDEX PAK *
- 13 [ ] FEDEX BOX
- 14 [ ] FEDEX TUBE

Standard Overnight (Delivery by next business afternoon)
- 51 [ ] YOUR PACKAGING
- 56 [ ] FEDEX LETTER *
- 52 [ ] FEDEX PAK *
- 53 [ ] FEDEX BOX
- 54 [ ] FEDEX TUBE

Economy Two-Day (Delivery by second business day)
- 30 [ ] ECONOMY

Government Overnight
- 46 [ ] GOVT LETTER
- 41 [ ] GOVT PACKAGE

Freight Service (for Extra Large or Extra Heavy Shipments)
- 70 [ ] OVERNIGHT FREIGHT ** (Customer Number required)
- 80 [ ] TWO-DAY FREIGHT **

* Delivery Commitment time 10:30 or 12:00 noon
** Declared Value Limit $100
** Call for delivery schedule

5 DELIVERY AND SPECIAL HANDLING (Check services required)
- 1 [ ] HOLD FOR PICK-UP (Fill in Box H)
- 2 [ ] DELIVER WEEKDAY
- 3 DELIVER SATURDAY (Extra charge) [ ] (Not available to all locations)
- 4 [ ] DANGEROUS GOODS (Extra charge)
- 5 [ ]
- 6 [ ] DRY ICE Lbs.
- 7 [ ] OTHER SPECIAL SERVICE
- 8 [ ]
- 9 [ ] SATURDAY PICK-UP (Extra charge)
- 10 [ ]
- 11 [ ]
- 12 [ ] HOLIDAY DELIVERY (If offered) (Extra charge)

6 PACKAGES | WEIGHT in Pounds Only | YOUR DECLARED VALUE

Total Total Total

DIM SHIPMENT (Chargeable Weight)

[ ] lbs.

L x W x H =

Received At:
1 [ ] Regular Stop 3 [ ] Drop Box
2 [ ] On-Call Stop 4 [ ] B.S.C. 5 [ ] Station

Emp. No. Date

[ ] Cash Received
[ ] Return Shipment
[ ] Third Party [ ] Chg. To Del. [ ] Chg. To Hold

Street Address

City State Zip

Received By: X

Date/Time Received FedEx Employee Number

7 Release Signature

FedEx Emp. No. Date/Time

Federal Express Use
Base Charges
Declared Value Charge
Other 1
Other 2
Total Charges

REVISION DATE 6/91
PART #[illegible]
FORMAT #[illegible]

099

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9704382290 6

(No Carbon Paper Required)

Tear Along Perforation

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC National Washington, DC 20006

31215

July 8 19 92

15-120/340 DOI

PAY One Hundred and Twenty Thousand Dollars and 00/100 DOLLARS $ 120,000.00

TO THE ORDER OF
Storch-Telle-Group, Inc.
375 West Broadway
New York, NY 10012

⑈031215⑈ ⑆054001204⑆ 262880 5⑈

D.N.C. SERVICES CORPORATION

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

DELUXE - FORM WVCP-3 V-7

1992 441a(d)
Telemarketing

97043822907

udio Communications, Inc. Hourly Report. Printed 06-15-1992 at 07:38.07 PM

pplication 0005005 on MONDAY JUNE 15, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	5	24	19
1	6	9	3
2	1	1	0
3	0	0	0
4	8	8	0
5	21	24	5
6	33	46	13
7	38	47	12
8	41	56	20
9	38	78	42
10	42	55	14
11	33	52	20
12	35	49	14
13	29	43	14
14	10	17	8
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	342	[illegible]	184
Kill Messages	M		

9704382290 8

Audio Communications, Inc. Hourly Report. Printed 06-17-1992 at 03:07.21 PM

Application 0005003 on TUESDAY JUNE 16, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	1	20	19
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	44	69	29
8	64	106	43
9	0	0	0
10	0	0	0
11	0	0	0
12	0	0	0
13	0	0	0
14	0	0	0
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	109	195	91
Kill Messages	2		

9704382290 9

Audio Communications, Inc. Hourly Report Printed 06-18-1992 at 07:17.38 AM

Application 0006005 on WEDNESDAY JUNE 17, 1992: Combined System(s)

Hour	Calls	Total Mins	Addl Mins
0	0	0	0
1	0	0	0
2	0	0	0
3	0	0	0
4	0	0	0
5	0	0	0
6	0	0	0
7	0	0	0
8	0	0	0
9	0	0	0
10	0	0	0
11	1	1	0
12	0	0	0
13	0	0	0
14	0	0	0
15	0	0	0
16	0	0	0
17	0	0	0
18	0	0	0
19	0	0	0
20	0	0	0
21	0	0	0
22	0	0	0
23	0	0	0
Totals	1	1	0
Kill Messages	0		

15

9704382291 0

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 7, 1994

VIA FACSIMILE AND
REGULAR MAIL

L. Anthony Sutin, Esquire
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Eli J. Segal

Dear Mr. Sutin:

This letter is to remind you of the July 11, 1994 deadline to respond to the Commission's subpoena to your client, Eli J. Segal. This due date was extended in response to your letter dated June 29, 1994, requesting an extension and stating in part that "[a]s of today, Mr. Segal still has not received the original shipment of the May 24 letter which apparently also was sent to the old address." After considering the circumstances presented in your letter, the Office of the General Counsel granted the requested extension.

Since granting the above extension of time, this Office has been advised by Federal Express that Mr. Segal received and signed for the May 24, 1994 letter and original subpoena on May 25, 1994. Under the circumstances we expect that there will be no further delays in your client's response.

If you have any questions, please contact me at (202) 219-3690. During the period from July 11, 1994 to July 19, 1994, please contact Abigail A. Shaine, Assistant General Counsel.

Sincerely,

Phillip L. Wise
Attorney

9704382291 1

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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OFFICE OF GENERAL
COUNSEL

JUL 11 4 12 PM '94

L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-8273

July 11, 1994

BY HAND DELIVERY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

Enclosed please find the Response to Subpoena submitted by Eli J. Segal, a non-party witness in the above-referenced matter.

Please call me if you have any questions.

Sincerely yours,

L. Anthony Sutin

L. Anthony Sutin

Enclosure

9704382291 2

BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	MUR 3546
	)	

RESPONSE TO SUBPOENA

Eli J. Segal, a non-party witness to this proceeding, hereby responds to the Subpoena dated May 23, 1994 issued by the Federal Election Commission in the above-captioned matter:

Responses to Document Requests

1. Provide a copy of all contracts for the services of Storch-Tele-Group, Inc. with regard to the June 12, 1992 television, "town hall meeting" of then Governor William J. Clinton.

Response: Mr. Segal has no documents responsive to this request..

2. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: Mr. Segal has no documents responsive to this request.

3. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: Mr. Segal has no documents responsive to this request.

9704382291 3

4. Provide the names, addresses, and positions held by all persons contacted by you from the DNC and the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response:

From the DNC:

Hon. Ronald Brown
Former Chair
Democratic National Committee

Mr. Brown now serves as the Secretary of the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC.

Carol Darr, Esq.
Former General Counsel
Democratic National Committee

Ms. Darr now serves as Deputy General Counsel of the United States Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC.

Ms. Joan Baggett
Former Political Director
Democratic National Committee

Ms. Baggett now serves as Assistant to the President of the United States, The White House, Washington, DC 20500.

From the Clinton Committee:

In addition to counsel for the Committee:

Mr. David Watkins
Former Deputy Campaign Manager
Clinton for President Committee

Mr. Watkins' current address is 8101 Cantrell Road #1610, Little Rock, AR 72206, but requests that the Commission direct any request to contact him to the undersigned counsel.

97043822914

Hon. Mickey Kantor
Former Chair
Clinton for President Committee

Mr. Kantor now serves as the United States Trade Representative, 600 17th Street, NW, Washington, DC. Mr. Kantor was not involved in discussions relating to the telemarketing aspect of the town hall meeting.

7. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records from the DNC and the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: Mr. Segal has no responsive documents.

Anthony S. Harrington
L. Anthony Sutin
HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
(202) 637-5600

Attorneys for Eli J. Segal

9704382291 5

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-8273

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JUL 11 4 12 PM '94

July 11, 1994

BY HAND DELIVERY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

On behalf of the Clinton for President Committee and Robert A. Farmer, as treasurer, I enclose:

(1) Memorandum of the Clinton for President Committee and Robert A. Farmer, as Treasurer, in Support of Request to Find No Probable Cause; and

(2) Response to Subpoena

Please call me if you have any questions.

Sincerely yours,

L. Anthony Sutin

L. Anthony Sutin

Enclosures

9704382291 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	MUR 3546

MEMORANDUM OF THE CLINTON FOR PRESIDENT COMMITTEE AND ROBERT A. FARMER, AS TREASURER, IN SUPPORT OF REQUEST TO FIND NO PROBABLE CAUSE

Respondents Clinton for President Committee and Robert A. Farmer, as Treasurer (collectively, "CFP"), hereby submit this memorandum in support of their position that there is no probable cause to find that they violated the Federal Election Campaign Act of 1971, as amended ("FECA"). This matter presents the issue of whether a national political party's coordinated party expenditure on behalf of its presidential nominee, made under the authority of 2 U.S.C. § 441a(d) and duly reported as such, may be set aside and deemed an excessive "contribution" to the nominee's primary campaign committee merely because of the erroneous inclusion of a fundraising solicitation, which was promptly remedied and from which no funds were derived. For the reasons set forth below, in light of the facts which present at most a technical violation of FECA, CFP urges that the Commission reaffirm its earlier determination to take no action in this matter.

9704382917

I. FACTUAL BACKGROUND

The Democratic primaries leading to the 1992 presidential election concluded on June 2, 1992. After the final primaries, presidential candidate Bill Clinton had captured the clear majority of the delegates to the national nominating convention and thus was assured of the Democratic nomination. The Clinton campaign and the Democratic National Committee jointly determined that a

nationally broadcast "town meeting" on June 12 would be an appropriate and effective expenditure "in connection with the general election campaign," to be financed as a coordinated party expenditure under 2 U.S.C. § 441a(d).

Following this determination, the DNC paid all of the costs of production, broadcast, travel and associated expenses in connection with the June 12 event. Affidavit of David Watkins ¶ 2 (Exhibit 1). 1/ During the 30-minute broadcast, then-Governor Bill Clinton addressed the national audience and answered questions from viewers.

During the program, an "800" telephone number appeared on the screen periodically. As an ancillary part of the "town hall" meeting, this telemarketing program also was paid for by the DNC. The purpose of this aspect of the program was to afford potential voters the opportunity to obtain more information about Governor Clinton's policies and plans for the nation or to record a personal message for Governor Clinton. See Transcript of Town Hall Meeting (attached to RNC Complaint) at 14.

Callers to the "800" number were also initially offered a third option -- that of making a contribution to the Clinton campaign. The inclusion of this option in the telephone script was an error. The error of the inclusion of this third option was quickly recognized and corrective action was taken promptly. Watkins Affidavit ¶ 3, 4. On June 15, 1992, Carol Darr, then General Counsel of the DNC, requested that the telephone script be modified to state that contributions were to be made to the DNC. On the following morning, because the change in script could not be implemented promptly enough, Ms. Darr requested that the "800" number be

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1/ The original affidavit was submitted to the Commission on June 24, 1992 in support of CLP's Reply to Petition to Deny Certification of Payments to Clinton for President Committee Under the Presidential Primary Matching Payment Account and Presidential Election Campaign Fund.

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disconnected. Letter from Carol C. Darr to Paul Storch, June 16, 1992 (Exhibit 2). CFP did not receive or accept a single contribution in connection with the town hall meeting. Watkins Affidavit ¶ 5.

II. PROCEDURAL HISTORY

A. The Denial of the RNC Petition

On June 23, 1992, the Republican National Committee ("RNC") submitted to the Commission a petition to deny certification of matching fund payments to CFP under the Presidential Primary Matching Payment Account Act and the Presidential Election Campaign Fund Act based on the allegation, inter alia, that CFP impermissibly used general election funds to raise primary election contributions. On June 25, 1992, the Commission denied the RNC petition, noting that the petition did not set forth a cognizable basis for suspending matching fund payments. The Commission noted, however, that the audit or enforcement process could address "whether the Clinton Committee actually received contributions as a result of this event and whether the Clinton Committee submitted these contributions for matching payments as the RNC suggests in its petition." Statement of Reasons at 11 (emphasis added).

B. The Initial Decision to Take No Action on RNC Complaint

On the same day as it submitted its Petition, the RNC also filed a complaint making essentially the same allegations. On July 29, 1992, CFP submitted its response to the complaint, demonstrating again that payment of the expenses associated with the town hall meeting by the DNC was fully consistent with Commission precedent, that the "800" number's contribution option was an error, promptly corrected when discovered, and that CFP did not accept a single contribution from the event. Accordingly, on July 27, 1993, the Commission

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"decided to take no action at this time" with respect to the allegations of the complaint against CFP.

C. The Commission's Reversal of Position Based Upon Its Unauthorized "Preliminary Investigation"

On information and belief, at or about the same time, the Commission found reason to believe that co-respondent DNC had violated FECA and commenced an investigation of the allegations of the complaint. On information and belief, subpoenas were issued by the Commission pursuant to that investigation prior to October 22, 1993.

On October 22, 1993, the United States Court of Appeals for the District of Columbia 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), cert. granted, 62 U.S.L.W. 3835 (U.S. June 20, 1994) ("the NRA decision").

Since the date of the NRA decision, the Commission has taken various actions allegedly seeking to remedy the constitutional defects found by the court. Among those actions is the revoting of prior decisions involving open enforcement matters. On May 10, 1994, contrary to the earlier decision to "take no action at this time," the Commission voted to find reason to believe that CFP violated FECA. In the Factual and Legal Analysis accompanying notification of this decision, which the transmittal letter states "formed a basis for the Commission's finding," there is a recitation of "additional evidence" that was obtained "during the preliminary investigation into this matter." Factual and Legal Analysis at 5-6. The "Analysis" section of the Factual and Legal Analysis also premises its conclusions on "the information obtained." Id. at 6.

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The allegedly new "evidence" identified was:

> "Eli Segal, the then Chief of Staff of Clinton for President, was personally involved in instructing what messages were to be received by callers to the above-mentioned "800" number;"
>
> Evidence that "appeared to indicated [sic] one of the purposes of the town hall meeting was to solicit contributions for the Clinton Committee;"
>
> "[T]he telemarketing agreement to render "800" number services to the town hall meeting had been with the Clinton Committee. Nevertheless, even though the vendor had not previously dealt with the DNC with regard to this town hall meeting, on June 15, 1992, three days after the program had run, the DNC contacted him and said the DNC was going to pay him."
>
> "[T]he message requesting a contribution to the Clinton Committee was not a mistake by the vendor."

Factual and Legal Analysis at 5-6.

On June 3, 1994, CFP filed a motion to quash the subpoena issued by the Commission in this matter on the ground that the "additional evidence" and "information obtained" during the "preliminary investigation," all of which "formed a basis for the Commission's finding," was a product of the investigation prompted by and authorized pursuant to the Commission's finding of reason to believe that co-respondent DNC violated FECA. Under the NRA decision, that finding and the ensuing investigation were constitutionally invalid. Absent a valid "reason to believe" finding, the Commission lacks statutory authority to conduct an investigation. 2 U.S.C. § 437g(a)(2); Conference Report, Federal Election Campaign

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Act Amendments of 1976, H. Rep. 94-1057 (94th Cong., 2d Sess.) at 49-50. The Commission denied this motion on June 14, 1994. 2/

III. ARGUMENT

A. The Reason to Believe Finding Is the Product of an Unauthorized Investigation

For the reasons stated in CFP's Motion to Quash, the Commission lacked a permissible basis on which to ground the reason to believe finding to which CFP now is asked to respond. CFP continues to urge this contention and incorporates by reference the arguments contained in that motion.

B. The Town Hall Meeting Was A Proper Coordinated General Election Expenditure by the DNC

The right to make § 441a(d) expenditures connected with a general election is an exception for political party committees permitting them to engage in certain activity that would otherwise result in a contribution to the candidate with respect to whom the expenditures were made. Advisory Opinion No. 1980-119 (Oct. 24, 1980), citing H.R. Rep. No. 94-1057, 94th Cong., 2d Sess. 59 (1976). In Advisory Opinion No. 1984-15 (May 31, 1984), the Commission stated that "[w]here a candidate appears assured of a party's presidential nomination, the general election campaign, at least from the political party's perspective, may begin prior to the formal nomination. Thus, national party expenditures in connection with that campaign are possible." In determining whether an expenditure is "in connection with the general election campaign," that Opinion stated that the test is whether

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2/ CFP noted in the motion to quash that the "additional evidence" cited by the Commission does not lend a factual or legal justification to reverse the Commission's decision "to take no action at this time." The irrelevance of this evidence is demonstrated in this Memorandum at § III.C, infra.

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the expenditures "are made for the purpose of influencing the outcome of the general election for President of the United States" and "relate primarily, if not solely, to the office of President of the United States and seek to influence a voter's choice between" the two party's candidates. Id.

The Factual and Legal Analysis recognizes this clear precedent:

> Based on the Commission's reasoning in AO 84-15, the DNC could make general election coordinated expenditures on behalf of then Governor Clinton and the Clinton Committee prior to the Democratic Convention. Such expenditures are chargeable to the DNC's 2 U.S.C. § 441a(d) limitation for president for the 1992 general election.

Factual and Legal Analysis at 6. Moreover, based on the amount of the asserted potential violation, the Commission appears to recognize that the DNC's payment for the production and broadcast of the June 12 town hall meeting itself, as well as associated travel and subsistence expenses, were permissible § 441a(d) expenditures. Id. at 7.

Although § 441a(d) makes clear that the coordinated expenditure is the DNC's expenditure to make or not to make, Advisory Opinion No. 1984-15 further confirms the obvious proposition that, in making the expenditure, "consultation or coordination with the candidate is permissible." See also Advisory Opinion No. 1975-120 (Jan. 26, 1976) (the party committee, "although it may consult with the candidate as to how to expend the funds, has control over how the monies are used") (emphasis added). Indeed, party committees "are deemed incapable of making 'independent expenditures.'" Advisory Opinion No. 1980-119, citing 11 CFR 110.7(b)(4).

Despite its acknowledgment that the town hall meeting itself was a legitimate general election expenditure, the General Counsel has concluded that the concurrent "800" number telemarketing program was not a coordinated expenditure

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but was attributable entirely to the primary campaign. This is demonstrably false. The "800" number was an inextricably intertwined component of the town hall meeting broadcast, serving as a mechanism to disseminate additional information about the putative Democratic nominee to those watching the television broadcast. The *only* access that the public had to the number was through the broadcast. Indeed, during the broadcast, candidate Clinton and the moderator both referred to the telephone number as the mechanism by which additional questions could be posed and answered. Transcript of Town Hall Meeting (attached to RNC Complaint) at 14. 3/

The General Counsel has improperly chosen to cleave the town hall program in two, because of the erroneously included solicitation referring to CFP in the telemarketing script. For several reasons, however, the inclusion of the solicitation does not disqualify the telemarketing program from being a valid § 441a(d) expenditure and render it a primary campaign expenditure.

First, it is important to emphasize that CFP from the outset has candidly admitted that inclusion of the solicitation as worded was an error. See Reply to RNC Petition at 3-4; Response to RNC Complaint at 4. The DNC presumably has done likewise. The General Counsel seems intent on affixing blame or fault for the error, but CFP respectfully submits that responsibility for the erroneous inclusion of the solicitation option in the script has no legal significance under FECA. What is meaningful is that when the significance of the error was realized, immediate remedial action was taken by the DNC. It is undisputed that immediate attempts were made to clarify the telephone script to reflect that contributions would go to the DNC and, when the script modifications could not be

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3/ Significantly, neither the moderator nor the candidate referred to the telephone number as the route to financially supporting the campaign.

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implemented swiftly enough, the "800" number was shut down. CFP did not accept a single contribution solicited from the telemarketing program. Watkins Affidavit ¶ 5. It would be a most unfortunate enforcement policy to waste Commission resources on pursuing technical violations, especially where, as here, the DNC and the campaign have acted to correct the potential violation as soon as it is recognized and decline to allow it have any impact on the financing of the election campaign.

In light of these facts -- none of which is controverted by any of the RNC filings or by the fruits of the Commission's unlawful "preliminary investigation," the only conceivable violation apparent is the technical and *de minimus* one of a short-lived and erroneously-included solicitation in a § 441a(d)-financed telemarketing program from which no contributions were accepted. Under principles of common sense and the Commission's articulated enforcement priorities, 4/ the only reasonable treatment of such a technical violation promptly corrected with no resulting effect on the electoral process is the one voted by the Commission in this very matter in 1993 -- to take no action.

Second, under the teachings of Advisory Opinion No. 1984-15 and the language of FECA, the validity of the DNC payment for the telemarketing program -- and indeed of any § 441a(d) expenditure -- is measured by the purpose of the national party committee in making the expenditure. The contemporaneous documents -- written days before any RNC protest -- confirm that the DNC exercised control over the funding and that the DNC's purpose in making the expenditure was most decidedly not to raise funds for CFP. The tone and content of

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4/ "FEC Strengthens Enforcement by Implementing Prioritization of Cases," FEC Release (Dec. 13, 1993) at 2 (prioritization factors to include, inter alia, "the presence of knowing and willful intent; the apparent impact the alleged violation had on the election; the amount of money involved"); see also Advisory Opinion No. 1982-50 (July 15, 1982) (considering minimal impact of technical violation).

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the June 16, 1992 letter from Carol Darr, former DNC general counsel, to Paul Storch, of Storch Tele-Group, Inc., amply demonstrate this. In this letter, Ms. Darr recounts her repeated demands to Mr. Storch that the solicitation message be changed or disconnected entirely. If the telemarketing program was in fact being conducted on behalf of CFP, Ms. Darr would have no reason to write such letters and Mr. Storch would have no reason to heed them.

Third, while recognizing that the solicitation as worded should not have been a part of the telephone script, its inclusion does not automatically kick the "800" number program out of the general election funding regime. While the Presidential Election Campaign Fund Act, with certain exceptions not applicable here, does not permit publicly funded presidential campaigns to accept private contributions, the statute and regulations do not declare mere solicitations to be unlawful. Title 26, § 9003(b)(2) provides that major party candidates, as a condition for eligibility for public funds, must certify that:

> no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any of their authorized committees.

26 U.S.C. § 9003(b)(2) (emphasis added); see also 11 CFR § 9003.2(a)(2). Thus, while accepting contributions from the "800" number would have been improper in connection with a § 441a(d)-funded program, the statute does not declare unlawful a solicitation that does not result in the acceptance of a contribution. 5/

5/ In denying the related RNC petition, the Commission noted that the audit or enforcement process could address "whether the Clinton Committee actually

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C. The "Additional Evidence" Is Immaterial

None of the "additional evidence" purportedly adduced by the General Counsel alters any of the analysis or casts any doubt on CFP's position in this matter.

First, CFP does not dispute that Mr. Segal consulted with Mr. Storch prior to the town hall meeting concerning the content of the telemarketing segment. Unlike the law governing independent expenditures which requires the absence of "cooperation or consultation" with a candidate, 2 U.S.C. § 431(17), Advisory Opinion No. 1984-15 explicitly approves "consultation or coordination with the candidate." *No* statute, regulation or Commission precedent places any limitation on the degree of candidate consultation that can precede a coordinated expenditure. Accordingly, Mr. Segal's consultations with Mr. Storch are entirely appropriate and in no way taint the coordinated expenditure.

Second, the tentative assertion that evidence "appeared to indicate" that one of the purposes of the town hall meeting was to solicit funds for CFP is too vague for meaningful response. As noted above, the *only* purpose relevant to determining the permissibility of a coordinated expenditure is that of the party making the expenditure, here the DNC. The contemporaneous documentation rebuts beyond dispute that raising funds for CFP was not the DNC's purpose.

Third, the General Counsel asserts that the telemarketing agreement had been with CFP. CFP does not possess, and indeed is not aware of the existence of, any contract between CFP and Storch Tele-Group concerning the town hall meeting. See Response to Subpoena. Even if there were such a contract, again the

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received contributions as a result of this event and whether the Clinton Committee submitted these contributions for matching payments as the RNC suggests in its petition." Statement of Reasons at 11. CFP agrees that the acceptance of contributions is the true issue here and it is undisputed that none was accepted.

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propriety of making a § 441a(d) expenditure would not be barred. Storch Tele-Group, Inc. was paid by the DNC. The validity of the § 441a(d) expenditure must rise and fall on its own merits, not on whether the same expenditure could have been made by a principal campaign committee. 6/

Finally, significance is attached to the fact that the error "was not a mistake by the vendor," which is asserted to "contradict[ ] the written response of the Clinton Committee." Factual and Legal Analysis at 6. CFP's response did not state that the solicitation was "a mistake by the vendor;" the response merely stated that it "was in error." CFP Response at 4. The "error" was including the fundraising option. As the Factual and Legal Analysis observes, Mr. Segal did see the proposed script and did not immediately grasp the legal issues raised by the § 441a(d) context. Whether that makes it CFP's error, the vendor's error, the DNC's error or some combination is purely semantic and of no legal consequence. The fact of dispositive legal significance is that corrective action was taken as soon as the error was appreciated and no contributions were accepted or received by CFP (or the DNC) as a result of calls to that "800" number.

D. Even if Payment for the Telemarketing Program Is Deemed Not to Be a Coordinated Expenditure, It Was Not an Excessive Contribution to CFP

As demonstrated above, there is no legal or factual justification to declare that the DNC could not make a coordinated expenditure in the manner in which it did. Even if the coordinated expenditure could be set aside and deemed a payment on behalf of CFP by the DNC, no "contribution" was made to CFP or, at

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6/ Indeed, there is no mention in Advisory Opinion No. 1984-15 of who arranged for or produced the television advertisements at issue there. Presumably the absence of any such reference means that the Commission did not perceive these facts to have any legal significance.

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most, a contribution was made within the DNC's $5,000 contribution limit under 2 U.S.C. § 441a(a)(2)(A).

A "contribution" is "any gift, subscription, loan, advance, or deposit of money, or anything of value, made by any person[.]" 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). By allegedly receiving from the DNC a terminated fundraising effort which yielded not a single collectible contribution, and indeed may have perplexed would-be contributors whose attempted contribution was never followed up, CFP did not receive "anything of value" from the DNC. This situation is perhaps analogous to a contributor who writes a check to a candidate in an excessive amount, realizes the error and retrieves the check from the mailbox prior to delivery to the candidate. No excessive contribution has been made.

At most, any conceivable contribution by the DNC is well below the applicable $5,000 contribution limit. The General Counsel has identified only one aspect of the "800" number -- the fundraising solicitation -- that is contended to be inconsistent with a coordinated expenditure. The remaining portions of the telephone script -- offering copies of the Clinton economic plan and taking recorded messages for the nominee-to-be -- were fully consistent with a general election expenditure. Accordingly, if the coordinated expenditure is concluded to be invalid, the Commission must determine the portion of the expenditure attributable to the allegedly improper solicitation.

CFP submits that, applying such an analysis, the amount of any contribution by the DNC would be determined by dividing the number of callers to the "800" number who requested the contribution option by the total number of callers and multiplying the resulting fraction by $120,000, the total payment to the

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vendor. 7/ The result of this calculation, certainly well below $5,000, is the amount of expense paid by the DNC attributable to the terminated fundraising effort.

Finally, a violation of 2 U.S.C. § 441a(f) requires that a committee receiving a prohibited contribution do so "knowingly." It was CFP's understanding that payment for the telemarketing program was being made by the DNC as a coordinated expenditure and reported as such to the Commission. Although the Commission now may disagree with the characterization of the expenditure, the legal context from which reason to believe now has been found is far from clear and there is no basis to conclude that any such contribution was received "knowingly" by CFP.

III. CONCLUSION

For the reasons stated above, the DNC made a proper coordinated expenditure on behalf of candidate Bill Clinton. The erroneous inclusion of a fundraising solicitation in the telephone script of the "800" number accompanying the town hall meeting, from which no contributions were accepted by CFP, does not render the coordinated expenditure improper. Even if the coordinated expenditure were set aside, no "contribution" to CFP would result and certainly no excessive contribution can be found. Both on the merits and as a matter of appropriate enforcement priorities, the Commission should find no probable cause to believe

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7/ It is CFP's understanding that Storch Tele-Group has these statistics available and that they demonstrate that the number of callers seeking to make a contribution was a very small percentage of the total callers.

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that CFP violated 2 U.S.C. § 441a(f) and should dismiss the complaint in this matter.

Respectfully submitted,

Date: July 11, 1994

Anthony S. Harrington
L. Anthony Sutin
HOGAN & HARTSON L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, DC 20004-1109
(202) 637-5600

Attorneys for Clinton for President Committee and Robert A. Farmer, as Treasurer

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AFFIDAVIT OF DAVID WATKINS

I, David Watkins of Little Rock, Arkansas, am the Vice President of the Clinton for President Committee and Deputy Campaign Manager of the Clinton campaign. Among my responsibilities are the day-to-day supervision of the finances of the campaign.

I do hereby affirm and swear to the following:

1. I am personally familiar with the June 12, 1992 Town Hall meeting on which Bill Clinton appeared on nationwide network television to answer questions posed to him by a television audience for a 30 minute period.

2. All of the expenditures related to this event are being paid for by the Democratic National Committee and no expenditures were made in connection with the event by the Clinton campaign.

3. I am aware that during the aforementioned program, a 1-800 number was presented and that persons calling such number were offered the opportunity to request a copy of Governor Clinton's economic plan, or to leave a recorded message for Governor Clinton, or to make a contribution. For persons interested in making a contribution, the name and address of the caller and the amount pledged was taken by a live operator.

4. Immediately upon learning of the problematic solicitation contained in the 800 number text, corrective

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action was taken to eliminate any inadvertent ambiguities in the text of the message to make clear that the request for contributions was being made on behalf of the Democratic National Committee and any contribution made in response thereto would be received by it.

5. The Clinton for President Committee has not and will not accept any contributions resulting from this event. As no contributions will be accepted from this event, no contributions from this event will be included in any request for Presidential Primary Matching Funds pursuant to 26 U.S.C. § 9031 and 11 C.F.R. 9031 et. seq.

The above statements are true and correct to the best of my knowledge and belief.

David Watkins

David Watkins

STATE OF ARKANSAS)
) ss
COUNTY OF PULASKI)

SUBSCRIBED AND SWORN to before me, a notary public, this 23rd day of June, 1992.

Monica C Breckler
Notary Public 6/23/92

My Commission Expires:

2/13/2001

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Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

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BEFORE THE
FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	MUR 3546

RESPONSE TO SUBPOENA

The Clinton for President Committee and Robert A. Farmer, as treasurer, (collectively, "CFP"), hereby respond to the Subpoena dated May 24, 1994 issued by the Federal Election Commission in the above-captioned matter:

General Objections

1. CFP objects to the subpoena on the ground that the reason to believe finding on which it is based is invalid. The basis of this objection is fully set forth in the Motion to Quash filed by CFP on June 2, 1994. The Commission has denied this motion. By making this response at this time, CFP reserves its right to assert the invalidity of the reason to believe finding and/or the subpoena at any subsequent stage of these or related proceedings.

2. CFP objects to the subpoena to the extent that it calls for the production of documents protected by the attorney-client privilege. CFP is submitting a privilege log identifying such documents.

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Responses to Document Requests

1. Provide a copy of all contracts for the services of Storch-Tele-Group, Inc. with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: CFP has no documents responsive to this request.

2. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: CFP has no documents responsive to this request.

3. Provide copies of all checks for the services rendered by Storch-Tele-Group, Inc. with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: CFP has no documents responsive to this request. As a § 441a(d) expenditure, the payment in question was made by the Democratic National Committee.

4. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Storch-Tele-Group, Inc. in planning the taped statements heard by anyone calling the "800 number" displayed during the broadcast of the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: CFP has no documents responsive to this request.

5. Provide the names, addresses, and positions held by anyone who contacted Paul Storch or Storch-Tele-Group, Inc. with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

Response: CFP objects to this request on the grounds that it is not a "document request" and that it is overbroad to the extent that it seeks information concerning contacts made by persons other than those acting on behalf of CFP. Subject to and without waiving this objection, CFP responds as follows: The

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following individuals had contact with Paul Storch and/or Storch Tele-Group on behalf of CFP:

Mr. Eli J. Segal
Former Chief of Staff
Clinton for President Committee

Mr. Segal currently is Chief Executive Officer of the Corporation for National Service, 1100 Vermont Avenue, Tenth Floor, Washington, DC 20525.

Mr. David Watkins
Former Deputy Campaign Manager
Clinton for President Committee

CFP requests that the Commission direct any request to contact Messrs. Segal or Watkins to the undersigned counsel.

6. Provide the names, addresses, and positions held by anyone from the DNC who contacted the Clinton Committee with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: CFP objects to this request on the ground that it is not a "document request." Subject to and without waiving this objection, CFP responds as follows:

Carol C. Darr, Esq.
Former General Counsel
Democratic National Committee

Ms. Darr is now Deputy General Counsel of the United States Department of Commerce, 14th Street and Constitution Avenues, NW, Washington DC. It is the Clinton Committee's understanding that the Democratic National Committee and Ms. Darr prefer that the Commission direct any request to contact her to the Office of the General Counsel of the Democratic National Committee.

Although CFP is unable to determine at this point whether the following individuals "contacted" CFP, CFP believes that they may have been

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involved in discussions concerning the general subject of the town hall meeting, but not the "800" number aspect of the program:

Hon. Ronald Brown
Former Chair
Democratic National Committee

Mr. Brown now serves as the Secretary of the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC.

Ms. Joan Baggett
Former Chief of Staff
Democratic National Committee

Ms. Baggett now serves as Assistant to the President of the United States, The White House, Washington, DC 20500.

Mr. Rob Stein
Former Finance Director
Democratic National Committee

Mr. Stein now serves as an official of the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC.

7. Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the Clinton Committee and the DNC with regard to the June 12, 1992 television "town hall meeting" of then Governor William J. Clinton.

RESPONSE: CFP objects to this request on the ground that it is unintelligible as written. CFP is responding on the assumption that the request should be read as if there were a comma between the word "conversations" and the word "between." Subject to this interpretation, CFP responds as follows: The following responsive, non-privileged documents are being produced:

1. Talking Points for 6/12/92 Clinton Townhall Meeting (Draft 6/12/92);

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2. Facsimile cover sheet, dated 6/16/92 from Carol Darr to Tony Harrington and Christine Varney, with attached copy of letter dated 6/16/92 from Carol Darr to Paul Storch;

3. Copy of 6/19/92 Republican National Committee Petition to deny certification to the Clinton for President Committee for eligibility to receive payments from the Presidential Primary Matching Payment Account and Presidential Election Campaign Fund, transmitted to CFP from DNC on 6/19/92

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Attorneys for Respondents
Clinton for President Committee and
Robert A. Farmer, as treasurer

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PRIVILEGE LOG

Clinton for President Committee
MUR 3546

Date of Document	Author	Recipient(s)	Subject	Privilege
July 29, 1992	Eric London, Esq.	Anthony S. Harrington, Esq.	Response to complaint by RNC	Attorney-client/common interest Attorney work-product/common interest
June 18, 1992	Carol Darr, Esq.	Ron Brown, Joan Baggett, Ginny Terzano cc: Eli Segal, Tony Harrington, Esq., Christine Varney, Esq., Patty Reilly, Esq.	Talking Points on Legality of DNC's Paying for a General Election Broadcast for Bill Clinton while Clinton Campaign Continues to Make Primary Election Expenditures	Attorney-client/common interest Attorney work-product/common interest

DRAFT 6/12/92

TALKING POINTS FOR 6/12/92 CLINTON TOWNHALL MEETING

- Tonight's townhall meeting presents an opportunity for Governor Clinton to talk to the American people about his agenda for the Fall general election and the future of the country. This is a historic opportunity that comes at a time earlier than has ever been possible in the nominating process.

- The Democratic National Committee has paid for the cost of this townhall under its authority to make general election expenditures.

- It is not unusual for the National Party to make these expenditures prior to the convention. Indeed, in 1984, the National Party made general expenditures on behalf of the Mondale campaign.

- Governor Clinton's top priority during the primary season was to win the Party's nomination. The top priority now is to put Governor Clinton and the Party's message across to the American public. The Democratic National Committee through its past 3 1/2 year aggressive fundraising strategy has the resources available to get this message out now.

- The cost of the show was under $400,000.00.

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Democratic National Committee

FASCIMILE COVER MESSAGE

FAX PHONE #: (202) 863-8140

DATE 6/16/92

TO Christine Varney / Tony Harrington

COMPANY

FAX NUMBER 637-5910

FROM Carol Darr

DEMOCRATIC NATIONAL COMMITTEE
FINANCE DIVISION
430 SOUTH CAPITOL STREET, NW
WASHINGTON, DC 20003

COMMENTS

We are sending a total of 2 pages including this cover sheet. If there are any missing or problem pages, please contact Pat at (202) 863-8192.

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
Paid for by the Democratic National Committee. Contributions to the Democratic National Committee are not tax deductible.
Printed on Recycled Paper

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Democratic National Committee

June 16, 1992

BY FAX

Mr. Paul Storch
Storch Tele Group, Inc.
375 West Broadway
New York, NY 10012

Dear Mr. Storch:

I am writing to confirm that the 800 number (1-800-551-5600) that was broadcast during the DNC-sponsored broadcast of Governor Bill Clinton's "Town Meeting" on Friday, June 12, 1992 was shut off as of approximately noon today. This action was taken in response to a demand made at approximately 10:00 a.m. this morning, followed up, as you know, by an additional demand by me at approximately 10:45 a.m.

This letter also confirms your statement to me this afternoon that "absolutely, positively" no written "fulfillment" materials have been sent out yet, and further confirms that no written materials of any kind related to the 800 number will be distributed without the prior written consent of the DNC Legal Office.

This letter also confirms, for your records and mine, that a demand was made by me at approximately 5:15 p.m. yesterday evening to change the messages, both recorded and live, that were delivered to callers to reflect that the 800 number was sponsored by the DNC, and that all donations would be contributed to the DNC. You called me back at approximately 5:45 p.m. to tell me that the recorded message was currently being re-recorded and "re-digitalized", that the live operators were being issued new instructions, and that you expected that all changes would be operational within several hours. When I called the number at approximately 9:50 a.m. this morning, I got the old message. Given that the changes were not made in a timely fashion, you were requested to disconnect the 800 number.

As I stated today and yesterday, the demand for changes was a matter of utmost urgency. If this letter is not consistent with your recollection, or if you have any questions whatever regarding this matter, please call me immediately.

Sincerely,

Carol Darr

Carol C. Darr, Esq.
General Counsel

430 South Capitol Street, S.E. Washington, D.C. 20003 (202) 863-8000
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Republican
National
Committee

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June 19, 1992

The Honorable Joan Aikens
Chairman
Federal Election Commission
999 E Street, N. W.
Washington, D.C. 20463

Re: Petition to deny certification to the Clinton for President Committee for eligibility to receive payments from the Presidential Primary Matching Payment Account and Presidential Election Campaign Fund.

Dear Madame Chairman:

This petition is filed with the Federal Election Commission ("FEC") challenging the eligibility of the Clinton for President Committee ("Clinton Committee") to receive payment from the Presidential Primary Matching Payment Account, 26 U.S.C. §9033, and the Presidential Election Campaign Fund, 26 U.S.C. §9006(a) of the Presidential Election Campaign Fund Act, 26 U.S.C. §§9001-9013, 9031-9042. As demonstrated below, the Clinton campaign has illegally used general election funds to raise primary election funds from private sources and the United States Treasury and has commingled general election and primary election funds. Accordingly, the Commission should deny certification of eligibility for any additional taxpayer funds to the Clinton campaign.

Facts

The Clinton Committee and the Democratic National Committee (DNC) have violated the law through an illegal $395,000 contribution designed to salvage Clinton's anemic primary fundraising effort.

Under the guise of claiming a general election "coordinated expenditure" by the DNC, Clinton has tried to forge a loophole to subsidize his primary campaign in violation of the Federal Election Campaign Act ("Act") and the FEC's Advisory Opinions ("AO"). In fact, this illegal contribution is being used to claim additional taxpayer funding from the United States Treasury that Clinton would be unable to obtain without this illegal contribution. The funds are further being used to allow payments of salaries to his employees for the primary campaign before the Democratic National Convention.

The violation arises because of the Clinton campaign's failure to convince donors to contribute to his campaign, thus causing severe deficits to develop in his primary account. On its May 1992 report, the Clinton campaign showed debts of $2,764,981.40 and cash-on-hand of $258,215.46. Press reports also indicate that Clinton's campaign has been unable to meet payroll. With the Clinton campaign's flawed operation bringing on a vicious cycle of inability to gain media attention, inability to purchase media time on its own and, consequently, inability to raise needed resources, the primary turned to an untapped pot of money -- the DNC's coordinated expenditure monies, 2 U.S.C. §441a(d).

Approximately $400,000 from these monies, which must be used "in connection with the general election campaign," *id.*, were spent on a June 12, 1992 television "town meeting." The town meeting featured Clinton answering questions on a variety of issues. The November general election was never referred to. *See transcript attached*. In addition, an "800" number was flashed repeatedly on the screen during the broadcast. Among the options given callers to the "800" number was contributing to Clinton's primary campaign. *See* Affidavit of John Wehrung, attached as Exhibit C of the accompanying Complaint.

Discussion

The FEC has ruled that using coordinated expenditures on behalf of a presidential candidate before a party's nominating convention is permissible as long as they are made "in connection with the general election campaign." 2 U.S.C. §441a(d). In determining whether such expenditures are allowable, "the proper analytical focus is whether the expenditures ... are made for the purpose of influencing the outcome of the general election for President of the United States." FEC AO 1984-15 (emphasis added).

By soliciting primary contributions on a broadcast paid for with general election funds, the Clinton campaign and the DNC have blatantly violated the letter and spirit of the Act and the FEC's AOs. Since the coordinated expenditures were used to solicit contributions, by definition, the funds were spent in the primary election. A presidential campaign may not solicit any contributions in the general election. 26 U.S.C. §9003(b)(2). A presidential campaign may solicit private contributions only in

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the primary campaign, and may receive matching funds from the U.S. Treasury for contributions under $250. 26 U.S.C. §9034.

Bill Clinton cannot have it both ways. The limit on a national party's contribution to a presidential primary campaign is $5,000. 2 U.S.C. §441a(a)(2)(A). If the Clinton campaign and the DNC maintain that having the DNC purchase a $400,000 nation-wide call-in show is for the primary election, since the "800" number was designed to raise primary matching funds, Clinton has accepted an illegal contribution above the $5,000 primary limit. On the other hand, if Clinton and the DNC are admitting that the general election has begun, they would be prohibited from the future raising of additional funds for the primaries and collecting matching funds from the United States Treasury without specifically informing contributors that their contributions will be used for primary debt retirement or for legal and accounting expenses. At a minimum, this illegal use of coordinated expenditure money for primary fundraising means that any funds raised as a result of the Clinton "town hall meeting" must be refunded to the contributors since general election contributions for publicly financed candidates are prohibited. In addition, the FEC must deny certification for any additional public funds in light of this improper raid on the United States Treasury, *see* below.

Federal election law precludes a publicly financed presidential candidate from mixing general and primary monies for the same event. Again, Clinton cannot have it both ways. If he is claiming that the June 12, 1992 broadcast was a general election expenditure, then primary funds cannot be used to pay for any expenses ancillary to the event such as travel costs to Pittsburgh for him and his entourage, or for staff salaries for that day if staff members went with him to that show, or for expenses on that trip.

If this broadcast is a general election expense, Clinton would be precluded from using primary funds for any future call-in shows with a similar format or from using primary funds to pay for similar fundraising events such as the fifty state fundraising satellite program he reportedly contemplates for later in the month (See *Washington Post* article attached as Exhibit A of the accompanying Complaint). The use of general election funds for this "town meeting" format featuring questions by telephone or from an audience means that all such future engagements paid for by the Clinton committee can only be paid for with general election funds. If this format is "general election" now, it must be for the remainder of the campaign. Accordingly, at least all direct and incidental expenses incurred by the Clinton campaign for future town hall meetings must be paid for with general, not primary, election funds. In addition, all ancillary expenses to these events must be paid for with general, not primary, funds the that Democratic nominee will receive.

On the other hand, if the Clinton argues that this expenditure was for the primary election campaign, then he has received an illegal and excessive contribution and the DNC has made an excessive contribution.

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The Clinton committee has qualified for, and has received, matching fund payments from the United States Treasury pursuant to 26 U.S.C. §§9031-9042. In return for these matching funds, candidate Clinton personally agreed to accept the taxpayers' matching funds for his campaign to conduct his primary election activities provided he abided by spending limits and contribution limits set forth in the Act. *See* 11 C.F.R. §9033.1. Although contributions from the national party are non-matchable, they are permitted subject to a $5,000 primary limit as would be the case for any other multi-candidate committee. *See* 2 U.S.C. §441a(a)(2)(A).

In the general election, nominees to the major parties may voluntarily agree to accept a taxpayer grant of $55.24 million, 26 U.S.C. §9004(a)(1), provided spending limits and other restrictions contained in the candidate's agreement are agreed to, 11 C.F.R. §9003.1. General election contributions are prohibited for taxpayer financed candidates, including contributions from party committees. However, the national committee of a major political party is allowed to make expenditures on behalf of the party's nominee under 2 U.S.C. §441a(d), provided the expenditures do not exceed $10.3 million.

All agreements to receive taxpayer funds are accompanied by an agreement signed by the candidate that his campaign will abide by all the rules set forth in the statute and regulations. At present, the Clinton committee cannot certify on good faith that these statutorily required conditions have been met or will be met in running his campaign. To the contrary, actions taken and statements made undermine any possible certification that Clinton may make that he does not intend to use improperly general election monies for primary election activities. Thus, if the Commission certifies the Clinton campaign to receive any more primary public funds, it will be sanctioning the open intention of the Clinton campaign, as exhibited by the overt and desperate acts described above, to undermine the Fund Act.

The facts of this matter are neither prospective or speculative, but exist on the public record. As such, the Commission has an obligation to consider this petition and further investigate the matter before performing its duty of assigning additional matching funds or certifying the Clinton campaign's general election funds. This duty can only be fulfilled upon the determination that the Clinton committee will not violate the Act or the Fund Act. As the D.C. Circuit has previously noted:

> If there were no circumstances under which a pre-certification investigation were permissible, the public could conceivably witness the spectacle of millions of taxpayer dollars being channeled to a candidate who had, before certification, either flouted the eligibility requirement or stated his intention to defy the restrictions imposed by the Fund Act on publicly financed candidates.

In Re Carter/Mondale Reelection Committee, Inc., 642 F.2d 538, 551 (D.C. Cir. 1980) (Wald, J., concurring).

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Certification of the Clinton committee for additional taxpayer money would undoubtedly raise this possibility. In this instance, for the first time since the enactment of the Fund Act, a candidate has chosen to impermissibly use coordinated expenditure general election money for primary election activities. What makes this case particularly insidious is that the impermissible coordinated funds are being used to pry additional, and otherwise unobtainable, taxpayer dollars from the United States Treasury for that candidate's primary campaign. Thus, the FEC should grant this petition to deny certification to the Clinton Committee for any additional public funds until such time that it is confident that millions of dollars will not be wrongly spent on this campaign.

Because the DNC appears to have subsidized the Clinton committee's primary election expenses by making excessive primary contributions of approximately $395,000, it violated 2 U.S.C. §441a(a)(2)(A) and the Clinton committee violated 2 U.S.C. §441a(f) by accepting this in-kind contribution. As a result, Governor Clinton appears to have breached his candidate agreement by failing to comply with 2 U.S.C. §431 et seq.; 26 U.S.C. §9031 et seq. and the Commission's regulations; 11 C.F.R. §9033.1(b)(9).

Based on these violations the Commission should rule on this petition expeditiously and deny the Clinton committee any more taxpayer funding from the United States Treasury based on this illegal fundraising subsidy. In addition, the Commission should begin an immediate investigation of the allegations made in the attached complaint.

Sincerely,

Benjamin L. Ginsberg

cc: The Honorable Lee Ann Elliot
The Honorable Danny McDonald
The Honorable John McGarry
The Honorable Trevor Potter
The Honorable Scott Thomas

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BEFORE THE FEDERAL ELECTION COMMISSION

OF THE UNITED STATES OF AMERICA

Complaint: Violations of 2 U.S.C. §§441 a(a)(2)(A), 441 a(f), 2 U.S.C. §441d(a), 26 U.S.C. §9003(b)(2), 11 C.F.R. §90331(b)(9) and 11 C.F.R. §9034.4 (a)(1).

Respondents: Governor Bill Clinton, Clinton For President Committee and Democratic National Committee

Complainant: Republican National Committee

INTRODUCTION

Pursuant to 2 U.S.C. §437(g), the Republican National Committee ("RNC") brings this complaint against Governor Bill Clinton, the Clinton For President Committee ("Clinton Committee") and the Democratic National Committee ("DNC") for actual and impending violations of the Federal Election Campaign Act of 1971 as amended (FECA), including 26 U.S.C. §9030 et seq. and Federal Election Commission ("FEC") regulations. Specifically, the violations result from the DNC's purchase of approximately $400,000 in television time for the benefit of the Clinton Committee. The RNC respectfully requests that the FEC initiate an expeditious investigation of this matter and, if necessary, seek injunctive relief authorized by 26 U.S.C. §9010(c) in order to prevent taxpayers' monies from being applied to non-qualified campaign expenses and to assure compliance with the Candidate's Agreement signed personally by Clinton.

The Complainant also respectfully requests that the FEC promptly make a finding that either: (a) the DNC's use of coordinated expenditures for primary election activities is impermissible and constitutes an illegal primary election contribution of approximately $395,000 by the DNC to the Clinton Committee, or (b) if these DNC expenditures are

viewed as general election related, then, (i) all related expenditures by the Clinton Committee, such as travel, subsistence and advance costs should also be classified as general election expenditures and, therefore, non-qualified primary campaign expenses under 26 U.S.C. §9032(9) and 11 C.F.R. §9032.9, (ii) any future expenditures made in relation to similar events either by the DNC or the Clinton Committee should be viewed as general election related expenditures subject to the appropriate general election expenditure limits and that (iii) any contributions raised as a result of the June 12, 1992 television program should be refunded to the contributors.

STATEMENT OF FACTS

1. On June 12, 1992 Governor Bill Clinton appeared on nationwide network television in a "town hall meeting" to answer questions posed to him by the television audience for 30 minutes.

2. The event cost approximately $400,000 and, according to the disclaimer shown on the program, was "Paid for by the DNC".

3. The DNC apparently felt it was authorized to pay for this event under its general election expenditure authority on behalf of its party's nominee because it was part of its "general election strategy" (Washington Post, June 13, 1992, attached as EXHIBIT A). This "general election strategy" apparently contemplates "several" more such town hall meeting events before the Democratic National Convention next month.

4. During the program, Clinton responded to questions concerning the issues that had been raised throughout the primary campaign. There was no apparent attack on the opposition candidates and there was only one specific reference to President Bush, relating to the "China Trade" issue. (See transcript of "town hall meeting" attached as EXHIBIT B).

5. Listeners were given a toll free number to call if they wanted to "ask a question or get more information". Reference to the toll free number was made by Clinton himself.

6. Callers to the toll free number were given the option of: (i) obtaining "Bill Clinton's Plan for America's Future", (ii) making a contribution, or (iii) leaving a message for Governor Clinton (Affidavit of John Wehrung attached as EXHIBIT C).

7. It appears the Clinton primary campaign is financially strapped, having cash on hand as of April 30, 1992 of only $258,215.46, but debts and obligations of

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$2,764,981.40. (Committee Summary of Receipts and Disbursements, FEC Report for April 1992, dated May 20, 1992, attached as EXHIBIT D).

8. It appears that the Clinton Committee's cash flow prevented the purchase of time which would have otherwise been treated as a qualified primary campaign expense.

9. Clinton has not filed an FEC Statement of Organization establishing a general election campaign committee. However, there is a general election legal and compliance fund registered with the FEC and affiliated with the Clinton primary Committee.

LEGAL ANALYSIS

Candidates seeking their party's nomination for president may voluntarily accept taxpayers' matching funds to conduct their primary campaigns if they comply with spending limits and other requirements set forth in the agreement signed by the candidate, *see* 11 C.F.R. §9033.1. Although contributions from the national party are non-matchable, they are allowed subject to a $5,000 primary limit. 2 U.S.C §441 a(a)(2)(A).

In the general election, nominees of the major parties may voluntarily agree to accept a taxpayer grant of $55.24 million, 11 C.F.R. §9004.1, provided they adhere to the spending limits and other restrictions set forth in the candidate agreement, 11 C.F.R §9003.1. General election contributions are prohibited for taxpayer financed candidates, including contributions from party committees. However, the national committee of a major political party is allowed to make expenditures on behalf of its 1992 nominee pursuant to 2 U.S.C. §441a(d) provided the expenditures do not exceed $10.3 million. They may or may not be coordinated with the campaign but these funds cannot be directly deposited into the Presidential campaign committee's account. These national party funds can in fact be expended prior to the selection of the party's nominee provided they "are made for the purpose of influencing the outcome of the general election for President of the United States." FEC Advisory Opinion 1984-15. That Advisory Opinion answered a narrow set of factual questions concerning negative ads against the other party's candidate that were not coordinated with any candidate. Specifically, the FEC found that party expenditures prior to the nominee being selected could be made for the purpose of influencing the outcome of the general election in the specific instance of a political ad attacking the opposition party candidate coupled with a partisan get-out-the vote message geared toward the November general election. The expenditures made by the DNC on behalf of Clinton are contrary to these facts.

The DNC payment for the Clinton "town hall meeting" expenses appears to have been motivated by a reason different than the "general election strategy" reported in the media and sanctioned in the 1984 FEC Advisory Opinion. The true reason is more

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basic -- the lack of primary funds available to the Clinton Committee. It appears that the Clinton Campaign intended to treat this event as a primary event and under FEC regulations would have been presumed to be a qualified primary campaign expense since it was incurred prior to the nominating convention of the Democratic Party. *See* 11 C.F.R. §§9032.9 and 9034.4. However, because of financial difficulty, the funds simply were not available. *See* FEC April Report dated May 20, 1992, Committee Summary of Receipts and Disbursements, Exhibit B. With the paucity of funds in its primary account, the Clinton campaign was forced to turn to impermissible sources -- the DNC and its general election coordinated expenditures.

While general election funds paid for it, the event was by legal definition a primary election event. Indeed, the television audience was urged to call the toll free number where the caller was given the option of making a contribution to the Clinton Committee. Contributions without additional designation are presumed to be for the next election, in this case the primary. *See* 11 C.F.R. §110.1(b)(2)(ii). Contributions to a publicly financed presidential candidate in the general election are prohibited. 11 C.F.R. §9012.2. Contributions to a general election legal and compliance fund are allowed subject to limit provided the monies are clearly solicited for this fund or if they are surplus primary funds that are specifically re-designated in writing by the contributor for the legal and compliance fund. 11 C.F.R. §§9003.3(a)(1)(i)(A) and (B) and (ii).

To summarize, the DNC purchased a $400,000 nationwide call-in program. During the course of that broadcast, an "800" number was referenced and repeatedly flashed on the screen. Calls to the "800" number invited respondents to, among other options, make a contribution to the Clinton Committee. That solicitation was clearly for the primary election effort since no money can be raised for the general election under the Presidential Funding Act. By allowing the DNC to purchase a $400,000 nationwide call-in show using its general election coordinated expenditure authority, money was made available to raise primary matching funds, which evidence suggests would not otherwise have been available to the Clinton Committee. Therefore, evidence suggests that the DNC used its coordinated expenditure authority not on "general election strategy" but blatantly to raise primary contributions on behalf of the Clinton For President Committee.

By subsidizing Clinton Committee primary election expenses, the DNC made excessive primary contributions amounting to approximately $395,000 in violation of 2 U.S.C. §441a(a)(2)(A). The Clinton Committee violated 2 U.S.C. §441a(f) by accepting excessive in-kind contributions. As a result, Clinton appears to have breached his candidate agreement by failing to comply with 2 U.S.C. §§431 et seq.; 26 U.S.C. §9031 et seq. and the Commission's regulations; 11 C.F.R. §9033.1(b)(9).

In the alternative, if the Commission determines that the "town hall meeting" is a general election expenditure, the Clinton Committee violated 11 C.F.R. §9034.4(a)(1) by making non-qualified primary campaign expenditures when it paid for or incurred

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any obligation to pay for related expenses associated with the "town hall meeting", such as travel, subsistence and any advance or planning costs of the event.

All contributions raised from callers to the "800" number as a result of the June 12, 1992 Clinton television program must also be refunded to the contributors since contributions cannot be accepted for the general election of a publicly financed candidate. 26 U.S.C. §9003(b)(2).

Although FEC regulations allow primary funds to be temporarily loaned to the general election effort to pay for qualified general election campaign expenses, these funds must be repaid to the primary account once the general election public grant money is received. 11 C.F.R. §9003.4 (b)(4)(i). But that is not what happened here; therefore, this defense is not available to the Clinton committee.

Also, if the FEC determines that the "town hall meeting" is a general election event, then similar future events must also be considered as general election related, whether paid for by the DNC or the Clinton Committee. Therefore, any expenditure or obligation incurred in connection with these future events by either the DNC or the Clinton Committee would count against the appropriate general election expenditure limits.

It is also imperative that the FEC make clear to the Clinton Committee that if these events are classified as general election activity, private contributions cannot be raised to pay for these specific events. Indeed, the only funds that can ultimately be used to pay for these expenses are Clinton's general election taxpayer grant of $55.24 million or the DNC's coordinated party expenditure authority of $10.3 million.

If the Commission determines, as in Advisory Opinion 1984-15, that Clinton's town hall meeting "effectively advocated the defeat of a clearly identified candidate" in November's election, then the DNC violated the FECA's mandatory disclaimer provisions, 2 U.S.C. §441d(a). Since the expenditure involved a clearly identified candidate the disclaimer needed to indicate not only that the communication was paid for by the DNC but also whether it was authorized by any candidate or candidate's committee. 2 U.S.C. §441d(a)(2) and (3); 11 C.F.R. §§110.11 (a)(1)(ii) and (iii).

CONCLUSION

Based upon the facts as known, the Complainant has reason to believe that the Respondents violated the FECA by making and accepting excessive primary contributions. In the alternative, if these expenditures are determined to be general election related, the Clinton Committee has violated 11 C.F.R. §9034.4(a)(1) by making non-qualified primary expenditures using primary contributions to pay for

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general election expenditures. More importantly, if the "town hall meeting" is classified as general election related, then all similar future events must be classified the same, implicating both the DNC's and the Clinton Committee's general election expenditure limits and prohibiting the Clinton Committee from using or raising primary contributions to pay for these future events or any related costs.

Respectfully submitted,

Benjamin L. Ginsberg
General Counsel

District of Columbia, ss:

Sworn to and subscribed before me this 19th day of June 1992.

Notary Public

Nicholas Lieber
Notary Public, District of Columbia
My Commission Expires April 30, 1997

My Commission Expires:

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EXHIBIT A

WASHINGTON POST 6/13/92

DNC Bails Clinton Out

Bill Clinton's presidential campaign has been facing such a cash crunch that it turned to the Democratic National Committee to pay the nearly $400,000 needed for a half-hour of network television time for a Clinton call-in show last night. "This is a judgment that Chairman [Ron] Brown made as a part of our general election strategy," DNC press secretary Ginny Terzano said.

Clinton's campaign hasn't been able to pay its staff on time lately, either. Spokesman Jeff Eller said yesterday that the staff's June 1 paychecks contained only one week's pay, instead of the usual two, but the shortage should be made up by the end of the month. The campaign, which is running about a $1 million vendor debt, has about 20 fund-raisers planned over the next month, including a 50-state satellite fund-raising event June 24 that officials hope will raise $1 million.

The funding difficulties should ease after the Democratic convention in mid-July, when the campaign should receive $55.24 million in public funds for the general election.

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EXHIBIT B

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-1 page# 1

dest+=netvpol,elecus,cak,fns13684,fns16000,taxes,deped,edfund,jbcrp
dest+=hlth,hlthcr,hcf,fretrdag,ecdev,fortr,trdpol,hiwy,airc,fiberop
dest+=child,childwelf,childcare,labor,laborpol,laborun,labagt,bus
dest+=crime,guncon
data

GOV. CLINTON: Thank you very much. First I want to thank all of you for coming tonight and for being willing to participate in this national town hall meeting. I did meetings like this on television with undecided voters in primary states from New Hampshire right through here in Pennsylvania. But we've never done it on a national basis before. We're doing this tonight for what I think are some very good reasons. As I traveled across America for

I feel that, too. I've been out here on the firing line, on the receiving end of most of what's happened in Washington for the last 10 or 11 years, trying to balance budgets and put people to work and educate children and adults and trying to move people from welfare to work and make this system work. And I know it's tough. And it just seems to me that the best way for all of us as Americans to make the right decision in this presidential race is for anybody who wants to be president to be as open to the American people as possible, to be direct and accessible to their questions. And I've worked hard on a lot of these problems for years, so I think I've got some answers. I know you've got some questions, so let's get started. Go ahead.

Q Governor Clinton, I'm very sensitive about the job issues here and what we're seeing in this country's exportation of meaningful jobs into Mexico and other foreign countries. What would you do to keep jobs in this country?

GOV. CLINTON: [redacted] We're the only advanced nation that doesn't have a national economic strategy to keep good jobs here. I would do it by saying, look, let's look at what we did wrong. What did we do wrong in the '80s? In the '80s, we didn't have a strategy. We just cut taxes on the wealthiest people and on corporations and said, "They'll invest in our economy," but they didn't. Instead, the top 1 percent of the people got more wealth than the bottom 90 percent for the first time in 70 years, but they moved jobs offshore.

So here's what I think we ought to do. We ought to take every dollar by which defense is reduced and put it into investing in American jobs; into high-speed rail, into fiber optics, into new water and sewer and road systems, into new highway systems and new airplane systems, building an economy for the 21st century. We

ought to change the tax system. We ought to say to business and to wealthy people, "We want you to have more tax incentives, but only if you invest in this country. So here are more incentives for new plant and equipment, for new businesses, for housing." But we're going to take all these ridiculous incentives out of the tax code that are there now that actually encourage people with your tax money to shut plants down and move them overseas. We're going to have a tough trade policy that says, "We want to expand trade, but you've got to treat us fair." We're going to educate and train our people as well as any country in the world, and we're going to control health care costs and provide health care to all our people so we can be competitive. These are the things that will give us a national economic strategy. And if we don't do it, the economy won't recover.

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to turn that around. (Applause.)

Yes, ma'am.

Q I wanted to talk about gridlock in government. We can't get a crime bill passed. I mean, more than 90 percent of the people support the Brady bill, but we can't get it passed because the Republicans are filibustering and you can't get it to the floor. How could you make a difference in that?

GOV. CLINTON: Be president and be for the Brady bill; I am. And [redacted] of the three people running for president who will say [redacted] the Brady bill [redacted] wife, and [redacted] but. And let me -- for those of you who don't know, the Brady bill would require anybody who wants to buy a handgun to go through a waiting period so we could check, or a criminal history or mental health history for appropriate age. That's one of the things that we need to do. This is a real big issue to me. I'm tired of going to schools -- I was in a town the other day where there are 11 grade schools with metal detectors to take the guns and knives off the 8- and 9-year-olds.

Now, you know, I know what it's like to be a victim of crime. Twenty years ago, I was robbed twice within a two-year period, and I lost everything I owned. I was really mad about it. This world is a lot more violent now than it was then. You've got more and more young people, more and more people with guns in their hands. There's a lot that needs to be done on crime. But we ought to start with the Brady bill. And the reason there's gridlock is, you know, the President doesn't believe in it. And so he uses it as an excuse not to sign a crime bill. There's a lot of other good things in that crime bill, too; more money so that cities like Pittsburgh can hire more police to go on the street for community-based policing.

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-S-2 page# 1
dest=notvpol,elecus,cak,fns13684,fns10000,crime,drug,guncon,hmless,jberg
dest+=hlth,hlthcr,hcf
data

Believe me, we can clean up our neighborhoods. Across the state in Philadelphia, I walked down a street that used to be dominated by crack houses and gangs, where people walk safely now because of a partnership between the federal law enforcement authorities, the state and the local people and people watching their own neighborhoods. We need to do more of that. But we've got to pass the Brady bill. It's a big deal.

Yes, sir.

Q Governor Clinton, I would like to ask what do you plan to do about the urban plight of the cities, particularly about the homeless?

GOV. CLINTON: Well, there are lots of things we can talk about with the urban plight. And maybe while we're all here, other questions will be asked, too. But let's just talk about the homeless for a moment. And think back 10 or 11 years ago when we didn't have such of a homeless problem. It was really unusual, wasn't it, to see someone sleeping on the street. You didn't -- now you see it in all cities of all sizes. That is because we've gone for more than a decade without a national housing policy. Housing is not such different than highways. You've got to have some sort of investment policy, except in America we have both public and private dollars going into housing.

I favor a homeless strategy that would give more funds to cities to design their own homeless program and would emphasize the lowest possible cost in solving the problem, which is to take these buildings that the government owns -- all right, we foreclosed on all these savings and loan properties. HUD has foreclosed on a lot of buildings; other federal agencies. We own houses. Those houses ought to be rehabilitated and made available for homeless shelters. We ought to take people who are out of work and let them work in return for public assistance, have them rehabilitate these houses and then open them for the homeless. But it's a crying shame to have all these boarded-up houses in America and people sleeping on the streets. We need to put them together. (Applause.)

Q Yes. Governor Clinton, I'd like to know what you would do about getting some form of national health care plan passed in this country, with almost 47,000 working American families being without any kind of health care.

GOV. CLINTON: Million.

Q Million.

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-2 page# 2

Q Million.

GOV. CLINTON: Do you have health insurance?

Q Yes, I do currently, but I'm currently involved in negotiations, contract negotiations, that may see those taken away.

GOV. CLINTON: How many of you have had to pay more for your health insurance in the last two years? (Hands are raised.) Anybody lost their health insurance in the last there years? (Hands are raised.) Let me tell you, this may be the biggest personal problem most Americans face. Most Americans still have jobs. Most Americans have access to some kind of education. But almost every American family is terrified of losing their health insurance, not being able to pay the bills. How many of you are in a family where you couldn't change jobs because somebody in your family's got a -- what do they call it, a pre-existing health condition, so you might not be able to get new health insurance if you change jobs? Another problem for millions of Americans.

Now, we have to solve this problem. You need to know -- this is like something else we were talking about, like you and I were talking about this other issue. Your country is the only advanced nation in the world that permits this to go on. This is not rocket science. It's not like we can't do this. You are the only -- we are in the only country in the world that doesn't provide affordable health care to all Americans. Why? Because the special interests in Washington have a collusion, and they don't want it to happen. They always say it's going to cost too much money.

Here's my idea. Every American ought to have a comprehensive package of affordable health care. You ought to be able to get it either through your job or for the self-employed, the poor and for small businesses who can't buy insurance, the government ought to offer an affordable insurance package. And every American ought to be guaranteed a comprehensive package. Then the payment ought to be the same state by state whether the government provides it or whether the employer provides it. And everybody ought to be involved in the system. There ought to be some incentives for cost controls, but the main thing we have to do is to take on the big insurance companies and the health care bureaucracies, drug companies that are raising drugs at three times the rate of inflation. These things are unforgivable.

You need to know that your country spends, conservatively, $70 [billion] to $80 billion a year on health care totally unrelated -- unrelated -- to providing you health care, because we don't have a system. And let me say I -- listen, I'm very suspicious of government. I know that there are things government can't do. But no nation can solve this problem without the government [illegible]

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC
PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-2 page# 3

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-3 page# 1
dest=natvpol,elecus,cak,fns13684,fns10000,crime,drug,guncon,hsless,jbcrp
dest+=hlth,hlthcr,hcf,prc,fortr,trdpol,huert,mexico,frstrdag,mideast
dest+=taxes,defbud,budgus
data

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Q Governor Clinton, there is a feeling that one of the reasons why our problems are not being resolved is because too many of our lawmakers spend too much time promoting themselves and they relax rather than working for the government. What would you do to discourage this and reverse the trend?

GOV. CLINTON: I'd do the following things: One, reform the campaign finance system. A lot of those people work hard, but they have to spend too much time catering to vested interest groups because of the cost of campaigns and because political action committees can give more money than people can. So don't let a PAC give a cent more than a person can. Two, lower the cost of congressional campaigns. Three, open up the airways. Say, if somebody's got a license to run a television station or a radio station, say, "You've got to give these people time for debates," so you can do what we're doing here, so TV can be an instrument of education, not a weapon of assassination. In other words, free up the political process.

Secondly, say to the Congress and the President we ought to have to live under the laws we make. If we pass a minimum wage law, we ought to live under it. If we pass a benefit law, we ought to live under it. If we make something a crime for somebody else to do, it ought to be a crime for us to do, people in public life. Those are important.

The third thing we need to do is to restrict lobbying activities when they're inappropriate; stop the revolving door from government to lobby, from government to lobby, especially for foreign lobbies, but for domestic too. Have restrictions on the impact that lobbyists can have on the system. These things, I think, would make a big difference. We shouldn't have a government dominated by perks and privilege. It ought to be dominated by people, and people ought to be put first again. (Applause.)

It's like nobody cares. It's like we're in a corner where nobody can see; like they say, "Out of sight, out of mind." I want to know what's going to be done about that.

GOV. CLINTON: The first thing I want you to believe is that something can be done about it. This drug business is a cancer that's eating America alive. And I want you to believe, in spite of

anything else I say, that I care a lot about it. I have a brother who is a recovering drug addict; nearly died by getting caught up in this. And I know there are things that can be done. You live in a neighborhood where people ignore it. Let me tell you why. Thirty years ago, there were three policemen for every crime reported. You know how many there are today? Three crimes for every policeman. This is not a big mystery. I mean, one of the things we need to do is to put more police back on the street so that your neighborhood has guaranteed policemen, and they're the same people every day so they know you and you know them and you can call them at home at night and you can say, "There's a drug dealer on the corner. Come get it done." Neighborhood policing.

The second thing you've got to do is to have something for these kids to do. If you're going to keep them out of gangs and off drugs, have something for them to do. First time they get in trouble, instead of sending them to the penitentiary or ignoring it, which is what usually happens now, put them in a community-based boot camp -- discipline, education, drug treatment -- and require them to do some community service work. Let people get to know a successful adult in the community. So more police, more community service, and community-based boot camps.

The third thing we've got to have is real close cooperation between the national and the local law enforcement officials so you know that everybody that the Justice Department can get off the street as quickly as we can get them off will be done. I'll give you that. I'll give you an attorney general that believes that every neighborhood is entitled to the same protection from drugs as the best neighborhoods in this country. I think that's important. (Applause.)

Go ahead.

Q Governor Clinton, the United States is still the most powerful country in the world economically and militarily. And we have a spate of domestic problems, but as the largest country, we still have international responsibilities. How would you go about balancing the two, our international and our domestic responsibilities?

GOV. CLINTON: I'm glad you care about it. Good for you.

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President Bush went to Japan on that trade mission recently? The whole thing ends in humiliation for us when the Japanese prime minister gets up. You remember what he said? He says, "I feel sympathy for the United States." God, it made me so sad. But he thinks we're weak at home. So the first thing we've got to do is to -- it's good for our foreign strength to invest in our own people and our own economy again.

TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-3 page# 3

The second thing we need to do is to say, "Okay, the Cold War is over, so we don't have to spend $100 billion a year anymore defending Europe." A lot of those countries are richer than we are. What we are going to do is to promote freedom and democracy and free-market economics. So, for example, I'd be for freedom for Haiti and I wouldn't send those people back until we put democracy back in Haiti. (Applause.)

I'd be for democracy in China. I wouldn't have done what Mr. Bush did and give all those trade preferences to China when they're locking their people up. (Applause.)

I'd be for expanded trade with Mexico and all these other countries, but only, only if they lifted their wage rates and their labor standards and they cleaned up their environment so we could both go up together instead of being dragged down. We have an incredible opportunity, because, you know, we used to have to make deals with people based on whether they were for or against Russia, all right, whether we liked them or not. That's not there anymore. We can just stand up for what we believe in. Same thing in the Middle East. You know, I don't agree with everything the Israeli government does, but it's still the only democracy in the Middle East. And I wouldn't do what Mr. Bush does, which is just hit on them to give over to the Arab position. I'd say, "Let's make peace. You all make peace, but I want to see less militarism, no nuclear weapons, and more democracy and freedom in the Middle East." That's what I would say. (Applause.)

Q My question is about Social Security. Being far away from retiring, when I'm 65, will there be a fund for me?

GOV. CLINTON: There will if we get this economy going again. Right now the Social Security system is, in fact, overfunded. That is, every year the taxes you pay are producing about $70 billion a year more than the benefits the retirees take out. That's -- and let me tell you the bad news. The bad news is, that money is applied against the deficit, which means everybody who makes $51,000 a year or less is making a bigger contribution to paying down the debt than everybody who makes more than $51,000, because that's where Social Security cuts off. It's just as wrong as it can be.

But anyway, the good news is, the fund is now stable ...

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Yes, sir -- in the back.

Q The first question of the night you explained where the money would come from to put people back to work. Where would the money come from for a national health plan and to support our schools and colleges? (Applause.)

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TOWN HALL MEETING WITH ARKANSAS GOVERNOR BILL CLINTON, DEMOCRATIC PRESIDENTIAL CANDIDATE PITTSBURGH, PENNSYVANIA 6:00 P.M. (EDT)
FRIDAY JUNE 12, 1992
CL-5-4-E page# 1
dest=notvpol,eleeus,csk,fns13584,fns10000,crise,drug,guncon,halres,jbcrp
dest+=hlth,hlthcr,hef,prc,fartr,trdpol,husrt,mexico,fretrdag,mideast
dest+=taxes,defbud,budgus,afaser
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GOV. CLINTON: Good question. Money for a national health plan first, because that's where most of the money is. First, you have to control costs. You've got to have a cost control. You've got to take on the health insurance companies, the health care bureaucracies. You've got to give people incentives to enroll in year-long plans where they pay a certain fee and they get all their needs taken care of, that they choose their doctors and providers. That's where the big money is. Then you have to require people to pay into the fund based on their ability to pay, like elderly and disabled people should be able to buy long-term care, but they would be charged based on their ability to pay. And employers would have to pay, but small business people would have a limit based on their revenues in small business. So everybody could afford to buy in.

It would cost some more money, but you'd save roughly -- this is amazing -- just on tax dollars alone, roughly $100 billion in the next four years if you could just bring health care costs in line with inflation. So if we all paid a little more in the front to cover everybody and then put the lid down on costs and stopped the insurance companies and the others from ballooning the costs, we'd save a lot of money.

On education, I propose to pay that by asking people who made money in the '80s but whose tax rates went down to pay their fair share. People over $200,000 I would ask to pay higher income taxes. People over a million dollars, I'd ask to pay a millionaire's surtax. They'd still be paying less than they were in 1980, but they'd be paying their fair share. In the '80s, we raised taxes on the middle class while their incomes went down, and we ought to reverse that. We ought to at least ask the wealthy to pay their fair share so we can invest in American education. (Applause.)

You had a question.

Rodney King verdict. What would you do to ensure that everyone in society feels they can receive fairness and justice? (Applause.)

GOV. CLINTON: First, I respect you for saying that, because it's not about race, is it? I mean, everybody should have -- it was about race, but it shouldn't have been. I think first, the federal authorities should look into that case and see if there's anything they can do to try to bring justice. Secondly, people should be prosecuted if they break the law no matter whether they're in a

uniform or out and no matter what the color of their skin. The law ought to be the law, and there ought not to be any bias in it.

Thirdly, we ought to really train our law enforcement officials to work with the people in the communities so that they feel like they're friends again and they feel a different commonality. I mean, it is obvious that these police saw that man as an animal, not a person. And it was wrong. And we need to work harder to make sure that people understand each other as human beings. You'd be amazed how many black Americans tell me that they walk in a department store; people that work 50, 60 hours a week. Somebody's always looking at them to see if they're going to steal something. We need to get beyond these stereotypes. Remember, most people in Los Angeles didn't loot, didn't rob, didn't burn. They (played by?) the rules. And that's what we ought to sensitize people to.

Yes.

MODERATOR: Governor, excuse me. We have only about a minute left, so a very quick question and very quick answer.

Q , Governor, you've gone on the record as opposing the recently and shamefully, I think, defeated balanced budget amendment. If president, would you submit a balanced budget? And if so, how would you accomplish that?

GOV. CLINTON: If I were president, I would submit a balanced budget plan over a five-year period. I don't think you can go from $400 billion to zero in a year. In this recession, you'd have to raise taxes and cut benefits; you'd make the economy worse. The reason I opposed the balanced budget amendment is I thought it was a gimmick and a putoff so nobody would have to really make any decisions for six years, and because it did not make a distinction between investment and consumption. That is, most of you have borrowed money for homes, for cars, for businesses, right? If the government borrows money to put us to work and we'll get it back, that's okay. But we're eating our seed corn, as we say in the farming country. We're borrowing money to go to dinner at night. That's what's wrong. And I would support an amendment that would control that, and I will present a five-year balanced budget plan of

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would like to ask Governor Clinton a question or who would like more information. Here's a toll-free number that you can call: 1-800-551-5600, toll-free call with questions or for information.

Governor, about one minute left for a couple of closing thoughts from you.

GOV. CLINTON: Let me thank all of you who watched on

television tonight and all these people who have come to share their thoughts, and I'm sure they were your thoughts. I want you to know how much I enjoyed the program, how grateful I am, how much I hope we can do more of this. If you saw the 800 number and you have a question, call it in and we'll get you an answer.

The people here tonight are like most Americans. They've worked hard, they've played by the rules, and they've not been rewarded. I know that if I hadn't been a product of the American Dream, I'd never have been able to be born in a small town, worked my way through college and wind [illegible] These are the opportunities I want for all Americans. We can bring America back if we'll invest in our people again.

Thank you very much. (Applause.)

END

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EXHIBIT C

BEFORE THE FEDERAL ELECTION COMMISSION

City of Washington)
)
District of Columbia)

AFFIDAVIT OF JOHN WEHRUNG

John Wehrung first being duly sworn, deposes and says:

1. I am John Wehrung, 10 Seventh Street, NE Washington, D.C. 20002.

2. On June 15, 1992 I called the "800" number (1-800-551-5600) referenced by Governor Bill Clinton in his nationwide "town hall meeting" televised on June 12, 1992.

3. A recorded message thanked me for the call and informed me of the following options:

A. To receive your free copy of Bill Clinton's "Plan for America's Future," Press 1.

B. If you believe that it's time for real change, help the Clinton campaign and make a contribution by pressing 2.

C. To leave a message for Governor Clinton, press 3.

4. After pressing "2" I was connected with an operator, who after requesting my zip code, telephone number and the remainder of my address, asked how

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much I wanted to contribute and whether by credit card or check.

District of Columbia, ss:

The above information is true and correct to the best of my knowledge and belief.

John Wehrung

Sworn and subscribed to by the said John Wehrung this 17th day of June, 1992.

Notary Public

Nicholas Linder
Notary Public, District of Columbia
My Commission Expires April 30, 1997

My Commission Expires:

9704382297 0

FEC FORM 3P, Page 1
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

REPORT OF RECEIPTS AND DISBURSEMENTS BY AN AUTHORIZED COMMITTEE OF A CANDIDATE FOR THE OFFICE OF PRESIDENT

HAND DELIVERED

NOTE: *This report is to be used by an authorized committee of a candidate seeking nomination or election to the Office of President or Vice President of the United States whether or not public funds are used.*

USE FEC MAILING LABEL OR TYPE OR PRINT

1. NAME OF COMMITTEE (in full): Clinton for President Committee

2. IDENTIFICATION NUMBER: C00253690

ADDRESS (number and street) ☐ Check if different than previously reported: P.O. Box 615

3. IS THIS REPORT OF RECEIPTS AND DISBURSEMENTS FOR: ☒ Primary ☐ General

CITY, STATE and ZIP CODE: Little Rock, AR 72203

4. TYPE OF REPORT ("X" appropriate box and complete, if applicable)

☐ Amendment for (Report)
☒ Monthly Report (month) April 1992
☐ April 15 Quarterly Report
☐ July 15 Quarterly Report
☐ October 15 Quarterly Report
☐ January 31 Year-end Report
☐ Termination Report
☐ Twelfth Day Before Election
☐ Thirtieth Day After Election

TYPE OF ELECTION

STATE | ELECTION DATE

COMMITTEE SUMMARY OF RECEIPTS AND DISBURSEMENTS

5. COVERING PERIOD: FROM April 1, 1992 THROUGH April 30, 1992

SUMMARY	6. CASH ON HAND AT BEGINNING OF THE REPORTING PERIOD	(375,419.90)
	7. TOTAL RECEIPTS THIS PERIOD (From Line 22 Column A)	5,089,132.52
	8. SUBTOTAL (Add Line 6 and 7)	4,713,712.62
	9. TOTAL DISBURSEMENTS THIS PERIOD (From Line 30 Column A)	4,455,497.16
	10. CASH ON HAND AT CLOSE OF THE REPORTING PERIOD (Subtract Line 9 from 8)	258,215.46
	11. DEBTS AND OBLIGATIONS OWED TO THE COMMITTEE (Itemize All on Schedule C or Schedule D)	
	12. DEBTS AND OBLIGATIONS OWED BY THE COMMITTEE (Itemize All on Schedule C or Schedule D)	2,764,981.40
	13. EXPENDITURES SUBJECT TO LIMITATION (From FEC Form 3P, Page 4)	14,699,555.88
NET YEAR-TO-DATE CONTRIBUTIONS AND EXPENDITURES	14. NET CONTRIBUTIONS (Other than Loans) (Subtract Line 29a Column B from 17a Column B)	8,518,587.45
	15. NET OPERATING EXPENDITURES (Subtract Line 20a Column B from 23 Column B)	13,590,066.19

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER: Bruce R. Lindsey

SIGNATURE OF TREASURER: [signature] DATE: 5/[illegible]/92

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

All previous versions of FEC Form 3P are obsolete and should no longer be used.

For further information, contact:
Federal Election Commission
Toll Free 800-424-9530
Local 376-3120

FEC FORM 3P (2/83)

9704382297 1

DETAILED SUMMARY OF RECEIPTS AND DISBURSEMENTS
(Page 2, FEC FORM 3P)

NAME OF COMMITTEE (in Full): Clinton for President Committee

REPORT COVERING THE PERIOD: From: 04/01/92 Through: 04/30/92

	COLUMN A Total This Period	COLUMN B Calendar Year-to-Date	
I. RECEIPTS			
16. FEDERAL FUNDS (Itemize on Schedule A-P)	1,112,938.95	3,169,803.72	1
17. CONTRIBUTIONS (other than loans) FROM:			
(a) Individuals/Persons Other Than Political Committees	2,430,134.72	8,533,298.45	1
(b) Political Party Committees			1
(c) Other Political Committees	285.00	3,488.00	1
(d) The Candidate			1
(e) TOTAL CONTRIBUTIONS (other than loans) (Add 17(a), 17(b), 17(c) and 17(d))	2,430,419.72	8,536,786.45	1
18. TRANSFERS FROM OTHER AUTHORIZED COMMITTEES			11
19. LOANS RECEIVED:			
(a) Loans Received From or Guaranteed by Candidate			11
(b) Other Loans	1,230,113.34	2,653,293.03	11
(c) TOTAL LOANS (Add 19(a) and 19(b))	1,230,113.34	2,653,293.03	11
20. OFFSETS TO EXPENDITURES (Refunds, Rebates, etc.):			
(a) Operating	315,660.51	1,235,134.37	20
(b) Fundraising		45,371.00	20
(c) Legal and Accounting			20
(d) TOTAL OFFSETS TO EXPENDITURES (Add 20(a), 20(b) and 20(c))	315,660.51	1,280,505.37	20
21. OTHER RECEIPTS (Dividends, Interest, etc.)		8,022.28	21
22. TOTAL RECEIPTS (Add 16, 17(e), 18, 19(c), 20(d) and 21)	5,089,132.52	15,648,410.35	22
II. DISBURSEMENTS			
23. OPERATING EXPENDITURES	3,270,611.66	14,825,200.56	23
24. TRANSFERS TO OTHER AUTHORIZED COMMITTEES			24
25. FUNDRAISING DISBURSEMENTS	29,814.58	840,188.20	25
26. EXEMPT LEGAL AND ACCOUNTING DISBURSEMENTS	153,150.92	595,306.43	26
27. LOAN REPAYMENTS MADE:			
(a) Repayments of Loans Made or Guaranteed by Candidate			27
(b) Other Repayments	1,000,000.00	1,000,000.00	27
(c) TOTAL LOAN REPAYMENTS MADE (Add 27(a) and 27(b))	1,000,000.00	1,000,000.00	27(
28. REFUNDS OF CONTRIBUTIONS TO:			
(a) Individuals/Persons Other Than Political Committees	2,120.00	18,199.00	28
(b) Political Party Committees			28
(c) Other Political Committees			28
(d) TOTAL CONTRIBUTION REFUNDS (Add 28(a), 28(b) and 28(c))	2,120.00	18,199.00	28
29. OTHER DISBURSEMENTS			29
30. TOTAL DISBURSEMENTS (Add 23, 24, 25, 26, 27(c), 28(d) and 29)	4,455,497.16	17,278,894.19	30

III. CONTRIBUTED ITEMS (Stock, Art Objects, Etc.)

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HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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BALTIMORE, MD
BETHESDA, MD
McLEAN, VA

L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-5273

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
JUL 13 11 17 AM '94

July 12, 1994

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 13 2 36 PM '94

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

I received your letter of July 7, 1994 concerning the issue of delivery of the Commission's May 24, 1994 subpoena to my client Eli J. Segal. As you know, we have submitted a response to the subpoena on July 11 as agreed. However, I have reconfirmed Mr. Segal's position that he did not receive this delivery and that he had moved from this address prior to the date of the subpoena. Mr. Segal has requested that I obtain the Federal Express airbill number for the May 24 package from your office so that we may pursue further inquiries concerning this delivery with Federal Express.

Thank you for your cooperation.

Sincerely yours,

L. Anthony Sutin

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL
999 E Street N.W.
Washington, D.C. 20463
Telephone (202) 219-3690
Telefax (202) 219-3923

DATE July 27, 1994

TIME 9:45 a.m

TO L. Anthony Sutin

TELEFAX # 202-637-5910

FROM Phillip L. Wise - FEC/OGC

No. of Pages (following cover page) 1

Message Attached hereto is a copy of the relevant info we received from FED-X with regard to MUR 3546 in reference to your client Eli J. Segal. PLW 7/27/94.

The information contained in this telefacsimile message is transmitted by an attorney. It may be privileged and confidential, intended only for the use of the individual of entity named above. If the reader of the this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited and may be in violation of 2 USC 437g(a)(12). If this communication has been received in error, please notify us immediately by telephone, collect if necessary, and return the original message to us at the above address via the US Postal Service (we will reimburse postage). Thank You.

Please contact Karen Hicks at the above-listed number if you do not receive all pages.

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FEDERAL EXPRESS

Rec'd Accounting 6-13-94

RE[redacted]NCE ADVIC[redacted] Payment Due P[redacted]ue On 15 Days of Invoice Date

RECEIVED
FEDERAL ELECTION COMMISSION
ACCOUNTING OFFICE

0200-5346-1 5-242-75689 06/03/94
ACCOUNT NUMBER INVOICE NUMBER ACCOUNT DATE

BILLING INQUIRIES?
CALL: 800-645-9424
7AM - 3PM CST

68.91
AMOUNT DUE

16
AIRBILLS

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BILL TO: FEDERAL ELECTION COMMISSION
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WASHINGTON, DC 20004

SENDER ACTIVITY SUMMARY

PAGE 2 OF
DATE 06/03/9
INVOICE NO. 5-242-75689 ACCOUNT NO. 0200-5346-

TRACKING NOS REFERENCE	SENDER'S NAME AND ADDRESS	RECIPIENT INFORMATION AND PROOF OF DELIVERY	PACKAGES & WEIGHT	SERVICES	CHARGES	NET CHARGES
6975190386 UPN ODD-NUM 3546 69966584 1	PHILLIP WISE FEDERAL ELECTION COMMISSION 999 E ST NW RM 819 WASHINGTON, DC 20004 02 SHIPPED 05/24/94	ELI J SEGAL 1535 28TH STREET N W WASHINGTON, DC 20007 AA DELIVERED:05/25/94 09:20 SIGNED: S.EGAL	1/ 0	GOVT LETTER DISCOUNT		
				CONTINUED NE		

QUESTIONS? CALL OUR BILLING SERVICE CENTER, 800-622-1147, 7AM - 6PM (CST) MONDAY - FRIDAY (IN MEMPHIS, TN, CALL 901-397-2000)
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9704382297

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 29, 1994

REGULAR MAIL AND FACSIMILE

L. Anthony Sutin, Esquire
Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street, N.W.
Washington, D.C. 20007-1109

RE: MUR 3546
Eli J. Segal

Dear Mr. Sutin:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires your client, Eli J. Segal, to appear and give sworn testimony on August 25, 1994 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider Mr. Segal a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00, plus mileage. Subsequent to the deposition, your client will be sent a check for the witness fee and mileage.

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Within two days of your receipt of this notification, please confirm your client's scheduled appearance with me at (202) 219-3690.

If you have any questions, please contact me at (202) 219-3690. If I am unavailable, please ask for Abigail A. Shaine, Assistant General Counsel.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

9704382297 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Eli J. Segal
2315 Bancroft Pl., NW
Washington, D.C. 20008

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to the taped information received by callers when the toll free 800 number was called as a result of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Notice is hereby given that the deposition is to be taken on August 25, 1994 in Room 657 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

9704382297 8

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 29th day of July, 1994.

For the Commission,

Trevor Potter
Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

9704382979

HOGAN & HARTSON
L.L.P.

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

BRUSSELS
LONDON
PARIS
PRAGUE
WARSAW
BALTIMORE, MD
BETHESDA, MD
McLEAN, VA

L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-5278

August 2, 1994

BY TELECOPY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

I am writing in response to your letter of July 29, 1994 concerning the deposition of Eli J. Segal in the above-captioned MUR. We confirm that we will appear pursuant to the subpoena in your office on August 25, 1994 at 10:00 a.m.

Also, to avoid delays in correspondence, please note that the correct zip code for my office is "20004-1109" rather than "20007-1109" set forth in your letter.

Thank you for your consideration.

Sincerely yours,

L. Anthony Sutin

9704382290

HOGAN & HARTSON
L.L.P.
COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-5875

August 18, 1994

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
AUG 18 10 08 AM '94

BY TELECOPY

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

Pursuant to 11 CFR § 111.18(d) and without prejudice to the positions taken in its submissions in this matter, the Clinton for President Committee hereby requests that the Office of General Counsel enter into negotiations directed toward reaching a mutually satisfactory conciliation agreement to conclude this matter.

If your office is willing to enter into such negotiations at this time, we would propose a brief adjournment of the August 25 deposition to enable such discussions to progress.

Thank you for your consideration.

Sincerely yours,

L. Anthony Sutin

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Aug 19 12 53 PM '94

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

August 19, 1994

MEMORANDUM

TO: THE COMMISSION

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: Request for preprobable cause conciliation by the Clinton for President Committee and Robert A. Farmer, as treasurer, in MUR 3546

On August 18, 1994, this Office received a request from the attorney representing the Clinton for President Committee and Robert A. Farmer, as treasurer ("the Clinton Committee") to enter into preprobable cause conciliation negotiations in the above-referenced matter. (Attachment 1). In this request counsel also wanted a brief adjournment of the scheduled August 25, 1994 deposition of his client, Eli J. Segal, who was the Chairman of the Clinton Committee.

The responses in this matter, from both the Clinton Committee and the Democratic National Committee ("DNC") about the June 12, 1992 "town hall meeting" and the "800" number which flashed on the screen during the program, have been contradicted by Paul Storch, the vendor for the "800" number. Both the Clinton Committee and the DNC have asserted that the request for contributions for the Clinton campaign, one option heard by callers to the "800" number, was an error and/or mistake. However, Mr. Storch under oath during his deposition testified that no mistake was made by him. Mr. Storch testified that the request for contributions, for the Clinton campaign was specifically directed by Mr. Segal. Mr. Storch also testified that one of the purposes of the "town hall meeting" was to solicit contributions for the Clinton Committee. In addition, Mr. Storch testified that he had expected to be paid by the Clinton Committee, and only was ordered to deal with the DNC, by Mr. Segal after the program had run and only after the the contribution option became an issue.

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In view of the foregoing this Office feels that we are not in a position to consider negotiating an agreement in this matter until after deposing Eli J. Segal. This determination is based on the fact that questions about the "town hall meeting" must be addressed by Mr. Segal to clarify the conflicting information. Accordingly, absent objection by the Commission this Office will proceed with the August 25, 1994, deposition of Eli J. Segal. After, deposing Mr. Segal this Office will submit a recommendation to the Commission with regard to the Clinton Committee's request for preprobable cause conciliation.

Attachment
Request for conciliation

9704382293

HOGAN & HARTSON
L.L.P.
COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON DC 20004-1109
(202) 637-5600

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L. ANTHONY SUTIN
PARTNER
DIRECT DIAL (202) 637-5273

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
SEP 19 12 33 PM '94

September 14, 1994

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546

Dear Mr. Wise:

I am writing to advise you that I will be leaving Hogan & Hartson effective September 19, 1994 to join the U.S. Department of Justice. Please direct any communications concerning this matter to Anthony S. Harrington, Esq. of this firm, whose name also appears on the previously filed Designation of Counsel.

Thank you for your cooperation.

Sincerely yours,

L. Anthony Sutin

9704382984

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OCT 31 10 07 AM '94

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and Robert A. Farmer, as treasurer	)	MUR 3546
	)	
Democratic National Committee and Robert T. Matsui, as treasurer.	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that William J. Clinton; Clinton for President Committee ("the Clinton Committee") and Robert A. Farmer, as treasurer; and the Democratic National Committee ("the DNC") and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), 441a(f), 441d(a), 26 U.S.C. § 9003(b)(2), 11 C.F.R. §§ 9033.1(b)(9) and 9034.4(a)(1).

On May 10, 1994, consistent with its procedures for revoting or ratifying decisions pertaining to open enforcement matters the Commission found reason to believe that the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a). On that same date the Commission also: found reason to believe that the Clinton Committee and Robert A. Farmer, as treasurer, violated 2 U.S.C. § 441a(f); and approved subpoenas for testimony and documents from Eli J. Segal, the Clinton Committee and Robert A. Farmer, as treasurer, and a representative of the DNC.

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On July 27, 1993, the Commission authorized a subpoena for documents and a deposition directed at Paul C. Storch, the vendor for the telemarketing portion of the June 12, 1992 Clinton town hall meeting. On October 14, 1993, a staff member from this Office deposed Paul C. Storch. Mr. Storch testified that Eli Segal personally instructed Mr. Storch on what messages were to be received by callers to the "800" number which flashed on the screen during the town hall meeting program. Furthermore, Mr. Storch testified that his agreement to render the telecommunication services for the town hall meeting had been with Mr. Segal, and that his company was to have been paid by the Clinton Committee. Nevertheless, even though he had not previously dealt with the DNC with regard to providing the "800" number service for this town hall meeting program, on June 15, 1992, three days after the program had run, the DNC contacted him and said the DNC was going to pay him. Mr. Storch also testified that all of the messages received by callers to the "800" number contained the exact information he was instructed to place therein by Eli Segal, including the message requesting a contribution to the Clinton Committee.

Mr. Storch testified that one of the purposes of the town hall meeting program was to get contributions for the Clinton Committee. Mr. Storch based his conclusion, in part, on the fact that he had performed a similar "800" number service for the campaign in pursuit of contributions during the Oregon primary, prior to this town hall meeting program. Mr. Storch also testified that there were constant communications between

9704382986

Eli Segal and him about the "800" number service for the town hall meeting program, and that during these communications Eli Segal told him he wanted callers to make contributions to the Clinton Committee.

On August 25, 1994, a staff member from this Office deposed Eli J. Segal. Mr. Segal, testified that when the June 12, 1992 town hall meeting was originally planned the intent was that the Clinton Committee would pay all of the expenses which resulted therefrom. According to Mr. Segal, a few days before the town hall meeting the Clinton Committee determined that it did not have enough money to finance the project. Mr. Segal testified that the Clinton Committee approached the DNC and convinced them to undertake the expenses for the town hall meeting. Mr. Segal testified that the vendor for the "800" number was inadvertently not informed of the town hall meeting now being a fundraiser for the DNC instead of the Clinton Committee. When questioned about specific circumstances surrounding the town hall meeting program, which would give support to his testimony, Mr. Segal testified that in his position as Chief of Staff he was not involved with the specifics that may have occurred, and other persons he named should know.

This Office feels that further discovery is necessary because neither Mr. Storch nor Mr. Segal were able to answer important questions with regard to the possible benefits which the Clinton Campaign may have obtained from the 800 number. The 800 number offered three options: (1) request Clinton's Plan for America's Future; (2) leave a message for President Clinton; and

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(3) make a contribution to the Clinton Campaign. The witnesses deposed so far were unable to tell us whether the list compiled from callers to the 800 number who wanted any of the options was ever used either by the Clinton Campaign or by the DNC. Nor was either deponent able to tell us whether any campaign materials were sent to the people who requested that option when calling the 800 number. Differences in Mr. Storch's and Mr. Segal's testimony also leave unresolved the question as to how the option to make a contribution to Clinton for President came to be on the tape. All of these unresolved questions are important to an ability to determine the magnitude of the violation. People named by Mr. Segal during his testimony, or whose names appear on pertinent documents, who may be able to help us investigate were David Watkins (Vice President of the Clinton Committee and Deputy Campaign Manager of the Clinton campaign); Frank Greer (Contractor for the town hall meeting); Joan Baggett (Assistant to the Chairman of the DNC); Kathy Harmon (Employee of the DNC); and Melvin Whitfield (Employee of the DNC).[1/]

Based on the foregoing this Office recommends that the Commission authorize subpoenas for documents and testimony to David Watkins, Frank Greer, Joan Baggett, Kathy Harmon, and

---

1/ Mr. Segal testified that the following people also had knowledge of the events surrounding the town hall meeting: Secretary of Commerce Ron Brown, George Stephanoupolis, James Carvel, Andy Greenwald, Paul Bagala, Stan Greenberg, Carol Darr and David Wilhelm. We have not sought subpoena authority to depose these individuals, as we believe at this time that the individuals we seek to depose are most likely to have knowledge of the details of this transaction. Should our investigation indicate otherwise, we will seek the necessary authority at a later date.

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Melvin Whitfield.

II. **GENERAL COUNSEL'S RECOMMENDATIONS**

Authorize subpoenas for documents and testimony to David Watkins, Frank Greer, Joan Baggett, Kathy Harmon, and Melvin Whitfield.

10/31/94
Date

Lawrence M. Noble
General Counsel

Attachment
Sample subpoena

Staff assigned: Phillip L. Wise

97043822989

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 3, 1994

SUBJECT: MUR 3546 - GENERAL COUNSEL'S REPORT DATED OCTOBER 31, 1994.

The above-captioned document was circulated to the Commission on Tuesday, November 1, 1994 at 11:00 a.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	
Commissioner Potter	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for Tuesday, November 8, 1994.

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	)	
	)	MUR 3546
Clinton for President Committee	)	
and Robert A. Farmer, as treasurer;	)	
Democratic National Committee and	)	
Robert T. Matsui, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on November 8, 1994, do hereby certify that the Commission decided by a vote of 5-1 to authorize subpoenas for documents and testimony to David Watkins, Frank Greer, Joan Baggett, Kathy Harmon, and Melvin Whitfield, as recommended in the General Counsel's October 31, 1994 report on MUR 3546.

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

Attest:

11-10-94
Date

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

9704382299 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 17, 1994

FEDERAL EXPRESS

Melvin Whitfield
1920 Varnum NE
Washington, DC 20018

RE: MUR 3546

Dear Mr. Whitfield:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to appear and give sworn testimony on December 7, 1994 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

9704382992

Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (202) 219-3400.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

9704382293

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Melvin Whitfield
1920 Varnum NE
Washington, DC 20018

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Notice is hereby given that the deposition is to be taken on December 7, 1994 in Room 657 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 16th day of November, 1994.

For the Commission,

Trevor Potter
Chairman

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 21, 1994

FEDERAL EXPRESS
Melvin Whitfield
Department Of Health and Human
Services, Room 635 G
200 Independence Ave., S.W.
Washington, DC 20201

RE: MUR 3546

Dear Mr. Whitfield:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to appear and give sworn testimony on December 7, 1994 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

9704382995

Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (202) 219-3400.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

9704382299 6

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Melvin Whitfield

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Notice is hereby given that the deposition is to be taken on December 7, 1994 in Room 657 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

WHEREFORE, the Vice Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 21st day of November, 1994.

For the Commission,

Danny L. McDonald
Vice Chairman

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

9704382997

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 21, 1994

FEDERAL EXPRESS

Frank Greer, President
Greer, Margolis, Mitchell, Burns
& Assoc.
1010 Wisconsin Ave., NW #800
Washington, DC 20007

RE: MUR 3546

Dear Mr. Greer:

The Federal Election Commission has the statutory duty of enforcing the Federal Election Campaign Act of 1971, as amended, and Chapters 95 and 96 of Title 26, United States Code. The Commission has issued the attached subpoena which requires you to appear and give sworn testimony on December 14, 1994 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. The Commission does not consider you a respondent in this matter, but rather a witness only.

Because this information is being sought as part of an investigation being conducted by the Commission, the confidentiality provision of 2 U.S.C. § 437g(a)(12)(A) applies. That section prohibits making public any investigation conducted by the Commission without the express written consent of the person with respect to whom the investigation is made. You are advised that no such consent has been given in this case.

You may consult with an attorney and have an attorney present with you at the deposition. If you intend to be so represented, please advise us of the name and address of your attorney prior to the date of the deposition.

Pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00, plus mileage. Subsequent to the deposition, you will be sent a check for the witness fee and mileage.

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Within two days of your receipt of this notification, please confirm your scheduled appearance with me at (202) 219-3400.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Subpoena

9704382299 9

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 3546
)

SUBPOENA

TO: Frank Greer, President
Greer, Margolis, Mitchell, Burns & Assoc.
1010 Wisconsin Ave., NW #800
Washington, DC 20007

Pursuant to 2 U.S.C. § 437d(a)(3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby subpoenas you to appear for deposition with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton. Notice is hereby given that the deposition is to be taken on December 14, 1994 in Room 657 at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C., beginning at 10:00 a.m. and continuing each day thereafter as necessary.

Further, pursuant to 2 U.S.C. § 437d(a)(3), you are hereby subpoenaed to produce the documents listed on the attachment to this subpoena. Legible copies which, where applicable, show both sides of the documents, may be substituted for originals. The documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463.

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WHEREFORE, the Vice Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C., on this 21st day of November, 1994.

For the Commission,

Danny L. McDonald

Danny L. McDonald
Vice Chairman

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachment
Document Request (1 page)

9704382300 1

DOCUMENT REQUEST

1. Provide a copy of all contracts for the services of Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

2. Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

3. Provide copies of all checks for the services rendered by Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

4. Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Greer, Margolis, Mitchell, Burns & Assoc. in planning the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

5. Provide the names, addresses, and positions held by anyone from the DNC and the Clinton Committee who contacted Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

6. Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the Clinton Committee and Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

7. Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the DNC and Greer, Margolis, Mitchell, Burns & Assoc. with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

9704382300 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1994

FACSIMILE TRANSMITTAL
(202-728-4044) Fax Number
AND REGULAR MAIL

Ms. Lynn Utrecht, Esquire
Oldaker Ryan and Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546

Dear Ms. Utrecht:

On November 21, 1994, the Federal Election Commission delivered to your client, Mr. Frank Greer, a subpoena which required he appear and give sworn testimony on December 14, 1994, at the Office of the General Counsel, Federal Election Commission, 999 E. Street, N.W., Washington, D.C. 20463, at 10:00 a.m. in connection with an investigation it is conducting. Your client was also order to furnish certain documents.

On December 5, 1994, Abigail Shaine, Assistant General Counsel, spoke to your client by telephone. Mr. Greer indicated that he would be out of town for most of the rest of the month and asked if we could postpone the deposition to the first week of January. Ms. Shaine indicated that we were reluctant to delay the progress of the case, but ultimately agreed to reschedule the deposition to January 5, 1995, a date designated by your client to accommodate his vacation. This rescheduled date was also conditioned on the receipt of the requested documents by December 14, 1994. However, in a telephone conversation I had with Mr. Greer's partner, Ms. Annie Burns stated that the documents could not be furnished by the agreed upon December 14, 1994 date. Ms. Burns also indicated that you would be contacting me with regard to the January schedule of your client, raising a question in our mind as to whether you intended to try to alter your client's agreement with this Office.

9704382303

Accordingly, It is requested that you respond by noon on December 9, 1994, and confirm your client's appearance. Please be advised if your client now contends that he cannot be in this Office for his deposition on January 5, 1995, we will recommend that the Commission seek judicial enforcement of the subpoena for the deposition on the original date of December 14, 1994. If you confirm his appearance on January 5, 1995, we can accommodate your client's request for additional time to produce the requested documents, until December 20, 1994.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

9704382300 4

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 8 1 55 PM '94

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3546

NAME OF COUNSEL: LYNN UTRECHT

ADDRESS: OLDAKER, RYAN AND LEONARD
818 CONNECTICUT AVE, NW SUITE 1100
WASHINGTON, DC 20006

TELEPHONE: 202/728-1010

The above-named individual/individuals is/are 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.

Dec 7, 1994
Date

Signature

WITNESSES'
~~RESPONDENT'S~~ NAME: FRANKLIN GREER

ADDRESS: 1010 WISCONSIN AVE, NW
SUITE 800
WASHINGTON, DC 20007

BUSINESS PHONE: 202/338-8700

9704382300 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 12, 1994

FACSIMILE TRANSMITTAL
(202-728-4044) Fax Number
AND REGULAR MAIL

Ms. Lynn Utrecht, Esquire
Oldaker Ryan and Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546

Dear Ms. Utrecht:

On November 21, 1994, the Federal Election Commission delivered to your client, Mr. Frank Greer, a subpoena which required he appear and give sworn testimony on December 14, 1994, at the Office of the General Counsel, Federal Election Commission, in connection with an investigation it is conducting. Your client was also requested to furnish certain documents.

This is to confirm that we have agreed that the deposition of Mr. Greer has been rescheduled to January 11, 1995, at the same location as previously stated starting at 10:00 a.m. In addition, it was agreed that the requested documents will be furnished to this Office by December 20, 1994.

If you have any additional questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

9704382300 6

RESPONSE OF GREER, MARGOLIS, MITCHELL, BURNS & ASSOCIATES, INC.*
TO REQUEST FOR PRODUCTION OF
DOCUMENTS IN MUR 3546

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 20 5 2 PM '94

1) Provide a copy of all contracts for the services of Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: No written contract exists for the June 12, 1992, television "town hall meeting". Often written contracts are not executed for specific projects.

2) Provide a copy of all written or taped instructions, directions, correspondence, or any other written records about the services to be rendered by Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: There are no written or taped instructions, directions, correspondence, or any other written records about the services to be rendered. Typically, all communications were oral.

3) Provide copies of all checks for the services rendered by Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: See attached.

4) Provide a copy of all scripts and drafts of scripts prepared by, received by, or used by Greer, Margolis, Mitchell, Burns & Associates in planning the broadcast of the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: A town hall meeting, by its nature, is unrehearsed and without script. If there was a script for the announcer, we are unable to find it at this time. The accompanying tape contains what was said by the announcer.

9704382307

5) Provide the names, addresses, and positions held by anyone from the DNC and the Clinton Committee who contacted Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: Although most GMMG staff involved in the town hall meeting recall contact with parties specified in #5 which would have been consistent with contact necessary to complete job requirements (e.g., setting up the broadcast, scheduling, advance arrangements), due to the many contracts with these parties both before and after that date, GMMG staff cannot recall the specific persons who contacted them on this one project.

6) Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the Clinton Committee and Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, "town hall meeting" of then Governor William J. Clinton.

Response: None exist. (see #2)

7) Provide a copy of all written communications, and any other written records, including notes of telephone conversations between the DNC and Greer, Margolis, Mitchell, Burns & Associates with regard to the June 12, 1992, television "town hall meeting" of then Governor William J. Clinton.

Response: None exist. (see #2)

9704382308

* During 1992, the name of the firm was Greer, Margolis, Mitchell, Grumwald & Associates, Inc.

On Behalf of Greer, Margolis, Mitchell, Burns & Associates, Inc.

Lyn Utrecht 12/20/94

Lyn Utrecht
Counsel

Great American Media, Inc.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Dec 20 5 22 PM '94

TO: DEMOCRATIC NATIONAL COMMITTEE

FROM: GREAT AMERICAN MEDIA, INC.

DATE: JUNE 04, 1992

RE: INVOICE # GAM92-219M

DOWNPAYMENT ON CLINTON
30 MINUTE TELEVISION BROADCAST ON
JUNE 12, 1992

BALANCE DUE: $ 287,500.00

9704382300 9

2626 Pennsylvania Avenue, NW • Suite 301 • Washington, DC 20037

Great American Media, Inc.

TO: DEMOCRATIC NATIONAL COMMITTEE

FROM: GREAT AMERICAN MEDIA, INC.

DATE: JUNE 09, 1992

RE: INVOICE # GAM92-220M

REMAINDER OF PAYMENT DUE FOR CLINTON
30 MINUTE TELEVISION BROADCAST
ON JUNE 12, 1992

BALANCE DUE: $ 86,034.48

9704382301 0

2626 Pennsylvania Avenue, NW • Suite 301 • Washington, DC 20037

Great American Media, Inc.

TO: Democratic National Committee

FROM: Great American Media, Inc.

DATE: June 17, 1992

RE: Invoice # GAM92-224P

Sol
7 000 242

Production

1/2 Hour NBC Network TV Show including studio and crew for live to tape broadcast at WQED Public Television in Pittsburgh for Friday, June 12th National Broadcast.

Audience Recruitment from independent research firm	7,200.00
Bio Roll-in Edit	1,920.73
Lead-in Announcer including P&W	657.34
Moderator including P&W	509.40
Satellite and Transponder including Redundant feed per NBC request	2,930.00
Stage Rental, including 5 cameras, director, 4 wireless mics, 4 mic handlers, technical director, assistant director, camera crew and audio crew, set construction and sign painting, bleacher rental and construction, music transfer, music rights, live closed captioning, craft services and security	32,945.33
Expenses including Airfare, Car Rental	3,001.72
Invoice Total	**49,164.52**

9704382301 1

2626 Pennsylvania Avenue, NW • Suite 301 • Washington, DC 20037

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC National Washington, DC 20006

31186

June 3rd 1992

15-120/540 D01

PAY TO THE ORDER OF Great American Media

Two hundred eighty seven thousand five hundred .....00/00 DOLLARS $ 287,500.00

GREAT AMERICAN MEDIA, INC.
FOR GENERAL DNC
WASHINGTON, D.C.
▲ AUTHORIZED SIGNATURE ▲

⑈031186⑈ ⑆054001204⑆ 262880 5⑈

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC National Washington, DC 20006

31194

June 9, 19 92

15-120/540 D01

PAY ***Eighty-Six Thousand Thirty-Four and 48/100*** DOLLARS $ 86,034.48

TO THE ORDER OF

Great American Media
2626 Pennsylvania Avenue, NW
Suite 301
Washington, DC 20037

⑈031194⑈ ⑆054001204⑆ 262880 5⑈

9704382301 3

31197

D.N.C. SERVICES CORPORATION
GENERAL FUND
430 SOUTH CAPITOL STREET, S.E.
WASHINGTON, D.C. 20003

SOVRAN BANK
Sovran Bank/DC National Washington, DC 20006

15-120/540 D01

June 17 19 92

PAY Forty nine thousand one hundred sixty four and 52 cents DOLLARS $ 49,164.52

TO THE ORDER OF
Great American Media
2626 Pennsylvania Avenue, N.W.
Suiet 301
Washington, DC 20037

Robert J. Matson

⑈031197⑈ ⑆054001204⑆ 262880 5⑈

9704382301 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1995

HAND-DELIVERED

Melvin Whitfield
Department Of Health and Human
Services, Room 635 G
200 Independence Ave., S.W.
Washington, DC 20201

RE: MUR 3546

Dear Mr. Whitfield:

On November 21, 1994, this Office mailed you a letter with an attached subpoena for your testimony under oath. This letter stated that pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00 witness fee. The check for this witness fee is attached hereto.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

Attachment

9704382301 5

United States Treasury 15-51/000 P 244,436,996

Check No.

01 30 95 87 PHILADELPHIA, PA - 2038 01972067

671411 05 MELVIN WHITFIELD 95350001

Pay to the order of MELVIN WHITFIELD F E C WASH DC

$*****40*00

VOID AFTER ONE YEAR

PO NO 5AW036 WITNESS FEE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 2, 1995

Ms. Lynn Utrecht, Esquire
Oldaker Ryan and Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546

Dear Ms. Utrecht:

On November 21, 1994, this Office mailed your client, Mr. Frank Greer, a letter with an attached subpoena for his testimony under oath. This letter stated that pursuant to 11 C.F.R. § 111.14, a witness summoned by the Commission shall be paid $40.00 witness fee. The check for this witness fee is attached hereto.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise

9704382301 6

United States Treasury 15-51/000 P 244,436,997

Check No.

01 30 95 07 PHILADELPHIA, PA - 2038 01972068
671411 05 FRANK GREER 95350001

Pay to the order of FRANK GREER F E C WASH DC

$******40*00

VOID AFTER ONE YEAR

PO NO 5AW036 WITNESS FEE

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 15, 1995

FACSIMILE TRANSMITTAL
(202-728-4044) Fax Number
AND REGULAR MAIL

Ms. Lynn Utrecht, Esquire
Oldaker Ryan and Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546

Dear Ms. Utrecht:

Pursuant to our recent telephone conversation, attached hereto are the questions this Office would like your client, Paul Storch, to answer under oath. Please submit such sworn answers to this Office within 30 days from your receipt. Thanks for your cooperation in this matter. We hope this will enable us to obtain the information we need without reopening Mr. Storch's deposition.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Attorney

Attachment
Questions

9704382301 7

TO: Paul Storch
4 Parkwood Drive
Great Neck, New York 11023

In furtherance of the investigation in MUR 3546 you are hereby requested to submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request.

In answering these interrogatories each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any of the following interrogatories each claim of privilege must specify in detail all the grounds on which it rests.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named witness in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

97043823018

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

Unless stated otherwise, the 1-800 number shall mean the 1-800 number, which flashed on the screen during President Clinton's June 12, 1992 "town hall meeting" program.

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INTERROGATORIES

1. Please name and fully identify every person, as defined above, to whom you or anyone from the Storch-Tele-Group, Inc. furnished a list or lists of names of the callers to the 1-800 number.

2. Please fully describe the procedures, processes, and methods utilized to compile the list or lists of names of the callers to the 1-800 number.

3. With respect to your response to Interrogatory No. 2, above, please fully describe the forms in which this list or lists of names was compiled. (i.e. computer tape, computer disk, audio tape, paper, etc.).

4. Please state whether the list or lists were forwarded either to the Democratic National Committee, the Clinton for President Committee, or the Clinton/Gore '92 Committee. If yes, please state to whom it was given and on what date. Please fully explain how the list or lists were labeled, coded, and identified.

5. Please fully describe the procedures, processes, and methods utilized to stop receiving calls on the 1-800 number.

6. With respect to your response to Interrogatory No. 5, above, please furnish documentation which shows the termination of the 1-800 number.

7. Please state whether at any time callers to the 1-800 number received instructions to dial a telephone number at the Clinton Campaign Headquarters, or any other telephone number.

8. With respect to your response to Interrogatory No. 7, above, please state how these instructions were communicated to the callers. (i.e. recording, operators, etc.). If there were instructions to call a number other than the Clinton Campaign Headquarters number, please list the number. Please also state the name of the person, as defined, whose telephone number it was.

9. With respect to your response to Interrogatory No. 8, above, If there were instructions to call a number other than the Clinton Campaign Headquarters number, please explain the purpose(s) for setting up such a number.

10. With respect to your response to Interrogatories No. 7 and No. 8, above, please fully describe the participation of you or anyone from the Storch-Tele-Group, Inc. in arranging for callers to the 1-800 number to be referred to another number.

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11. With respect to your response to Interrogatory No. 10, above, please identify whose idea it was to have these callers referred to a telephone number at the Clinton Campaign Headquarters, or any other number.

12. With respect to your response to Interrogatory No. 11, above, please state how this idea was communicated to you and identify every person involved in such communications. Provide all documents.

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

MAR 15 11 39 AM '95

March 10, 1995
Phillip L. Wise
Federal Election Commission
Washington, DC 20463

Re:MUR 3546

Dear Mr. Wise,

As per your February 15, 1995 letter request to Lynn Utrecht, following are the answers to the interrogatories in the above referred to matter:

1. Carol Darr
   General Counsel, Democratic National Committee

2. The procedures involved in compiling the list of 1-800 number callers began with an operator answering the call to the 1-800 number. The operator took information about the caller including name, address and contribution amount, if any. The operator then key punched that information into a computer. At the end of the day all the callers from that day would be compiled into a batch file and that file transmitted to Storch-Tele-Group via electronic transfer.

3. The form in which the file was compiled was computer disk.

4. The list was copied to diskette and forwarded by me only to Carol Darr of the Democratic National Committee on or about July 15, 1992. The list was in diskette format and labeled to indicate callers from the June 12, 1992 show. I did not forward the list to anyone else.

5. I sent via fax a handwritten note to Sue Abler at Call Interactive. I called her to orally verify same.

6. Attached.

7. No.

8-12. Not applicable.

Sincerely,

Paul C. Storch

Paul C. Storch
4 Parkwood Drive
Great Neck, NY 11023

Sworn before me the 10th day of March 1995

MICHELLE MOLINARI
NOTARY PUBLIC, State of New York
No. 30-4951329
Qualified in Nassau County
Commission Expires ~~May 22, 1961~~ Aug 1, 1995

Michelle Molinari

cc:Lynn Utrecht

9704382302 2

STORCH-TELE-GROUP, INC.
375 WEST BROADWAY
NEW YORK, N.Y. 10012
TEL: (212) 274-1919
FAX: (212) 274-1971

6-16-97

Sue Ablen,

As per our conversation please shut down the 1-800-551-5600 number.
Effective immediately.

Paul CSK

9704382302 3

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

Oct 5 5 04 PM '95

In the Matter of)
) MUR 3546
Clinton for President Committee and J. L. Rutherford, as treasurer)
)
Democratic National Committee and Robert T. Matsui, as treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

This Office believes that the investigation in this matter has produced enough evidence: to enable the Commission to enter into preprobable cause conciliation based on its reason to believe finding that the Clinton Committee ("Clinton Committee") and its treasurer[1/], violated 2 U.S.C. § 441a(f); and to permit this Office to prepare and forward a brief to the Democratic National Committee ("DNC") and Robert T. Matsui, as treasurer, analyzing the possible violations of 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

Information and evidence were gathered from written responses, from furnished documents, and from testimony under oath. Although there are some factual issues which have not been fully resolved, this Office has concluded that, on balance, these issues are not sufficiently significant to warrant investing the resources that would be required to pursue further investigation.[2/] Accordingly, this Office recommends that the

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1/ Robert A. Farmer was the treasurer when the Commission made its findings. J. L. Rutherford is the current treasurer.

2/ This Office earlier received authority to take depositions of several additional people, a few of whom we now believe may not be necessary to depose. This decision was based in part, on this Office's conclusion that further depositions would not

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Commission grant the request to engage in preprobable cause conciliation received from the Clinton Committee and its treasurer, and move to the next stage in the enforcement process with respect to the DNC and its treasurer, which respondents did not request to engage in preprobable cause conciliation.

II. BACKGROUND

On June 12, 1992, the Democratic National Committee ("DNC"), sponsored a 30-minute nationwide televised town hall meeting at which President Clinton appeared to answer questions from the television audience. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive President Clinton's "Plan for America's Future"; leave a message for President Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." In addition to the "800" number, during the televised program an announcement appeared on the screen stating "paid for by the Democratic National Committee."

Referring to the foregoing facts, the Republican National Committee ("RNC"), filed a complaint alleging various violations of the federal election laws by the DNC and the Clinton Committee ("the Clinton Committee") and its treasurer. In responding to the complaint, both the DNC and the Clinton Committee claimed that an inadvertent mistake caused the

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(Footnote 2 continued from previous page)
reveal any additional significant information about these issues. Furthermore, this Office believes that the questions important to determining the magnitude of the violations have been resolved sufficiently.

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violations.

On May 10, 1994, the Commission voted to find reason to believe that the Clinton Committee and its treasurer, violated 2 U.S.C. § 441a(f); and revoted to find reason to believe that the DNC and Robert T. Matsui, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). On that same date, the Commission approved subpoenas for testimony and documents directed toward Eli J. Segal, the Clinton Committee and its treasurer, and a representative of the DNC.[3/] On November 8, 1994, the Commission authorized subpoenas for documents and testimony to David Watkins, Frank Greer, Joan Baggett, Kathy Harmon, and Melvin Whitfield.[4/] To date, this Office has deposed Paul Storch, Eli Segal, Melvin Whitfield, and Frank Greer. We have also reviewed documents submitted by Paul Storch, Frank Greer, the Clinton Committee, and the DNC.

3/ On June 2, 1994, both the Clinton Committee, and the DNC filed Motions To Quash Subpoenas. On June 14, 1994, the Commission denied the Motions to Quash filed by the respondents.

4/ On July 27, 1993, the Commission authorized a subpoena for documents and testimony directed to Paul C. Storch. During the period relevant to this investigation Paul Storch's company Storch-Tele-Group, Inc. was the vendor for the 1-800 number which appeared on the screen during the June 12, 1992 "town hall" meeting program; Eli J. Segal was Chief of Staff of the Clinton Presidential Campaign; David Watkins was Vice President of the Clinton Committee and Deputy Campaign Manager of the Clinton campaign; Frank Greer's company Greer, Margolis, Mitchell, Burns & Associates, Inc. was the contractor for the town hall meeting; Joan Baggett was Chief of Staff and Assistant to the Chairman of the DNC; Kathy Harmon was an employee of the DNC; and Melvin Whitfield was the DNC liaison to the Clinton Committee.

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III. SUMMARY OF INVESTIGATION

The investigation in this matter has focused on the following issues: how the message soliciting contributions for the Clinton Committee, heard by callers to the 800 number, came to be one of the options available to callers; and the extent of the benefit the Clinton Committee obtained from the appearance of the "800" number on the television screen during the town hall meeting program.

This section of the report will present this Office's conclusions with regard to the foregoing issues, and summarize the evidence which supports such conclusions. At the heart of the investigation lies the decision as to which organization - the DNC or the Clinton Committee - would pay for the broadcast of the town hall meeting. The evidence shows that during the original planning stage for the town hall meeting program it was anticipated that the Clinton Committee would pay all expenses for the town hall meeting program, including the "800" number. Later, but prior to the airing of the town hall meeting program, the DNC decided it would pay all expenses for the town hall meeting program, and treat it as a general election expense. It does not appear that anyone, prior to the airing of the program, considered whether any changes to the funding or content of the "800" number program were appropriate, as a result of the DNC's decision to assume financial responsibility for the television broadcast, which cost approximately $432,130. After the town meeting aired, the DNC concluded that it should have paid for the "800" number, and the solicitation should have been on

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behalf of the DNC. The DNC ultimately paid the "800" number vendor $120,000 for the "800" number program, but terminated the project when it was not possible to change quickly the solicitation message to solicit money for the DNC rather than for the Clinton Committee.

Although it would have been permissible for the DNC to raise money for itself through this "800" number, the evidence shows that such solicitation for the benefit of the DNC was never considered prior to the broadcast of the town hall meeting. The evidence gathered also shows that the town hall meeting and the "800" number which flashed on the screen during the broadcast had different focuses. It appears that, while the principal reason for broadcasting the town hall meeting was to expose the candidate to the voters, all three options available on the "800" number were developed primarily as a means of raising money for the Clinton Committee.

A. How the message requesting contributions for the Clinton Committee, heard by callers to the "800" number, came to be one of the options

Information obtained during the investigation shows that personnel from the DNC and the Clinton Committee approved the message soliciting contributions for the Clinton Committee as one of the options heard by callers to the "800" number. However, the fact that this option was actually heard by callers to the "800" number appears to be the result of inattention by both the DNC and the Clinton Committee. Even though the respondents claim the "800" number solicitation was a mistake, the fact remains that the DNC paid for a telemarketing program

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which solicited contributions for the Clinton campaign from June 12, 1992 to June 16, 1992. Such individual contributions to a presidential candidate can only be collected in connection with the Primary.

On July 13, 1994, the Clinton Committee filed its response to the Commission's reason to believe finding. (Attachment 1).[5/] According to the Clinton Committee, the Democratic primaries

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5/ In this response, the Clinton Committee filed what this Office considers a Motion to Dismiss (requested that the Commission find no probable cause and dismiss the complaint) in this matter. In support of its Motion the Clinton Committee reiterated its argument that there was no violation because the town hall meeting was a proper coordinated general election expenditure by the DNC. This Office addressed this argument in the First General Counsel's Report, dated July 7, 1993, and in the NRA General Counsel's Report, dated April 18, 1994. This Office's arguments concerning this issue are incorporated by reference in this present report.

In support of its Motion to Dismiss the Clinton Committee also reiterated its argument, previously submitted in support of its Motion to Quash, that because of NRA the Commission's reason to believe finding is the product of an unauthorized investigation. This Office's position on these issues set forth in the General Counsel's Report, dated June 10, 1994, is incorporated by reference in this present report.

The Clinton Committee also states that its conduct in this matter has not satisfied the "knowingly accept" element of any violation of 2 U.S.C. § 441a(f). The Clinton Committee appears to be basing this argument on an incorrect premise that it must actually know the activity at issue is a violation. The "knowingly" standard with regard to this violation only requires that the respondents were aware of the activity which resulted in the violation. See FEC v. Dramesi For Congress Committee, 640 F.Supp. 985 (D.N.J. 1986); Federal Election Commission v. California Medical Association, 502 F. Supp. 196, 203-04 (N.D. Cal. 1980) (the term "knowingly accept" requires only that the recipient know that he received the contributions at issue, their amount, and their source). But see FEC v. Re-Elect Hollenbeck To Congress Committee (Civil Action No. 85-2239, 1986). (The "knowingly accept" element is not satisfied if the contribution "would appear to be legal to any reasonable treasurer...."). As can be seen from the facts in this present matter the Clinton Committee had specific knowledge about the facts at issue.

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leading to the 1992 presidential election concluded on June 2, 1992. In this response the Clinton Committee stated that after the final primaries, presidential candidate Bill Clinton had captured the clear majority of the delegates to the national nominating convention and thus was assured of the Democratic nomination. The Clinton Committee also stated that the Clinton campaign and the Democratic National Committee jointly determined that a nationally broadcast "town meeting" on June 12, 1992 would be an appropriate and effective expenditure "in connection with the general election campaign," to be financed as a coordinated party expenditure under 2 U.S.C. § 441a(d).

In responding to the complaint the DNC, like the Clinton Committee, stated that the purpose of the television broadcast was to disseminate the general election message of the Democratic Party's likely nominee. The DNC also stated that the toll-free number was not designed primarily as a fundraising device, but as a way to inform the viewing audience about the Democratic campaign message. In its response to the Commission's reason to believe finding, the DNC stated that the solicitation on behalf of the Clinton Committee in the toll-free number was a mistake, and that no one had focused on the fact that the "800" number contained the message "help the Clinton campaign" rather than "help the Democratic National Committee" until the evening of June 14th, two days after the broadcast aired, when the General Counsel of the DNC, Carol C. Darr, learned that the recording referred to the Clinton Committee.

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(Attachment 2).[6/]

During his deposition Eli Segal, former Chief of Staff of the Clinton for President Committee, discussed the process leading to the decision to have Mr. Clinton appear on the town hall meeting broadcast and to have the DNC pay for the appearance. Mr. Segal stated that even though President Clinton was successful in the California primary, the polls still had him as third behind Ross Perot, and President George Bush in the general election. According to Mr. Segal, because of President Clinton's standing in the polls the campaign concluded that it was important for President Clinton to reach the American people, the same as he had done six months earlier in New Hampshire. Therefore, as Mr. Segal testified, the Clinton Committee decided to broadcast a town hall meeting program in Pittsburgh on June 12, 1992. (See Segal deposition transcript pages 8 and 9). Mr. Segal also testified that, as with the prior town hall meetings, the Clinton campaign was planning to finance the June 12, 1992 town hall meeting program; however,

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6/ In this response, the DNC filed a Motion to Dismiss this matter. In support of its Motion the DNC reiterated its arguments that there was no violation because the town hall meeting was a proper coordinated general election expenditure by the DNC, and that there was no disclaimer requirement. This Office addressed these argument in the First General Counsel's Report, dated July 7, 1993, and in the NRA General Counsel's Report, dated April 18, 1994. This Office's arguments concerning these issues is incorporated by reference in this present report.

In support of its Motion to Dismiss the DNC also reiterated its argument, previously submitted in support of its Motion to Quash, that because of NRA the Commission's reason to believe finding is the product of an unauthorized investigation. This Office's position on these issues set forth in the General Counsel's Report, dated June 10, 1994, is incorporated by reference in this present report.

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some time after the California primary it was determined that the Clinton campaign was short of money and that the DNC could pay for this program as a general election expenditure. (See Segal deposition transcript pages 39 and 40).

Frank Greer, whose company Greer, Margolis, Mitchell, Burns & Associates, Inc. was the contractor for the town hall meeting, was also a political advisor to the Clinton campaign. Mr. Greer agreed with Mr. Segal that the goal of the town hall meeting broadcast was for Bill Clinton to communicate directly with the American people. (See Greer deposition transcript pages 32 and 33). Mr. Greer also testified that he was contacted several days before the June 12, 1992 town hall meeting program, by Joan Baggett, then Chief of Staff of the DNC, and informed that his company would be paid by the DNC. (See Greer deposition transcript pages 13 and 14). This testimony is supported by documents furnished to this Office by Mr. Greer, which include checks and invoices dated June 3, 1992 to June 17, 1992, indicating payments by the DNC to Mr. Greer's company for the June 12, 1992, town hall meeting program. (Attachment 3). Thus, the decision that the DNC would pay for the actual town hall meeting broadcast was made at least a week prior to the airing of this program, leaving plenty of time to make changes to the "800" number script.[7/]

7/ Significantly, the central issues raised by this case resulted not from the Clinton Committee's attempt to raise money, but from the DNC's decision, made after the broadcast, to pay for the "800" number which included a solicitation for the Clinton Committee. Mr. Segal testified that because the decision to have the DNC pay for the broadcast was made at the last minute, possible issues arising from the inclusion of a

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Paul C. Storch, president of Storch-Tele-Group, Inc., the vendor for the "1-800" telephone number which appeared on the screen during the June 12, 1992 "town hall" meeting program, testified under oath that Eli Segal personally instructed him on what messages were to be received by callers to the "800" number which flashed on the screen during the town hall meeting program. (See Storch deposition transcript page #9). Mr. Storch also testified that all of the messages received by callers to the "800" number contained the exact information he was instructed to place therein by Eli Segal, including the message requesting a contribution to the Clinton Committee. In support of his testimony and in response to a Commission subpoena Mr. Storch furnished a copy of the script for the messages heard by callers to the 800 number. This script clearly shows that one of the messages solicits contributions for the Clinton Committee. (Attachment 4).

Eli Segal testified that Mr. Storch followed the instructions he was given when including the request for contributions for the Clinton Committee as one of the options. According to Mr. Segal, Mr. Storch was never told that the contribution request should be changed to be on behalf of the Democratic National Committee, prior to the television broadcast. (See Segal deposition transcript pages 47 to 48).

(Footnote 7 continued from previous page)
contribution option for the Clinton Committee on the "800" number were overlooked. (See Segal deposition transcript page 40). The evidence from Frank Greer, however, reveals that there was sufficient time to plan and make the necessary changes to the "800" number message.

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Mr. Segal stated that the program was designed initially as a Clinton for President campaign event, and when the DNC became involved he forgot to go back to the script, and have it changed to reflect the fact that it was now a DNC program. (See Segal deposition transcript pages 40 and 41).

In the written responses it had been implied that Mr. Storch was at fault for the script problems. In addition, while being deposed Frank Greer testified that the problems were caused by Mr. Storch. Furthermore, Melvin Whitfield testified that the general opinion among campaign staff was that Paul Storch was responsible for the script problems. Yet, the evidence, including some of Mr. Segal's testimony, reveals that Mr. Storch did exactly as he was instructed. Thus, the availability of the contribution option does not appear to be the result of a vendor error.

Indeed, the evidence also shows that Mr. Storch, the "800" number contractor, was not even aware of the DNC's participation in the town hall meeting program until after the legal issue surrounding the contribution option arose. During his deposition, Mr. Storch informed this Office that his agreement to render the telecommunication services was with Eli Segal, and that he had understood that his company was to be paid by the Clinton Committee. According to Mr. Storch, on June 15, 1992, three days after the program had been televised Carol Darr contacted him and said the DNC was going to pay him for the telecommunication services. (See Storch deposition transcript pages 14 and 15). (See also Attachments 5, 6, 7, 8, 9 and 10).

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During this telephone conversation Mr. Storch said Ms. Darr informed him that she did not know that the town hall meeting program was going to have the 800 telephone number and request contributions. (See Storch deposition transcript page 22).

Although Carol Darr personally may not have been aware of the "800" telephone number and its script contents, the DNC cannot credibly argue that it was unaware of the solicitation option in the telephone script. As stated at the beginning of this section, the evidence clearly establishes that personnel from both the DNC and the Clinton Committee approved the inclusion of the solicitation on the "800" number by the Clinton Committee. Melvin Whitfield, the DNC liaison to the Clinton campaign who was stationed in Little Rock, Arkansas, testified that he attended "1-800" telephone number planning discussions a couple of times with Eli Segal and David Watkins. Mr. Whitfield informed this Office that the stated goal of this "1-800" program was to take advantage of the success that Governor Jerry Brown had with his "1-800" number and try to see if they could some how parlay this into contributions for the Clinton campaign. (See Whitfield deposition transcript pages 79 to 80).[8] After reviewing a copy of the script of the messages

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8/ Under oath, Melvin Whitfield testified that he was sent to Little Rock in April of 1992 and stayed until July of 1992, as the DNC liaison to the Clinton campaign. According to Mr. Whitfield, his duties included trying to raise funds for the Clinton campaign. Mr. Whitfield also informed this Office that while working at the Clinton campaign he took his directions from Eli Segal and David Watkins. (See Whitfield deposition transcript pages 10 to 15).

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heard by callers to the "1-800" number (See Attachment 4), which appeared during the June 12, 1992 town hall meeting broadcast, Mr. Whitfield testified that this script would be something that he would have checked grammatically and for which Eli Segal and David Watkins would have given final approval as to the substance and content. (See Whitfield deposition transcript pages 79 to 90).

Mr. Whitfield also testified that all three options available on the "1-800" number program were specifically designed to raise funds. Whether callers wanted material, to leave a message, or called for any other reason, their names were compiled to enable the Clinton Committee to contact them at some later point for a contribution. He said such callers are the prime people contacted for contributions. (See Whitfield deposition transcript page 40 to 42).

This Office has been furnished a video tape of the June 12, 1992, television town hall meeting program. A review of this tape reveals that the program was telecast for approximately 30 minutes. During this 30 minute program, the "800" telephone number appears periodically on the screen for a total of 15 minutes. The entire time that the "800" telephone number is on the screen President Clinton is answering questions and addressing the concerns of the studio audience. Although neither President Clinton's presentation nor the telecast explicitly asked for money this program provided an opportunity for the committee to solicit contributions.

Thus, the evidence shows that the purpose of all three

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options provided on the "800" number was to solicit contributions and to establish a pool of potential contributors. The evidence also shows that the broadcasting of the town hall meeting program was the means by which callers received notice of the "800" number. Accordingly, at this stage in the investigation we have now concluded that the scope of the violation 2 U.S.C. § 441a(f), (the Clinton Committee accepting an excessive contribution from the DNC) and 2 U.S.C. § 441a(a)(2)(A), (the DNC making an excessive contribution to the Clinton Committee) should include a portion of the cost of the telemarketing portion of the program, plus a portion of the remaining cost of the town hall meeting program which appear to constitute a primary contribution by the DNC to the Clinton campaign. This conclusion is based on the evidence described above that this town hall meeting telecast was the vehicle by which the viewing audience obtained knowledge of the "800" telephone number, and that the primary purpose of all aspects of the "1-800" number program was to raise funds.

In determining the portion of the cost of these programs that this Office recommends the Commission treat as contributions

this Office has followed the approach set out in AO 1988-6. In that AO, the Gore Committee proposed to broadcast a 60 second television commercial for the purpose of garnering political support and soliciting contributions. While the first 57 seconds of the commercials attempted to garner political support for the candidate, the

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final 3 seconds were devoted to soliciting contributions. The question presented to the Commission was how much of the cost of the commercial was subject to the exclusion of certain costs of fundraising from the presidential primary expenditure limit. The Commission concluded that in this situation, when the program had two purposes, the Committee may allocate as much as 50% of the cost of broadcasting television commercials to exempt fundraising expenditures.[9/] We recommend that the Commission follow a similar approach and make its initial negotiating position that 50% of the cost of the town hall meeting broadcast and the telemarketing program constituted fundraising and therefore, a contribution in that amount. We make this recommendation based on the assumption that the scope of the DNC's contribution to the Clinton Committee will be the subject of negotiations with respondents. [10/]

9/ See generally, Final Repayment Determination and Statement of Reasons -- Senator Robert Dole and the Dole for President Committee, Inc.; and Final Repayment Determination and Statement of Reasons -- Senator Paul Simon and the Paul Simon for President Committee, Paul Simon v. Federal Election Commission (D.C. Cir. 1995), reversed on other grounds.

10/ The Commission at times has determined a smaller portion of expenditures is allocable to the fundraising exclusion when committees can show another reasonable basis for allocation with regard to dual purpose activity. In AOs 1981-3 and 1978-46 the Commission indicated that a reasonable allocation basis would be the percentage of column inches or space in newsletter which pertained to Federal elections or candidates for Federal office. In AO 1982-5, with regard to a national conference held by a political party organization, the Commission stated that a reasonable allocation method could be based upon the ratio of time in the agenda for activities pertaining to Federal elections in relation to total time for all conference activities. In AO 1988-6, the Commission noted that these other advisory opinions focused on how little could be reasonably attributed to federal activity, not how much. The Commission pointed out that those opinions do not foreclose the

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Thus, this Office recommends that the Commission calculate the primary contribution resulting from the town hall meeting as follows:

$120,000.00	telemarketing expenses
+	
$432,131.52	cost of the televised town hall meeting program
$552,131.52	Total expenses
$276,065.76	50% of total expenses equals total primary contribution from the town hall meeting

B. **The extent of any other benefits received by the Clinton Committee as a result of the DNC's payment for the "800" number services.**

As a part of the investigation in this matter the Commission specifically requested that this Office find out whether the Clinton Committee received any contributions as a result of the town hall meeting program; whether any fulfillment materials were mailed to viewers of the town hall meeting program; and what happened to the list compiled of callers to the "800" number which flashed on the screen during the town hall meeting program.

The evidence obtained has not revealed that any contributions were received by the Clinton Committee as a result of the "800" telephone number. In addition there was no evidence received to show that any of the other options available over the "800" number were honored.

The responses from both the Clinton Committee and the DNC to the complaint and the Commission's reason to believe findings have strongly stated that no contributions were received by

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(Footnote 10 continued from previous page)
reasonableness of a different allocation method such as the 50-50 basis which was determined to be reasonable in AO 1988-6.

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either the Clinton Committee or the DNC. The Audit Division's review of the Clinton Committee's campaign account, for approximately one month before the June 12, 1992 town hall meeting program and for approximately one month after the town hall meeting, did not uncover any significant change in the amount of contribution activity. Nor has this investigation revealed any information which would indicate that the Clinton Committee received any immediate contributions, as a result of the contribution option of the "800" number.

During the investigation, however, an issue arose as to whether, after the "800" number was terminated, callers were being directed to the Clinton headquarters, so that neither the names of callers nor contributions were lost. This Office has been furnished a copy of a memo dated June 17, 1992, to Kathy Harmon from Melvin Whitfield, which stated that calls to the "800" number could be referred to a number at the Clinton Campaign Headquarters. (Attachment 11).

In answering questions about this issue Melvin Whitfield, the DNC liaison to the Clinton Committee, speculated that after the respondents discovered that the "800" number contained a message illegally requesting contributions, the callers may have been referred to a number at the Clinton Campaign Headquarters in Little Rock, Arkansas. According to Mr. Whitfield, he seemed to remember that this option was set up to allow for the making of donations. (See Whitfield deposition transcript page 40). He also testified that such callers are valuable and, therefore, he believes a list of their names would have been made. (See

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Whitfield deposition transcript page 40).

In order to clarify this issue, this Office requested that Mr. Storch, who was responsible for terminating the "800" number, answer questions under oath. (Attachment 13). In his answers, Mr. Storch reiterated his earlier deposition testimony that he only furnished a list of the names of callers to the "800" number to Carol Darr, the DNC's General Counsel. Mr. Storch denies that callers to the "800" number were referred to a number at the Clinton Headquarters. (Attachment 14).

Another issue that arose during a review of the documents received pertained to whether the DNC or the Clinton Committee forwarded the fulfillment materials planned to be sent to callers requesting them. All the witnesses deposed testified that they did not send out any fulfillment materials, nor had they heard that anyone had sent out the materials.

Some of the documents obtained reflect that the DNC contemplated what to do with the requests compiled from the callers to the "800" number. (Attachment 12).[11/] However, it should also be noted that the statements that no campaign materials were sent out is supported by a letter dated June 16, 1992, from Carol Darr to Paul Storch. In this letter Ms. Darr

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11/ This Office was furnished a copy of a memo dated June 17, 1992, from Kathy Harmon to Eli Segal. In this memo, Ms. Harmon gives Mr. Segal the status of things with regard to the "800" number items that Mr. Segal passed on to her. Ms. Harmon tells Mr. Segal that they are awaiting instructions from Carol Darr with regard to whether they can fulfill pledges, process credit cards, acknowledge contributions, etc., and whether it is legal to use the names of "800" number callers who request information.

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sought confirmation from Mr. Storch that the "800" number was shut off; that no fulfillment materials had been sent; and that no written materials related to the "800" number would be distributed without written consent from the DNC. (See Attachment 5). Mr. Storch gave such confirmation in his letter to Carol Darr dated June 18, 1992. (See Attachment 7).[12/]

IV. CONCLUSIONS

This Office believes that the investigation has produced enough evidence to enable the Commission to enter into preprobable cause conciliation based on its finding that the Clinton Committee and J. L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f); and to forward a brief to the DNC and Robert T. Matsui, as treasurer, analyzing the possible violations of 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

Attached for the Commission's approval is a proposed conciliation agreement with the Clinton Committee and its treasurer.

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12/ The complaint also alleged that the DNC did not include a proper disclaimer on the broadcast. As stated, this Office has been furnished a video tape of the June 12, 1992, television town hall meeting program. The video tape shows that a message appears on the screen which only states that the program was paid for by the DNC. This Office will address the question whether a disclaimer was required in the General Counsel's Brief to the DNC.

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Based on the foregoing this Office recommends that the Commission pursue preprobable cause conciliation with the Clinton Committee, as they requested, and approve the attached proposed conciliation agreement. The DNC has not requested

preprobable conciliation; therefore, we will proceed to the next stage in the enforcement process with regard to the DNC.

VI. RECOMMENDATIONS

1. Deny Motion to Dismiss filed by the Clinton for President Committee and J. L. Rutherford, as treasurer.

2. Deny Motion to Dismiss filed by the Democratic National Committee and Robert T. Matsui, as treasurer.

3. Enter into conciliation with the Clinton for President Committee and J. L. Rutherford, as treasurer prior to a finding of probable cause to believe.

4. Approve the attached proposed conciliation agreement.

5. Approve appropriate letters.

10/5/95
Date

Lawrence M. Noble
General Counsel

Attachments

1. The Clinton Committee's response to reason to believe
2. The DNC's response to reason to believe
3. Checks and invoices dated from 6/3/92 to 6/17/92, indicating payments by the DNC to Frank Greer for the June 12, 1992 town hall meeting program
4. Copy of the script for "800" number
5. Letter dated June 16, 1992, from Carol Darr to Paul Storch
6. Letter dated June 17, 1992, from Carol Darr to Paul Storch
7. Letter from Paul Storch to Carol Darr, dated June 18, 1992
8. Cover letter dated 6/25/92, and invoice, dated 6/16/92 from the Storch-Tele-Group, Inc. to the DNC
9. Cover letter dated 7/8/92, and another invoice, dated 6/16/92, from the Storch-Tele-Group, Inc. to the DNC
10. Check dated 7/8/92, in the amount of $120,000.00, from the DNC to Storch-Tele-Group, Inc.
11. Memo dated 6/17/92, to Kathy Harmon from Melvin Whitfield
12. Memo dated 6/17/92, from Kathy Harmon to Eli Segal
13. Interrogatories to Paul Storch
14. Paul Storch's sworn response to interrogatories
15. Conciliation Agreement.

Staff assigned: Phillip L. Wise

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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
COMMISSION SECRETARY

DATE: OCTOBER 12, 1995

SUBJECT: MUR 3546 - GENERAL COUNSEL'S REPORT DATED OCTOBER 5, 1995.

The above-captioned document was circulated to the Commission on Friday, October 6, 1995 at 12:00.

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

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

This matter will be placed on the meeting agenda for Tuesday, October 17, 1995.

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	)	
	)	MUR 3546
Clinton for President Committee	)	
and J.L. Rutherford, as treasurer;	)	
	)	
Democratic National Committee	)	
and Robert T. Matsui, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 5, 1995, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Deny Motion to Dismiss filed by the Clinton for President Committee and J. L. Rutherford, as treasurer.

2. Deny Motion to Dismiss filed by the Democratic National Committee and Robert T. Matsui, as treasurer.

3. Approve the proposed conciliation agreement recommended in the General Counsel's October 5, 1995 report

(continued)

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4. Approve the appropriate letters as recommended in the General Counsel's October 5, 1995 report.

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

Attest:

12-6-95
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 3, 1996

Anthony S. Harrington, Esquire
Hogan & Hartson
Columbia Square
555 Thirteenth Street N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Clinton for President Committee
and J.L. Rutherford, as treasurer

Dear Mr. Harrington:

On May 10, 1994, the Federal Election Commission found reason to believe that the Clinton for President Committee and J.L. Rutherford, as treasurer violated 2 U.S.C. § 441a(f). At your request, on December 5, 1995, the Commission determined to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

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

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Enclosure
Conciliation Agreement

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

January 26, 1996

Anthony S. Harrington, Esquire
Hogan & Hartson
Columbia Square
555 Thirteenth Street N.W.
Washington, D.C. 20004-1109

RE: MUR 3546
Clinton for President Committee
and J.L. Rutherford, as treasurer

Dear Mr. Harrington:

On January 3, 1996, you were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter with your clients prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded on behalf of your clients to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Phillip L. Wise
Phillip L. Wise
Attorney

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OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

LYN UTRECHT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 26 3 57 PM '96

January 26, 1996

Phillip L. Wise, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Wise:

Enclosed please find an additional Statement of Designation of Counsel for MUR 3546. This Statement of Designation of Counsel is in addition to the previously designated counsel.

If you have any questions, please call me.

Sincerely,

Lyn Utrecht

Lyn Utrecht
General Counsel Clinton/Gore '92

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RECEIVED
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COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 26 3 57 PM '96

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3546

NAME OF COUNSEL: Lyn Utrecht | Eric Kleinfeld

ADDRESS: Oldaker, Ryan & Leonard
818 Connecticut Avenue, NW
Washington, DC 20006

2100 M Street, NW
Suite 700
Washington, DC 20036

TELEPHONE: (202) 728-1010 | (202) 496-4861

The above-named individual/individuals is/are 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.

1/25/96
Date

Signature

RESPONDENT'S NAME: Clinton for President Committee and J.L. Rutherford, as treasurer

ADDRESS: P.O. Box 2100
Little Rock, Arkansas 72203

BUSINESS PHONE: (501) 375-1290

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 30, 1996

FACSIMILE
Lyn Utrecht, Esquire
Oldaker, Ryan & Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546
Clinton For President Committee
and J. L. Rutherford, as treasurer

Dear Ms. Utrecht:

On January 26, 1996, this Office received your letter and the accompanying Statement of Designation of Counsel from the Clinton For President Committee and J. L. Rutherford, as treasurer, naming you as counsel in the above referenced matter. We are certain that you are aware the Commission, on January 3, 1996, mailed a proposed conciliation agreement to counsel representing your clients at that time. Since no response was received to the proposed conciliation agreement, on January 26, 1996, this Office mailed then counsel a letter requesting a response, and informing them that the 30 day conciliation negotiation period prior to a finding of probable cause was coming to an end. This period ends the close of business on Friday, February 2, 1996.

In an effort to informally settle this matter at the reason to believe stage we are enclosing a copy of the conciliation agreement, and the correspondence mailed to your clients' counsel. Since the 30 day period closes in a few days please give this matter your immediate attention.

Sincerely,

Phillip L. Wise

Phillip L. Wise
Attorney

Attachments

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HAND DELIVERED

RECEIVED
FEDERAL ELECTION
COMMISSION
PUBLIC DISCLOSURE
DIVISION

JAN 31 5 58 PM '96

OLDAKER, RYAN & LEONARD
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

(202) 728-1010
FACSIMILE (202) 728-4044

LYN UTRECHT

January 31, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

JAN 32 10 46 AM '96

Mr. Philip Wise
Office of the General Counsel
Federal Election Commission
999 E Street, N.W., Room 657
Washington, D.C. 20463

Re: MUR 3546

Dear Mr. Wise:

In response to your letter of January 3, 1996 to Anthony S. Harrington, the Clinton for President Committee and J.L. Rutherford, as Treasurer, have no interest in pursuing pre-probable cause conciliation in the amounts or on the flawed analysis contained in the draft conciliation agreement attached to your letter.

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The Committee's previous 1994 written request for pre-probable cause conciliation is hereby withdrawn, in light of what we believe to be fundamental errors in the draft's categorization of this Section 441a(d) general election expenditure.

Sincerely,

Lyn Utrecht

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and J.L. Rutherford, as treasurer	)	MUR 3546
	)	

GENERAL COUNSEL'S REPORT

On May 10, 1994, the Federal Election Commission ("the Commission") found reason to believe that the Clinton for President Committee and its treasurer ("the Clinton Committee"), violated 2 U.S.C. § 441a(f). On December 5, 1995, the Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter with the Clinton Committee prior to a finding of probable cause to believe. On December 22, 1995, the Commission approved a conciliation agreement to be presented to the Clinton Committee. On January 3, 1996, the Commission's proposed conciliation agreement was mailed to the respondents. On January 31, 1996, the Clinton Committee informed this Office that the Committee has no interest in pursuing pre-probable cause conciliation because of the flawed legal analysis contained in the Commission's proposed conciliation agreement. In addition, the Clinton Committee withdrew its request for pre-probable cause conciliation, thereby terminating the pre-probable cause conciliation period.

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Based on the foregoing this Office is proceeding to the next stage in the enforcement process.

2/8/96
Date

L M Noble (FLZ)
Lawrence M. Noble
General Counsel

Staff Assigned: Phillip L. Wise

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: MWE Marjorie W. Emmons/Bonnie J. Ross
Secretary of the Commission

DATE: February 12, 1996

SUBJECT: MUR 3546 - Memorandum to the Commission dated February 8, 1996.

The above-captioned matter was received in the Commission Secretariat at 9:57 a.m. on Friday, February 9, 1996 and circulated to the Commission on a 24-hour no objection basis at 12:00 p.m. on Friday, February 9, 1996.

There were no objections to the Office of General Counsel proceeding to the next stage in the enforcement process because the Respondents have indicated that they are no longer interested in pursuing pre-probable cause conciliation in settlement of violation 2 U.S.C. § 441a(f).

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and J. L. Rutherford, as treasurer	)	MUR 3546
	)	
Democratic National Committee and R. Scott Pastrick, as treasurer	)	**SENSITIVE**

GENERAL COUNSEL'S REPORT

The Office of the General Counsel is prepared to close the investigation in this matter as to the Clinton for President Committee and J. L. Rutherford, as treasurer, and the Democratic National Committee and R. Scott Pastrick, as treasurer, based on the assessment of the information presently available.

Date 4/17/96

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 18, 1996

Ms. Lynn Utrecht, Esquire
Oldaker Ryan and Leonard
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546
Clinton for President Committee
and J.L. Rutherford, as treasurer

Dear Ms. Utrecht:

Based on a complaint filed with the Federal Election Commission on June 19, 1992, the Commission, on May 10, 1994, found that there was reason to believe your clients, violated 2 U.S.C. § 441a(f), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and J. L. Rutherford, as treasurer	)	MUR 3546
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Clinton for President Committee ("the Clinton Committee") and its treasurer, violated 2 U.S.C. § 441a(f). On July 27, 1993, the Commission decided to take no action at this time with respect to the Clinton Committee and its treasurer.[1/]

On October 26, 1993, the Commission reconstituted itself to conform to the Court's opinion in FEC v. NRA Political Victory Fund, 778 F. Supp. 62,64, 65 (D.D.C. 1991), rev'd on other grounds, 6 F.3d at 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 115 S. Ct. 537 (1994), ("NRA"). On May 10, 1994, consistent with its procedures pertaining to open enforcement matters the Commission voted to find reason to believe that the Clinton Committee and its treasurer, violated 2 U.S.C. § 441a(f).

1/ It is important to note that the Commission did not close this matter with regard to the Clinton Committee. The Commission's decision was only to postpone any action until further information was obtained with regard to the Clinton Committee's role in this matter.

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II. ANALYSIS

The Commission conducted an investigation in this matter. Based on the information obtained from depositions, responses to interrogatories, and the submission of documents this brief sets forth the basis for the General Counsel's recommendation that the Commission find probable cause to believe that the Clinton Committee violated 2 U.S.C. § 441a(f).

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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.[2/]

Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to 2 cents multiplied by the voting age population of the

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2/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

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United States.[3/]

B. **The Facts**

On June 12, 1992, the DNC sponsored a 30-minute nationwide televised town hall meeting at which Mr. Clinton appeared to answer questions from the television audience. During the program, an "800" number appeared on the screen periodically. This "800" number was included in a message on the screen which stated, "For a copy of the Clinton Plan or if you want to help call 1-800-551-5600." Callers to the "800" number were offered three options: receive Mr. Clinton's "Plan for America's Future"; leave a message for Mr. Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." In addition to the "800" number, during the televised program an announcement appeared on the screen stating "paid for by the Democratic National Committee."

The evidence shows that during the original planning stage for the town hall meeting program it was anticipated that the Clinton For President Committee ("Clinton Committee") would pay all expenses for the town hall meeting program, including the "800" number. Later, but prior to the airing of the town hall

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3/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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meeting program, the DNC decided it would pay all expenses for the town hall meeting program, and treat it as a general election expense. No one prior to the airing of the program, considered whether any changes to the funding or content of the "800" number program were appropriate, as a result of the DNC's decision to assume financial responsibility for the television broadcast, which cost approximately $432,130. After the town meeting aired, the DNC concluded that it should have paid for the "800" number, and the solicitation should have been on behalf of the DNC. The DNC ultimately paid the "800" number vendor $120,000 for the "800" number program, but terminated the project when it was not possible to change quickly the solicitation message to solicit money for the DNC rather than for the Clinton Committee.

Although it would have been permissible for the DNC to raise money for itself through this "800" number, the evidence shows that such solicitation for the benefit of the DNC was never considered prior to the broadcast of the town hall meeting. The evidence gathered also shows that the town hall meeting and the "800" number which flashed on the screen during the broadcast had different focuses. While the principal reason for broadcasting the town hall meeting was to expose the candidate to the voters, all three options available on the "800" number were developed primarily as a means of raising money for the Clinton Committee.

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Information obtained during the investigation shows that personnel from the DNC and the Clinton Committee approved the message soliciting contributions for the Clinton Committee as one of the options heard by callers to the "800" number. Even though the respondents claim the "800" number solicitation was a mistake, the fact remains that the DNC paid for a telemarketing program which solicited contributions for the Clinton campaign from June 12, 1992 to June 16, 1992. Such individual contributions to a presidential candidate can only be collected in connection with the Primary.

During his deposition with this Office Eli Segal, former Chief of Staff of the Clinton for President Committee, discussed the process leading to the decision to have Mr. Clinton appear on the town hall meeting broadcast and to have the DNC pay for the appearance. Mr. Segal stated that even though President Clinton was successful in the California primary, the polls still had him as third behind Ross Perot, and President George Bush in the general election. According to Mr. Segal, because of President Clinton's standing in the polls the campaign concluded that it was important for President Clinton to reach the American people, the same as he had done six months earlier in New Hampshire. Therefore, as Mr. Segal testified, the Clinton Committee decided to broadcast a town hall meeting program in Pittsburgh on June 12, 1992. Mr. Segal also testified that, as with the prior town hall meetings, the Clinton campaign was planning to finance the June 12, 1992 town hall meeting program; however, some time after the California

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primary it was determined that the Clinton campaign was short of money and that the DNC could pay for this program as a general election expenditure.

Frank Greer, whose company Greer, Margolis, Mitchell, Burns & Associates, Inc. was the contractor for the town hall meeting, was also a political advisor to the Clinton campaign. Mr. Greer agreed with Mr. Segal that the goal of the town hall meeting broadcast was for Bill Clinton to communicate directly with the American people. Mr. Greer also testified that he was contacted several days before the June 12, 1992 town hall meeting program, by Joan Baggett, then Chief of Staff of the DNC, and informed that his company would be paid by the DNC. This testimony is supported by documents furnished to this Office by Mr. Greer, which include checks and invoices dated June 3, 1992 to June 17, 1992, indicating payments by the DNC to Mr. Greer's company for the June 12, 1992, town hall meeting program. Thus, the decision that the DNC would pay for the actual town hall meeting broadcast was made at least a week prior to the airing of this program, leaving plenty of time to make changes to the "800" number script.

Paul C. Storch, president of Storch-Tele-Group, Inc., the vendor for the "1-800" telephone number which appeared on the screen during the June 12, 1992 "town hall" meeting program, testified under oath that Eli Segal personally instructed him on what messages were to be received by callers to the "800" number which flashed on the screen during the town hall meeting program. Mr. Storch also testified that all of the messages

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received by callers to the "800" number contained the exact information he was instructed to place therein by Eli Segal, including the message requesting a contribution to the Clinton Committee. In support of his testimony and in response to a Commission subpoena Mr. Storch furnished a copy of the script for the messages heard by callers to the "800" number. This script clearly shows solicitation of contributions for the Clinton Committee.

Eli Segal testified that Mr. Storch followed the instructions he was given when including the request for contributions for the Clinton Committee as one of the options. According to Mr. Segal, Mr. Storch was never told that the contribution request should be changed to be on behalf of the Democratic National Committee, prior to the television broadcast.

In written submissions received during this investigation it had been implied that Mr. Storch was at fault for the script problems. In addition, while being deposed Frank Greer testified that the problems were caused by Mr. Storch. Furthermore, Melvin Whitfield testified that the general opinion among campaign staff was that Paul Storch was responsible for the script problems. Yet, the evidence, including some of Mr. Segal's testimony, reveals that Mr. Storch did exactly as he was instructed. Thus, the availability of the contribution option does not appear to be the result of a vendor error.

Indeed, the evidence also shows that Mr. Storch, the "800" number contractor, was not even aware of the DNC's participation

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in the town hall meeting program until after the legal issue surrounding the contribution option arose. During his deposition, Mr. Storch informed this Office that his agreement to render the telecommunication services was with Eli Segal, and that he had understood that his company was to be paid by the Clinton Committee. According to Mr. Storch, on June 15, 1992, three days after the program had been televised Carol Darr contacted him and said the DNC was going to pay him for the telecommunication services. During this telephone conversation Mr. Storch said Ms. Darr informed him that she did not know that the town hall meeting program was going to have the 800 telephone number and request contributions.

Although Carol Darr personally may not have been aware of the "800" telephone number and its script contents, the DNC cannot credibly argue that it was unaware of the solicitation option in the telephone script. The evidence clearly establishes that personnel from both the DNC and the Clinton Committee approved the inclusion of the solicitation on the "800" number by the Clinton Committee. Melvin Whitfield, the DNC liaison to the Clinton campaign who was stationed in Little Rock, Arkansas, testified that he attended "1-800" telephone number planning discussions a couple of times with Eli Segal and David Watkins. Mr. Whitfield informed this Office that the stated goal of this "1-800" program was to take advantage of the success that Governor Jerry Brown had with his "1-800" number and try to see if they could somehow parlay this into

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contributions for the Clinton campaign.[4/] After reviewing a copy of the script of the messages heard by callers to the "1-800" number which appeared during the June 12, 1992 town hall meeting broadcast, Mr. Whitfield testified that this script would be something that he would have checked grammatically and for which Eli Segal and David Watkins would have given final approval as to the substance and content. Mr. Whitfield also testified that all three options available on the "1-800" number program were specifically designed to raise funds. Whether callers wanted material, to leave a message, or called for any other reason, their names were compiled to enable the Clinton Committee to contact them at some later point for a contribution. He said such callers are the prime people contacted for contributions.

This Office has been furnished a video tape of the June 12, 1992, television town hall meeting program. A review of this tape reveals that the program was telecast for approximately 30 minutes. During this 30 minute program, the "800" telephone number appears periodically on the screen for a total of 15 minutes. The entire time that the "800" telephone number is on the screen Mr. Clinton is answering questions and addressing the concerns of the studio audience. Although neither Mr. Clinton's presentation nor the telecast explicitly asked for money this program provided an opportunity for the committee to solicit

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4/ Under oath, Melvin Whitfield testified that he was sent to Little Rock in April of 1992 and stayed until July of 1992, as the DNC liaison to the Clinton campaign. According to Mr. Whitfield, his duties included trying to raise funds for the Clinton campaign. Mr. Whitfield also informed this Office that while working at the Clinton campaign he took his directions from Eli Segal and David Watkins.

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contributions.

Further, as stated during the program, an "800" number appeared on the screen periodically. This "800" number was included in a message on the screen which stated, "For a copy of the Clinton Plan or if you want to help call 1-800-551-5600." Callers to the "800" number were offered three options: receive Mr. Clinton's "Plan for America's Future"; leave a message for Mr. Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." The messages received by the callers to the "800" clearly shows that the help wanted by the Clinton Committee included contributions. Thus, this language appearing on the television screen, either alone or when considered with the options provided to the callers, constituted a solicitation.

Also, during the program Mr. Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Mr. Clinton also made the statement that, "I am the only one of the three people running for President who is for the Brady Bill." In response to a question about affordable health care Mr. Clinton also stated that "I will do that if elected President."

Therefore, there is no doubt that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election. However, there is also

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no doubt that the televised town hall meeting solicited contributions.

C. **Discussion**

1. **Excessive Primary Contributions**

The threshold issue is whether the DNC's payments for the town hall meeting and the "800" number were primary election or general election expenditures by the DNC on behalf of Mr. Clinton.

A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d). Furthermore, the Commission has said that the general election campaign may begin prior to the formal nomination, and national party expenditures in connection with that campaign are possible. Advisory Opinion 1984-15 (AO 84-15). However, such expenditures must be in connection with the general election campaign for the office of President of the United States and seek to influence a voter's choice between the two parties' candidates.

The Clinton Committee and the DNC have argued that all of these expenditures were general election expenditures pursuant to 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention. The expenditures by the DNC, however, paid in part for activities which were designed to obtain contributions from individual contributors for Clinton's primary campaign committee. Contributions from individuals cannot be accepted by a major party candidate during the general election

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campaign.[5/] The purpose of all three options provided on the "800" number was to solicit contributions and to establish a pool of potential contributors for the Clinton Committee. The broadcasting of the town hall meeting program was the means by which callers received notice of the "800" number. Therefore, the cost of the "800" number and a portion of the town hall meeting costs were expenditures that could not have been for the general election, which is a publicly-funded activity and not funded by individual contributors. Accordingly, the DNC could not use its' 2 U.S.C. § 441a(d) expenditure limit to make these expenditures.

Under 2 U.S.C. § 441a(a)(2)(A), which is the provision that limits the extent of the DNC's primary contributions in this context, a multicandidate committee can only contribute $5,000.00 to a candidate's committee. Accordingly, the Clinton Committee could not accept primary contributions from the DNC in excess of this limitation. 2 U.S.C. § 441a(f). The scope of the violation of 2 U.S.C. § 441a(f), includes a portion of the cost of the telemarketing portion of the program, plus a portion of the remaining cost of the town hall meeting program which constitutes a primary contribution by the DNC to the Clinton campaign. This conclusion is based on the evidence described above that this town hall meeting telecast was the vehicle by

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5/ A major party candidate may accept contributions to a legal and accounting compliance fund during the general election cycle. However, all solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund. 11 C.F.R. § 9003.3(a)(1)(i)(A). The solicitation in this matter did not state that the contributions would be used for a legal and accounting compliance fund.

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which the viewing audience obtained knowledge of the "800" telephone number, and that the primary purpose of all aspects of the "1-800" number program was to raise funds.

In determining the portion of the cost of these programs to be treated as primary contributions, the Commission should follow the approach set out in AO 1988-6. In that AO, the Gore Committee proposed to broadcast a 60 second television commercial for the purpose of garnering political support and soliciting contributions. While the first 57 seconds of the commercials attempted to garner political support for the candidate, the final 3 seconds were devoted to soliciting contributions. The question presented to the Commission was how much of the cost of the commercial was subject to the exclusion of certain costs of fundraising from the presidential primary expenditure limit. The Commission concluded that in this situation, when the program had two purposes, the Committee may allocate as much as 50% of the cost of broadcasting television commercials to exempt fundraising expenditures. Similarly, here the Commission should follow a similar approach and take the position that 50% of the cost of the town hall meeting broadcast and the telemarketing program constituted fundraising and therefore, a contribution in that amount.

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Thus, this Office recommends that the Commission calculate the primary contribution resulting from the town hall meeting as follows:

$120,000.00	telemarketing expenses
+	
$432,131.52	cost of the televised town hall meeting program
$552,131.52	Total expenses
$276,065.76	50% of total expenses equals total primary contribution from the town hall meeting

The reports for the primary filed by both the Clinton Committee and the DNC reported that the DNC made an aggregate of $2,253.00 in primary contributions to the Clinton Committee. Subtracting the reported primary contribution amount ($2,253.00) from the maximum contribution limit allowed multicandidate committees ($5,000.00) leaves a remaining possible contribution amount of $2,747.00. Subtracting the remainder of the allowable contribution limit ($2,747.00) from the amount calculated as a primary contribution with regard to the town hall meeting program ($276,065.76), results in an excessive contribution of $273,318.76.

Therefore, there is probable cause to believe that the Clinton for President Committee and its treasurer, violated 2 U.S.C. § 441a(f).

2. NRA Issues

During the preliminary stages of this matter, the Clinton Committee has challenged the Commission's authority to proceed in this matter, arguing that the ruling in FEC v. NRA Political Victory Fund, 6 F.3d 821 ("NRA"), renders the Commission's findings void. The Commission acted in accordance

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with NRA when it reconstituted itself as a constitutionally structured six-member agency. Subsequently, as noted above, the Commission made new reason to believe findings with the reconstituted Commission. The Clinton Committee has not provided a basis for treating this matter differently than the way in which the Commission has treated other matters affected by the NRA decision. Accordingly, the reconstituted Commission may properly proceed to make probable cause determinations.[6/]

The Clinton Committee has also presented arguments alleging a constitutional taint bars the use of evidence uncovered as a result of the investigation authorized by a Commission which was considered unconstitutional by the NRA decision. Respondents appear to be arguing that the "Fruit of The Poisonous Tree Doctrine" is applicable to the Commission's civil enforcement proceedings. Under this rule evidence which is the direct result or immediate product of illegal conduct on the part of an official is inadmissible in a criminal trial against the victim of the conduct (or other person with standing) under the due

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6/ On February 16, 1996, the United States Court of Appeals For The District Of Columbia, held that the Commission's post-reconstitution ratification of its prior decisions is an adequate remedy for the NRA constitutional violations. Federal Election Commission v. Legi-Tech, Inc. Civil Action No. 94-5379 (D.C.Cir. February 16, 1996). See National Republican Senatorial Committee v. Federal Election Commission (Civil Action No. 94-332 (TPJ)) (granted the Commission's motion to dismiss), (1995 WL 225220 (D.C.Cir.)) (March 14, 1995, on the court's own motion, the district court's order filed May 11, 1994 was vacated and the case remanded to the district court with instructions to dismiss the complaint as moot). (In dismissing this action on grounds of ripeness, the court stated in dicta in pertinent part: . . . a "reason to believe" finding as a condition precedent to an investigation, if indeed it is such at all, is hardly a matter of fundamental right).

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process clause. See Weeks v. United States, 232 U.S. 382 (1914). The foregoing rule is not applicable in civil matters as is evidenced by the United States Supreme Courts holding in Immigration and Naturalization Service v. Lopez-Mendoza Et Al., 468 U.S. 1032 (1984).

For all of the reasons set forth above, the actions of the Commission in the past are valid. Therefore, there is probable cause to believe that the Clinton For President Committee and its treasurer, violated 2 U.S.C. § 441a(f).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Clinton for President Committee and J. L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f).

9/13/96
Date

Lawrence M. Noble
General Counsel

Staff assigned: Phillip L. Wise

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

APR 18 2 32 PM '96

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 18, 1996

SENSITIVE

Joseph E. Sandler, Esquire
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and R. Scott Pastrick, as
treasurer

Dear Mr. Sandler:

Based on a complaint filed with the Federal Election Commission on June 19, 1992, the Commission, on May 10, 1994, found that there was reason to believe your clients, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

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Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Phillip L. Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic National Committee and R. Scott Pastrick, as treasurer	)	MUR 3546
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Democratic National Committee ("the DNC") and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). On July 27, 1993, the Commission found reason to believe that the DNC and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

On October 26, 1993, the Commission reconstituted itself to conform to the Court's opinion in FEC v. NRA Political Victory Fund, 778 F. Supp. 62,64, 65 (D.D.C. 1991), rev'd on other grounds, 6 F.3d at 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 115 S. Ct. 537 (1994), ("NRA"). On May 10, 1994, consistent with its procedures for revoting or ratifying decisions pertaining to open enforcement matters the Commission voted to find reason to believe that the DNC and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

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II. ANALYSIS

The Commission conducted an investigation in this matter. Based on the information obtained from depositions, responses to interrogatories, and the submission of documents this brief sets forth the basis for the General Counsel's recommendation that the Commission find probable cause to believe that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

A. The Law

Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to 2 cents multiplied by the voting age population of the United States.[2/]

Pursuant to 2 U.S.C. § 441d(a), whenever any person makes

1/ The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing election for Federal office. 2 U.S.C. § 431(8)(A).

2/ The formula for calculating the allowable expenditure amount is $.02 x VAP of U.S. + COLA. Commonly referred to as the coordinated party spending limit, this is the amount that the national party may spend on behalf of its nominee. The party may work in conjunction with the campaign, but the money is raised, spent, and reported by the national party committee. This limit only applies to the general election.

COLA is the cost-of-living adjustment (increase) over the base year of 1974.

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an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. See 11 C.F.R. § 110.11(a)(1).[3/]

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3/ Under the revisions to the Commission's Regulations at 11 C.F.R. § 110.11(a)(2)(ii) which took effect on December 20, 1995, the disclaimer requirements for communications paid for with coordinated party expenditures pursuant to 2 U.S.C. § 441a(d), state that such communications made prior to the date a party's candidate is nominated need state only who paid for the communication (i.e., no authorization statement is required).

B. **The Facts**

On June 12, 1992, the DNC sponsored a 30-minute nationwide televised town hall meeting at which Mr. Clinton appeared to answer questions from the television audience. During the program, an "800" number appeared on the screen periodically. This "800" number was included in a message on the screen which stated, "For a copy of the Clinton Plan or if you want to help call 1-800-551-5600." Callers to the "800" number were offered three options: receive Mr. Clinton's "Plan for America's Future"; leave a message for Mr. Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." In addition to the "800" number, during the televised program an announcement appeared on the screen stating "paid for by the Democratic National Committee."

The evidence shows that during the original planning stage for the town hall meeting program it was anticipated that the Clinton For President Committee ("Clinton Committee") would pay all expenses for the town hall meeting program, including the "800" number. Later, but prior to the airing of the town hall meeting program, the DNC decided it would pay all expenses for the town hall meeting program, and treat it as a general election expense. No one prior to the airing of the program, considered whether any changes to the funding or content of the "800" number program were appropriate, as a result of the DNC's decision to assume financial responsibility for the television broadcast, which cost approximately $432,130. After the town

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meeting aired, the DNC concluded that it should have paid for the "800" number, and the solicitation should have been on behalf of the DNC. The DNC ultimately paid the "800" number vendor $120,000 for the "800" number program, but terminated the project when it was not possible to change quickly the solicitation message to solicit money for the DNC rather than for the Clinton Committee.

Although it would have been permissible for the DNC to raise money for itself through this "800" number, the evidence shows that such solicitation for the benefit of the DNC was never considered prior to the broadcast of the town hall meeting. The evidence gathered also shows that the town hall meeting and the "800" number which flashed on the screen during the broadcast had different focuses. While the principal reason for broadcasting the town hall meeting was to expose the candidate to the voters, all three options available on the "800" number were developed primarily as a means of raising money for the Clinton Committee.

Information obtained during the investigation shows that personnel from the DNC and the Clinton Committee approved the message soliciting contributions for the Clinton Committee as one of the options heard by callers to the "800" number. Even though the respondents claim the "800" number solicitation was a mistake, the fact remains that the DNC paid for a telemarketing program which solicited contributions for the Clinton campaign from June 12, 1992 to June 16, 1992. Such individual contributions to a presidential candidate can only be collected

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in connection with the Primary.

During his deposition with this Office Eli Segal, former Chief of Staff of the Clinton for President Committee, discussed the process leading to the decision to have Mr. Clinton appear on the town hall meeting broadcast and to have the DNC pay for the appearance. Mr. Segal stated that even though President Clinton was successful in the California primary, the polls still had him as third behind Ross Perot, and President George Bush in the general election. According to Mr. Segal, because of President Clinton's standing in the polls the campaign concluded that it was important for President Clinton to reach the American people, the same as he had done six months earlier in New Hampshire. Therefore, as Mr. Segal testified, the Clinton Committee decided to broadcast a town hall meeting program in Pittsburgh on June 12, 1992. Mr. Segal also testified that, as with the prior town hall meetings, the Clinton campaign was planning to finance the June 12, 1992 town hall meeting program; however, some time after the California primary it was determined that the Clinton campaign was short of money and that the DNC could pay for this program as a general election expenditure.

Frank Greer, whose company Greer, Margolis, Mitchell, Burns & Associates, Inc. was the contractor for the town hall meeting, was also a political advisor to the Clinton campaign. Mr. Greer agreed with Mr. Segal that the goal of the town hall meeting broadcast was for Bill Clinton to communicate directly with the American people. Mr. Greer also testified that he was contacted

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several days before the June 12, 1992 town hall meeting program, by Joan Baggett, then Chief of Staff of the DNC, and informed that his company would be paid by the DNC. This testimony is supported by documents furnished to this Office by Mr. Greer, which include checks and invoices dated June 3, 1992 to June 17, 1992, indicating payments by the DNC to Mr. Greer's company for the June 12, 1992, town hall meeting program. Thus, the decision that the DNC would pay for the actual town hall meeting broadcast was made at least a week prior to the airing of this program, leaving plenty of time to make changes to the "800" number script.

Paul C. Storch, president of Storch-Tele-Group, Inc., the vendor for the "1-800" telephone number which appeared on the screen during the June 12, 1992 "town hall" meeting program, testified under oath that Eli Segal personally instructed him on what messages were to be received by callers to the "800" number which flashed on the screen during the town hall meeting program. Mr. Storch also testified that all of the messages received by callers to the "800" number contained the exact information he was instructed to place therein by Eli Segal, including the message requesting a contribution to the Clinton Committee. In support of his testimony and in response to a Commission subpoena Mr. Storch furnished a copy of the script for the messages heard by callers to the 800 number. This script clearly shows solicitation of contributions for the Clinton Committee.

Eli Segal testified that Mr. Storch followed the

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instructions he was given when including the request for contributions for the Clinton Committee as one of the options. According to Mr. Segal, Mr. Storch was never told that the contribution request should be changed to be on behalf of the Democratic National Committee, prior to the television broadcast.

In written submissions received during this investigation it had been implied that Mr. Storch was at fault for the script problems. In addition, while being deposed Frank Greer testified that the problems were caused by Mr. Storch. Furthermore, Melvin Whitfield testified that the general opinion among campaign staff was that Paul Storch was responsible for the script problems. Yet, the evidence, including some of Mr. Segal's testimony, reveals that Mr. Storch did exactly as he was instructed. Thus, the availability of the contribution option does not appear to be the result of a vendor error.

Indeed, the evidence also shows that Mr. Storch, the "800" number contractor, was not even aware of the DNC's participation in the town hall meeting program until after the legal issue surrounding the contribution option arose. During his deposition, Mr. Storch informed this Office that his agreement to render the telecommunication services was with Eli Segal, and that he had understood that his company was to be paid by the Clinton Committee. According to Mr. Storch, on June 15, 1992, three days after the program had been televised Carol Darr contacted him and said the DNC was going to pay him for the telecommunication services. During this telephone conversation

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Mr. Storch said Ms. Darr informed him that she did not know that the town hall meeting program was going to have the 800 telephone number and request contributions.

Although Carol Darr personally may not have been aware of the "800" telephone number and its script contents, the DNC cannot credibly argue that it was unaware of the solicitation option in the telephone script. The evidence clearly establishes that personnel from both the DNC and the Clinton Committee approved the inclusion of the solicitation on the "800" number by the Clinton Committee. Melvin Whitfield, the DNC liaison to the Clinton campaign who was stationed in Little Rock, Arkansas, testified that he attended "1-800" telephone number planning discussions a couple of times with Eli Segal and David Watkins. Mr. Whitfield informed this Office that the stated goal of this "1-800" program was to take advantage of the success that Governor Jerry Brown had with his "1-800" number and try to see if they could somehow parlay this into contributions for the Clinton campaign.[4/] After reviewing a copy of the script of the messages heard by callers to the "1-800" number which appeared during the June 12, 1992 town hall meeting broadcast, Mr. Whitfield testified that this script would be something that he would have checked grammatically and for which

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4/ Under oath, Melvin Whitfield testified that he was sent to Little Rock in April of 1992 and stayed until July of 1992, as the DNC liaison to the Clinton campaign. According to Mr. Whitfield, his duties included trying to raise funds for the Clinton campaign. Mr. Whitfield also informed this Office that while working at the Clinton campaign he took his directions from Eli Segal and David Watkins.

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Eli Segal and David Watkins would have given final approval as to the substance and content. Mr. Whitfield also testified that all three options available on the "1-800" number program were specifically designed to raise funds. Whether callers wanted material, to leave a message, or called for any other reason, their names were compiled to enable the Clinton Committee to contact them at some later point for a contribution. He said such callers are the prime people contacted for contributions.

This Office has been furnished a video tape of the June 12, 1992, television town hall meeting program. A review of this tape reveals that the program was telecast for approximately 30 minutes. During this 30 minute program, the "800" telephone number appears periodically on the screen for a total of 15 minutes. The entire time that the "800" telephone number is on the screen Mr. Clinton is answering questions and addressing the concerns of the studio audience. Although neither Mr. Clinton's presentation nor the telecast explicitly asked for money this program provided an opportunity for the committee to solicit contributions.

Further, during the program Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Therefore, there is no doubt that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the

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general election.[5/]

C. **Discussion**

1. **Excessive Primary Contributions**

The threshold issue is whether the DNC's payments for the town hall meeting and the "800" number were primary election or general election expenditures by the DNC on behalf of Mr. Clinton.

A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d). Furthermore, the Commission has said that the general election campaign may begin prior to the formal nomination, and national party expenditures in connection with that campaign are possible. Advisory Opinion 1984-15 (AO 84-15). However, such expenditures must be in connection with the general election campaign for the office of President of the United States and seek to influence a voter's choice between the two parties' candidates.

The DNC has argued that all of these expenditures were general election expenditures pursuant to 2 U.S.C. § 441a(d) even though they occurred before the Democratic convention. The expenditures by the DNC, however, paid in part for activities which were designed to obtain contributions from individual contributors for Clinton's primary campaign committee.

5/ In determining what constitutes express advocacy the Commission has determined that the appropriate inquiry is whether the communication, when read as a whole and with limited reference to external events, is susceptible to no other reasonable interpretation but as an exhortation to vote for or against a specific candidate. 11 C.F.R. § 100.22

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Contributions frcm individuals cannot be accepted by a major party candidate during the general election campaign.[6/] The purpose of all three options provided on the "800" number was to solicit contributions and to establish a pool of potential contributors for the Clinton Committee. The broadcasting of the town hall meeting program was the means by which callers received notice of the "800" number. Therefore, the cost of the "800" number and a portion of the town hall meeting costs were expenditures that could not have been for the general election, which is a publicly-funded activity and not funded by individual contributors. Accordingly, the DNC could not use its' 2 U.S.C. § 441a(d) expenditure limit to make these expenditures.

Under 2 U.S.C. § 441a(a)(2)(A), which is the provision that limits the extent of the DNC's primary contributions in this context, a multicandidate committee can only contribute $5,000.00 to a candidate's committee. The scope of the violation of 2 U.S.C. § 441a(a)(2)(A), includes a portion of the cost of the telemarketing portion of the program, plus a portion of the remaining cost of the town hall meeting program which constitutes a primary contribution by the DNC to the Clinton campaign. This conclusion is based on the evidence described above that this town hall meeting telecast was the vehicle by which the viewing audience obtained knowledge of the "800"

6/ A major party candidate may accept contributions to a legal and accounting compliance fund during the general election cycle. However, all solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund. 11 C.F.R. § 9003.3(a)(1)(i)(A). The solicitation in this matter did not state that the contributions would be used for a legal and accounting compliance fund.

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telephone number, and that the primary purpose of all aspects of the "1-800" number program was to raise funds.

In determining the portion of the cost of these programs to be treated as primary contributions, the Commission should follow the approach set out in AO 1988-6. In that AO, the Gore Committee proposed to broadcast a 60 second television commercial for the purpose of garnering political support and soliciting contributions. While the first 57 seconds of the commercials attempted to garner political support for the candidate, the final 3 seconds were devoted to soliciting contributions. The question presented to the Commission was how much of the cost of the commercial was subject to the exclusion of certain costs of fundraising from the presidential primary expenditure limit. The Commission concluded that in this situation, when the program had two purposes, the Committee may allocate as much as 50% of the cost of broadcasting television commercials to exempt fundraising expenditures. Similarly, here the Commission should follow a similar approach and take the position that 50% of the cost of the town hall meeting broadcast and the telemarketing program constituted fundraising and therefore, a contribution in that amount.

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Thus, this Office recommends that the Commission calculate the primary contribution resulting from the town hall meeting as follows:

$120,000.00	telemarketing expenses
+	
$432,131.52	cost of the televised town hall meeting program
$552,131.52	Total expenses
$276,065.76	50% of total expenses equals total primary contribution from the town hall meeting

The reports for the primary filed by both the Clinton Committee and the DNC reported that the DNC made an aggregate of $2,253.00 in primary contributions to the Clinton Committee. Subtracting the reported primary contribution amount ($2,253.00) from the maximum contribution limit allowed multicandidate committees ($5,000.00) leaves a remaining possible contribution amount of $2,747.00. Subtracting the remainder of the allowable contribution limit ($2,747.00) from the amount calculated as a primary contribution with regard to the town hall meeting program ($276,065.76), results in an excessive contribution of $273,318.76.

2. **Violation of 2 U.S.C. § 441d(a)**

The DNC claims that it did not violate the disclaimer requirements under 2 U.S.C. § 441d(a) because viewers were notified that the program was "paid for by the DNC", and because Clinton's continuous appearance during the broadcast gave viewers notice that the broadcast was authorized by him. Because the town hall meeting included both express advocacy and a solicitation, the DNC was required to comply with the disclaimer provision.

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As previously stated there is no doubt that the televised town hall meeting, which was intended to convince the television audience to vote for Mr. Clinton in the general election, included express advocacy. The program started with people stating that they were undecided voters. Mr. Clinton indicated near the beginning of the program that he wanted to help the listeners make the right decision in the Presidential race. Further, during the program Mr. Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care, and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Mr. Clinton also made the statement that, "I am the only one of the three people running for President who is for the Brady Bill." In response to a question about affordable health care Mr. Clinton also stated that "I will do that if elected President."

During the program, an "800" number appeared on the screen periodically. This "800" number was included in a message on the screen which stated, "For a copy of the Clinton Plan or if you want to help call 1-800-551-5600." Callers to the "800" number were offered three options: receive Mr. Clinton's "Plan for America's Future"; leave a message for Mr. Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." The messages

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received by the callers to the "800" clearly shows that the help wanted by the Clinton Committee included contributions. Thus, this language appearing on the television screen, either alone or when considered along with the options provided to the callers, constituted a solicitation.

Since the facts show that there was express advocacy and solicitation of contributions contained in the town hall meeting program, the disclaimer requirements under 2 U.S.C. § 441d(a) are applicable. The televised program clearly displayed an announcement on the screen stating "paid for by the Democratic National Committee." However, the program announcement failed to contain the additional required statement stating whether or not the program was authorized by the candidate or his committee.

The DNC's assertions that the program carried a statement that it was paid for by the DNC, and that the continuous appearance of William J. Clinton on the program was an indication of his consent and/or authorization, do not satisfy the disclaimer requirements under 2 U.S.C. § 441d(a). See also, 11 C.F.R. § 110.11(a)(1).[7/] (See MUR 2771 in which the Commission found probable cause to believe that the Democratic

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7/ This assertion would satisfy the disclaimer requirements under the more permissive revisions to 11 C.F.R. § 110.11(a)(2)(ii) which took effect on December 20, 1995, but only if the expenditures were pursuant to 2 U.S.C. § 441a(d). Under the new regulations expenditures solely for the general election need state only who paid for the communication (i.e., no authorization statement is required). However, as stated above, a portion of the expenditures by the DNC constitute primary contributions. Accordingly, both the "paid for by" and "authorized by" requirements would be required even under the new regulation.

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Senatorial Campaign Committee violated 2 U.S.C. § 441d(a)(2) when a televised commercial which ran on behalf of John P. Vinich, in which Mr. Vinich appeared, during his 1988 senatorial campaign failed to state whether it was authorized by the candidate or his committee.).

Therefore, there is probable cause to believe that the Democratic National Committee and its treasurer, violated 2 U.S.C. § 441d(a).

3. **NRA Issues**

During the preliminary stages of this matter, the DNC has challenged the Commission's authority to proceed in this matter, arguing that the ruling in FEC v. NRA Political Victory Fund, 6 F.3d 821 ("NRA"), renders the Commission's findings void. The Commission acted in accordance with NRA when it reconstituted itself as a constitutionally structured six-member agency. Subsequently, as noted above, the Commission made new reason to believe findings with the reconstituted Commission. The DNC has not provided a basis for treating this matter differently than the way in which the Commission has treated other matters affected by the NRA decision. Accordingly, the reconstituted Commission may properly proceed to make probable cause determinations.[8/]

8/ On February 16, 1996, the United States Court of Appeals For The District Of Columbia, held that the Commission's post-reconstitution ratification of its prior decisions is an adequate remedy for the NRA constitutional violations. Federal Election Commission v. Legi-Tech, Inc. Civil Action No. 94-5379 (D.C.Cir. February 16, 1996). See National Republican Senatorial Committee v. Federal Election Commission (Civil Action No. 94-332 (TPJ)) (granted the Commission's motion to dismiss), (1995 WL 225220 (D.C.Cir.)) (March 14, 1995, on the

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The DNC has also presented arguments alleging a constitutional taint bars the use of evidence uncovered as a result of the investigation authorized by a Commission which was considered unconstitutional by the NRA decision. Respondents appear to be arguing that the "Fruit of The Poisonous Tree Doctrine" is applicable to the Commission's civil enforcement proceedings. Under this rule evidence which is the direct result or immediate product of illegal conduct on the part of an official is inadmissible in a criminal trial against the victim of the conduct (or other person with standing) under the due process clause. See Weeks v. United States, 232 U.S. 382 (1914). The foregoing rule is not applicable in civil matters as is evidenced by the United States Supreme Courts holding in Immigration and Naturalization Service v. Lopez-Mendoza Et Al., 468 U.S. 1032 (1984).

For all of the reasons set forth above, the actions of the Commission in the past are valid, there is probable cause to believe that the Democratic National Committee and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

(Footnote 8 continued from previous page)
court's own motion, the district court's order filed May 11, 1994 was vacated and the case remanded to the district court with instructions to dismiss the complaint as moot). (In dismissing this action on grounds of ripeness, the court stated in dicta in pertinent part: . . . a "reason to believe" finding as a condition precedent to an investigation, if indeed it is such at all, is hardly a matter of fundamental right).

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Democratic National Committee and R. Scott Pastrick, as treasurer violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a).

4/17/96
Date

Lawrence M. Noble
General Counsel

Staff assigned: Phillip L.

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STATEMENT OF DESIGNATION OF COUNSEL

MUR: 3546

Name of Counsel: Patricia Fiori*

Address: P.O. Box 8
Charles Town, WV 25414

Telephone: (304) 725-8231

*Designation of Patricia Fiori is in addition to the previous addition of Lyn Utrecht and Eric Kleinfeld.

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

6/10/96
Date

Signature

Name: Clinton for President Committee and
J.L Rutherford, as treasurer

Address: P.O. Box 2100
Little Rock, Arkansas 72203

Business Phone: (501) 375-1390

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	**MUR 3546**
and R. Scott Pastrick,	)	
as Treasurer	)	

MEMORANDUM IN SUPPORT OF NO PROBABLE CAUSE
AND DISMISSAL OF THE COMPLAINT

In June 1992, the Democratic National Committee ("DNC") sponsored and paid for the television broadcast of a town hall meeting at which the party's presumptive presidential nominee, then-Governor Bill Clinton, appeared to answer questions from a television audience. It is undisputed that the purpose of this broadcast was to persuade the audience to vote for Governor Clinton in the general election. During the broadcast, a 1-800 number was displayed on the screen and callers to that number were given the option to receive a copy of Governor Clinton's economic plan; to leave a message for Governor Clinton; or to "help the Clinton [for President primary] campaign and make a contribution."

In fact, no contributions were ever collected or received by or for the Clinton primary committee, and nothing whatsoever of value was given to or received by that committee as a result of the "town hall" broadcast or the 1-800 number. The Clinton/Gore general election campaign, and only that campaign, benefitted from the broadcast and 1-800 number. Accordingly, all of the DNC's costs for the broadcast and 1-800 number were duly treated, and reported, as coordinated expenditures in connection with the presidential general election campaign pursuant to 2 U.S.C. §

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441a(d).

Nevertheless, the General Counsel is recommending that the Commission find that the DNC made a contribution to the Clinton primary campaign of some $276,000--half the total cost of the broadcast and 1-800 number--and on that ground find probable cause to believe that respondents DNC and R. Scott Pastrick, as treasurer, have violated 2 U.S.C. §§ 441a(a)(2). There is absolutely no basis, however, for any finding that the DNC made any contribution to the Clinton primary campaign.

First, the General Counsel concedes that the purpose of the town hall meeting broadcast was to persuade voters to support Governor Clinton in the general election. There is no doubt, therefore, that the costs of this broadcast were properly treated by the DNC as coordinated expenditures in connection with the general election campaign pursuant to section 441a(d).

Second, the costs of the 1-800 number were also properly treated as coordinated expenditures in connection with the general election. Two of the options offered to callers were manifestly efforts to garner support for the candidate in the general election by promoting his positions on economic issues and offering voters an opportunity to communicate with the candidate, and made no mention of contributions or money. The third option offered callers an opportunity to contribute, but this feature was aborted: no money was ever collected or received as a result of this option. No lists of the names of those who called the 1-800 number, for any option, were ever provided to the Clinton primary campaign for any

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purpose. Thus, nothing whatsoever of value was given by the DNC or received by the Clinton primary campaign in connection with the 1-800 number.

The General Counsel contends that the subjective intent of the DNC and the Clinton campaign with respect to all three options was to raise funds for the Clinton primary committee. That suggestion is based solely on the testimony of a lower-level DNC employee who admitted having no first hand knowledge of any of the relevant facts, and whose testimony was completely contradicted by that of the senior Clinton campaign official and the senior DNC consultant engaged in the project. Even if that testimony was entitled to any weight at all, which it is not, the subjective intent of DNC and campaign officials with respect to the goals of the 1-800 number is utterly irrelevant. The purpose of any communication under the Federal Election Campaign Act must be measured solely by objective factors, and the irrefutable fact here is that two of the three caller options in the 1-800 number contained no words of solicitation and the remaining option was terminated before it could function as a solicitation.

Third, even if the mere existence of the terminated solicitation option is regarded as having resulted in a contribution, there is no basis whatsoever for treating half of the costs of the entire broadcast and 1-800 program as the amount of such contribution. The only precedent cited by the General Counsel does not support such an approach; to the contrary, it supports the allocation of costs on a time and space basis, consistent with the

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approach previously approved by the Commission in this very case. Under that approach, properly applied, the amount of any contribution should be based on the proportion of callers actually selecting the contribution option. Based on that proportion, the amount of any contribution did not exceed $2,160.

Fourth, the General Counsel also recommends a finding of probable cause to believe that the respondents have violated 2 U.S.C. § 441d because the disclaimer on the broadcast stated that it was paid for by the DNC, without saying that the broadcast was authorized by Governor Clinton. This contention is also meritless since the statute, as currently interpreted by the Commission, does not require an authorization statement on a communication made by a party committee pursuant to section 441a(d).

Finally, to the extent that any finding of probable cause relies on the deposition of Paul Storch, taken at a time when the Commission's composition was unconstitutional, that finding would be invalid because the Commission had no authority to conduct an investigation at that point.

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STATEMENT OF FACTS

On June 12, 1992, there was broadcast a town hall meeting at which then-Governor Clinton appeared to answer questions from the television audience. (General Counsel's Brief at 4). The purpose of the program was to convince the audience to vote for Governor Clinton in the general election. (Id. at 10-11).

During the broadcast, a 1-800 number was periodically

displayed. The 1-800 number was in operation as of the time the broadcast was aired on June 12, 1992. (Affidavit of Paul C. Storch, submitted by the DNC to the Commission as part of the DNC's October 8, 1993 response to the initial RTB finding (hereinafter "Storch Aff.")). Callers to the 1-800 number were given three options: (1) to receive a copy of Governor Clinton's economic plan; (2) to "help the Clinton campaign and make a contribution;" or (3) to leave a message for Governor Clinton. (Storch Aff. ¶ 5; Deposition of Paul C. Storch, Oct. 14, 1993 (hereinafter "Storch Dep.") at 21).

Offering the option to contribute to the Clinton for President campaign was an error and, when the DNC discovered it, the DNC requested that Mr. Storch's firm, which operated the 1-800 number, change the script to reflect that any contributions received would go to the DNC. (Storch Aff. ¶ 6; Storch Dep. at 27-30 and Exhibit 8). When the changes could not be put into effect quickly enough, the DNC demanded that the 1-800 number be shut down. It was in fact shut down as of approximately noon on June 16, 1992, and no further calls were accepted or received after that time. (Storch Aff. ¶ 7; Storch Dep. at 27-30 and Exhibit 8).

During the time the 1-800 number was in operation, a total of 115,636 calls were received. As of the last available measurement, which was at a time when 114,914 (nearly all) of the calls had been received, only 2,107, or 1.8%, were calls in which the caller selected the option of "help the Clinton campaign and make a contribution." All of the remaining callers--over 98%--only asked

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for a copy of the economic plan or wanted to leave a message for Governor Clinton. (Storch Aff. ¶ 10; Storch Dep. Exhibit 10).

No money whatsoever was ever received or collected even from the small percentage of callers who selected the option of making a contribution. Specifically, in the case of those persons who provided their credit card numbers, the credit card transactions were simply never processed; and in the case of persons who pledged a contribution and were told they would be invoiced and sent an envelope to return their contribution were simply never sent an invoice or envelope. (Storch Dep. at 27-28, 36; Storch Aff. ¶ 11). The lists of all of those calling the 1-800 number were provided to the Carol Darr, then general counsel of the DNC. (Storch Dep. at 37; Deposition of Eli Segal, Aug. 24, 1994 (hereinafter "Segal Dep.") at 32-33).

The cost of the broadcast was $432,131 and the cost of the 1-800 number was $120,000. All of these costs were paid by the DNC, and were treated and reported as coordinated expenditures in connection with the presidential general election pursuant to 2 U.S.C. § 441a(d). (General Counsel's Brief at 4-5, 11).

This MUR was initiated by a complaint filed by the Republican National Committee on June 19, 1992, alleging that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A) and 441d(a), in connection with the DNC's sponsorship and payment for the town hall broadcast. On June 23, 1992, the Commission notified the DNC of the complaint. On July 29, 1992, the DNC submitted its initial response to the complaint.

On August 10, 1993, the Commission informed the DNC that it

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had voted, on July 27, 1993, to find reason to believe ("RTB") that the DNC had violated 2 U.S.C. § 441a(a)(2)(A) and 441d(a). In the Factual and Legal Analysis, the Commission found that the costs of the broadcast did constitute a lawful expenditure by the DNC on behalf of its nominee for president, pursuant to 2 U.S.C. § 441a(d). The Commission found, however, that since contributions to a presidential candidate can only be collected in connection with the primary, the costs of that portion of the 1-800 number giving callers the option to "make a contribution" should be treated as a contribution by the DNC to the Clinton primary campaign.

The Commission reasoned that, since only one of the three caller options was to make a contribution, only one-third of the costs of the 1-800 program should be considered a contribution by the DNC to the Clinton primary campaign. The total costs of the 1-800 number program were $120,000. Accordingly, the Commission found that one-third, or $40,000, should be considered a contribution.

The Commission further found that the DNC violated 2 U.S.C. § 441d(a) by not including in the disclaimer an express statement that the broadcast was authorized by the Clinton campaign.

On October 8, 1993, the DNC submitted a response to this reason to believe finding. On October 14, 1993, the General Counsel's office took the deposition of Mr. Storch. On May 25, 1994, the DNC received a letter from the Commission stating that, following the decision in FEC v. NRA Political Victory Fund, 6 F.3d

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821 (D.C. Cir. 1993), cert. dismissed, 115 S. Ct. 437 (1995), in which the Court found the Commission's composition unconstitutional because its membership included congressional designees, the Commission "has taken several actions to comply with the court's decision." In this matter, the Commission indicated that it had, on May 10, 1994, after having earlier "reconstitut[ed]" itself as a six member body without the congressional designees, "revoted" to find reason to believe that the DNC had violated 2 U.S.C. §§ 441a(a)(2), this time in the amount of $120,000, the entire cost of the 1-800 number (not including any costs of the broadcast). On July 7, 1994, the DNC submitted documents in response to a subpoena, answers to written questions and a brief.

The General Counsel then proceeded to conduct an investigation, including the taking of three more depositions. On April 18, 1996, the General Counsel issued to the DNC its brief recommending a finding of probable cause.

ARGUMENT

I. THE COSTS OF THE BROADCAST WERE PROPERLY TREATED BY THE DNC AS A SECTION 441A(D) EXPENDITURE

As the General Counsel concedes, "there is no doubt that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election." (General Counsel's Brief at 10-11). That conclusion is fully supported by the evidence developed in the investigation. By June, 1992, Governor Clinton was the presumptive nominee of the

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Democratic Party, but polls showed him running behind President Bush and Ross Perot. (Segal Dep. at 8). According to Frank Greer, who in 1992 served as senior media consultant to the Clinton campaign and the DNC, and who produced and directed the town hall meeting, the campaign was "getting ready for the general election" and wanted to "reach into people's living rooms and have them judge for themselves President Clinton." (Deposition of Frank Greer, Jan. 11, 1995 (hereinafter "Greer Dep.") at 18). During the program, Governor Clinton discussed issues central to his general election effort and discussed his plans if he were elected President. (General Counsel's Brief at 10).

The Commission has ruled that a national party committee may make expenditures in connection with the presidential general election campaign pursuant to 2 U.S.C. § 441a(d), prior to the party's nominating convention, if those expenditures are "made for the purpose of influencing the outcome of the general election." Advisory Opinion 1984-15. In this case, as the General Counsel concedes, the purpose of the broadcast of the town hall meeting was to persuade voters to support Governor Clinton in the general election. Therefore, it is clear that the DNC properly treated the $432,131 cost of producing and airing the broadcast as a coordinated expenditure pursuant to section 441a(d).

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II. THE COSTS OF THE 1-800 NUMBER WERE PROPERLY TREATED AS A SECTION 441A(D) EXPENDITURE

The DNC also properly treated the $120,000 costs of the 1-800 number as a section 441a(d) expenditure. No part of the costs of that program constituted a contribution to the Clinton primary committee.

A. The Objective Purpose of the 1-800 Number Was to Persuade Voters to Support Governor Clinton in the General Election

As noted above, callers to the 1-800 number were offered three options: (1) to receive a copy of Governor Clinton's economic plan; (2) to "help the Clinton campaign and make a contribution;" or (3) to leave a message for Governor Clinton. (Storch Aff. ¶ 5; Storch Dep. at 21). Two of these options made no reference whatsoever to contributing and were clearly designed to help persuade voters to support Governor Clinton in the general election campaign--by disseminating his economic plan and by giving voters the opportunity to react to the Governor's positions and ideas by leaving a message for him.

Although the third option solicited a contribution to the primary campaign, very few callers chose that option: of 114,914 callers to the 1-800 number, only 2,107, or less than 2 percent, selected that option. In any event, the contribution option was effectively disabled. No solicitation materials were sent to those who asked to be invoiced and, in the case of those making pledges by credit card, the credit card transactions were never processed. (Storch Aff. ¶ 11; Storch Dep. at 36 and Exhibits 8 & 10).

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Further, the lists of all of those calling the 1-800 number were provided to Carol Darr, then general counsel of the DNC. (Storch Dep. at 37; Segal Dep. at 32-33). There is no evidence in this record that any of those lists were ever used for any purpose by the Clinton primary committee. It is illogical to suppose that Ms. Darr, who immediately shut down the program for legal reasons, would have ever provided those lists to the Clinton primary committee for any purpose.

Thus, the only parts of the 1-800 program that were put into effect were the two options intended to influence voters in connection with the general election. For this reason, the purpose of the entire program was to influence the general election and, accordingly, the DNC properly treated the entire $120,000 cost of the 1-800 program as a section 441a(d) expenditure.

B. <u>No Contribution Was Made to the Clinton Primary Committee</u>

The mere existence of the contribution option in the 1-800 program did not result in a contribution by the DNC to the Clinton primary committee. The Federal Election Campaign Act of 1971, as amended, defines "contribution" to mean:

> any gift, subscription, loan, advance or deposit of money or anything of value made by any person. . . .

2 U.S.C. § 431(8)(A)(i). In this case, the DNC provided nothing whatsoever of value to the Clinton primary committee. The entire "message" value of both the broadcast and the 1-800 number benefitted only the general election campaign. The solicitation feature of the 1-800 number was of no benefit to anyone, since it

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was immediately aborted and rendered inoperable in such a way that it could not, and did not, collect any money for the Clinton primary committee.

To be sure, where a solicitation violates a statutory provision or Commission rules specifically governing solicitations, a violation can be found regardless of whether any money is collected or received. See, e.g., 11 C.F.R. § 114.5(g). In this case, however, there is no statute or rule which makes the mere solicitation of a contribution by a multi-candidate committee to a candidate committee, a "contribution" as defined in 2 U.S.C. § 431(8)(A). Thus, in this case, nothing of value was given by the DNC to the Clinton primary committee and, accordingly, no contribution was made at all.

The General Counsel makes much of evidence suggesting that DNC and Clinton campaign officials, rather than the vendor, were to blame for allowing the solicitation option to be included in the 1-800 number script. (General Counsel's Brief at 6-9). Responsibility for this mistake, however, is legally irrelevant. The objective fact is that the solicitation option was of no value at all to the Clinton primary committee. This is not a case of an unsuccessful solicitation or one in which money was collected but refunded. The solicitation feature was deliberately rendered meaningless and valueless by not sending out fulfillment materials--the actual solicitation and return envelope--to those who pledged without giving a credit card, and by not processing any credit card transactions for those who did provide a credit card number. In

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these circumstances, nothing of value was given or received and there was no contribution.

C. The Subjective Purpose of the 1-800 Number Was Not Fundraising

The General Counsel asserts that "all three options available on the 1-800 number were developed primarily as a means of raising money for the Clinton Committee" (General Counsel's Brief at 5) and that the "purpose of all three options provided on the '800' number was to solicit contributions and to establish a pool of potential contributors for the Clinton Committee." (Id. at 12). In reaching this conclusion, the General Counsel relies exclusively on the deposition of Melvin Whitfield (hereinafter "Whitfield Dep."), whom the General Counsel cites as believing that the stated goal of the 1-800 number was fundraising and that all three options were designed to raise funds or to develop names of potential contributors. See id. at 9-10.

The General Counsel's reliance on Mr. Whitfield's beliefs is entirely misplaced. First, Mr. Whitfield's testimony is simply not entitled to any weight at all. He testified without the benefit of counsel and was repeatedly and specifically urged, by FEC counsel, to engage in sheer speculation.[1] Mr. Whitfield testified

[1] In answer to one question, Mr. Whitfield stated, "I don't really want to speculate." FEC counsel responded, "Speculation is good. We know what to do with speculations. . . ." (Whitfield Dep. at 39). At another point, FEC counsel stated, "Speculation is okay. It's just fine." (Id. at 20). At yet another point, FEC counsel asked Mr. Whitfield to provide rumors, "I mean, any rumors at all going on." Id. at 94.

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specifically that he had no personal, first-hand knowledge whatsoever of the town hall meeting or 1-800 number: "No, I wasn't involved in that particular fundraiser." (Whitfield Dep. at 16). He admitted that he never attended any meetings about the project but merely "overheard" things, "[y]ou know, I can hear things happening. . . ." (Id. at 17). See id. at 63.

Nor was Mr. Whitfield in any position to learn or understand the purpose or goals of the town hall meeting broadcast or 1-800 number. Contrary to the General Counsel's suggestion (General Counsel's Brief at 9), Mr. Whitfield was not a senior political or financial "liaison" to the Clinton campaign nor was he a political "operative" of any kind. Rather, he was a relatively low-level employee who served as the DNC's director of operations for direct mail and was sent to Little Rock solely to assist the Clinton campaign in retaining direct mail vendors[2] and to assist in obtaining input from campaign officials with respect to DNC direct mail copy. (Declaration of Glenn Hoffman, submitted herewith (hereinafter "Hoffman Dec.")[3]; Whitfield Dep. at 11, 13, 57). Mr. Whitfield's services were not provided to the Clinton primary committee for the purpose of planning the town hall meeting or developing the content of the 1-800 number. (Hoffman Dec. ¶ 5).

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[2] The donation of Mr. Whitfield's services was treated as follows: For the period covering services provided in May, 1992, the DNC disclosed an in-kind contribution to the Clinton for President Committee. The DNC was reimbursed by the Clinton for President committee for services provided by Mr. Whitfield in June, 1992.

[3] Glen Hoffman was Mr. Whitfield's supervisor at the DNC. See Whitfield Dep. at 9, 13.

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If indeed Mr. Whitfield had any role at all with respect to the 1-800 number, Mr. Whitfield himself claimed he did no more than discuss problems with the mechanics of fulfillment and, possibly, make grammatical corrections to the text. (Whitfield Dep. at 61-62, 89).

Second, Mr. Whitfield's testimony as to the purpose of the 1-800 number was directly contradicted by the testimony of the chief of staff of the Clinton campaign, Mr. Segal, and of Mr. Greer, the senior campaign and DNC media consultant who produced and directed the town hall meeting. Mr. Segal testified that the primary purpose of the 1-800 number "was not at all for contribution" but was "primarily for distributing the plan or getting the person who was calling in, an opportunity to give their message through to the President." (Segal Dep. at 25). He characterized the solicitation of contributions as "a secondary or tertiary objective" of the 1-800 number (Id. at 19) and testified that the 1-800 number "was driven essentially to distribute the plan and to give voters a chance to get a message to the President." (Id. at 20). He stated that if the purpose of the 1-800 number had been to solicit contributions, "the message would have been substantially different." (Id.)

Similarly, Mr. Greer testified that the purpose of the entire program was to "communicate with several million Americans, a message of Bill Clinton going direct to people. . . ." (Greer Dep. at 32). He stated that such communication "was the goal of the program. It was the goal in every discussion I ever had. . . ."

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Referring to the solicitation option, he stated that, "This other thing is like a mistaken footnote that had nothing to do with the large purpose of this." (Id. at 32-33).

Third, to the extent that the General Counsel cites Mr. Whitfield's testimony for the proposition that a purpose of the 1-800 number was to develop lists of potential contributors to the Clinton primary committee (General Counsel's Brief at 10, 12), such a proposition is wholly unsupported by Mr. Whitfield's deposition and is simply at odds with the facts. Mr. Whitfield testified that he did not receive any lists from the 1-800 number (Whitfield Dep. at 51); that he did not know if the DNC received any names (Id. at 74); and that he did not know if any lists had been provided to the Clinton campaign. (Id. at 77). The testimony of those who were in a position to know the relevant facts clearly establishes that all of the names of those who called into the 1-800 number were provided to Carol Darr, then-general counsel of the DNC (Storch Dep. at 37; Segal Dep. at 32-33). There is no evidence in the record that any of these lists were in fact provided to the Clinton campaign; and it is illogical to suppose that Ms. Darr, who shut down the entire program because of the solicitation option, would have provided those lists to the Clinton campaign for any purpose.

D. In Any Event, the Subjective Intent Behind the 1-800 Number is Irrelevant

In any event, the subjective intent of Clinton campaign or DNC officials in setting up the 1-800 number, i.e, their "stated goal" (General Counsel's Brief at 9), is entirely irrelevant. The

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Commission has ruled that a national party committee may treat expenses as coordinated expenditures pursuant to section 441a(d) if they are made "for the purpose of influencing the outcome of the general election." Advisory Opinion 1984-15.

Whether the "purpose" of a communication is to influence the general election, as opposed to soliciting contributions, cannot legally depend upon the state of mind or subjective intent of those sponsoring the communication. Rather, the communication must be judged by an objective standard that takes into account only the communication's content, timing, operation, structure and other external, objective factors. The Commission itself has taken the position that the standard for determining when an expenditure counts against the section 441a(d) limits is not a subjective one but rather is objective, such that a person of "'common intelligence' would have no difficulty understanding" when a communication meets the standard, based on its content. Brief for the Respondent, Colorado Republican Federal Campaign Committee v. Federal Election Commission, No. 95-489, U.S. Supreme Court (March 1996), citing Broadrick v. Oklahoma, 413 U.S. 601, 607 (1973).

Furthermore, in Orloski v. Federal Election Commission, 795 F.2d 156 (D.C. Cir. 1986), the court upheld the Commission's rejection of a subjective test for determining when something of value is given "for the purposes of influencing any election to Federal office" within the meaning of 2 U.S.C. § 431(8)(A)(i). There, respondent argued that the FEC was required to "make its determination solely on the basis of the state of mind of the donor

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and not on the nature of the funded event." Orloski, 756 F.2d at 162. The FEC rejected that contention, and the Court agreed:

> We find nothing . . . that prohibits the FEC from adopting an objective test for determining when a corporate donation is made "for the purposes of influencing any election." In fact, as the FEC points out, the Act may implicitly mandate an objective test.

Id.

Similarly, in Federal Election Commission v. Furgatch, 807 F.2d 857 (9th Cir. 1987), the court rejected a subjective intent test for determining when a communication constitutes "express advocacy," stating that a "speaker may expressly advocate regardless of his intention, and our attempts to fathom his mental state would distract us unnecessarily from the speech itself." Furgatch, 807 F.2d at 863. See also Federal Election Commission v. Ted Haley Congressional Committee, 852 F.2d 1111, 1116 (9th Cir. 1988)(rejecting subjective intent test for determining purpose of influencing a federal election, since any test that would "depend upon the subjective state of mind of the actor would make it next to impossible to police the statute").

Nor can the Commission, in the instant matter, apply a subjective intent test to determine whether a communication--in this case, the 1-800 number--was for the purpose of influencing the general election or was for the purpose of soliciting contributions to the Clinton primary committee. Mr. Whitfield's testimony about the subjective goal or purpose of the three options, even if such testimony were entitled to any weight, which it is not, is therefore completely irrelevant. The purpose of the 1-800 number

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must be measured by objective factors: its language, structure, operation and results. By every objective factor--the language of two of the options, devoid of any solicitation message, the fact that less than two percent of the callers chose the solicitation option, and the fact that the one solicitation option was disabled and rendered totally inoperative--the entire purpose and effect of the 1-800 number was to influence the general election, not to solicit funds for the Clinton primary committee.

For these reasons, the DNC did not make any contribution to the Clinton primary committee in connection with the broadcast of the town hall meeting or the operation of the 1-800 number.

III. IN ANY EVENT EVEN IF THERE WAS A CONTRIBUTION IT DID NOT EXCEED $2,160

In any event, even if the solicitation feature of the 1-800 number is regarded as a contribution by the DNC to the Clinton primary committee--which it should not be--the DNC did not contribute more than $2,160 to the Clinton primary committee in connection with operation of the 1-800 number.

In the original Factual and Legal Analysis adopted in this matter, supporting the Commission's July 27, 1993 RTB finding, the Commission, finding that a contribution had been made, determined that the amount of the contribution was $40,000, reasoning that the total cost of the 1-800 number ($120,000) should be divided by three, since only one of the three options solicited contributions. (Factual and Legal Analysis, Aug. 10, 1993 at 9-10). In its response to this RTB finding, the DNC accepted the Commission's

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methodology but noted that it had been misapplied. Assuming there was any contribution, which there was not, the $120,000 cost should indeed be divided between the three options, but that division should be based on the actual number of callers choosing the contribution option, since that is the maximum number of calls that could possibly have resulted in contributions--even if all the credit card transactions had been processed and all the pledges had been collected.

As of the point when nearly all of the calls had been received, only 2,107 out of 114,914--or 1.8%--were calls in which the caller selected the option to "help the Clinton campaign and make a contribution." (Storch Aff. ¶ 10 and Storch Dep. Exhibit 10). Applying the proportion of callers selecting the contribution option (1.8%) to $120,000 produces a contribution value of $2,160.

The Factual and Legal Analysis supporting the Commission's May 10, 1994 RTB finding abandoned the Commission's original methodology and rejected the DNC's application of it, without any explanation, and contended that the amount of the contribution should be the entire cost of the 1-800 number, $120,000. Now, amazingly, the General Counsel's brief abandons that second position, again without any explanation, and contends that fully half of the entire cost of the 1-800 number and the broadcast should be considered a contribution, in the amount of $276,065--more than six times the amount originally determined by the Commission. (General Counsel's Brief at 12-14).

The General Counsel argues that the broadcast was the "vehicle

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by which the viewing audience obtained knowledge" of the 1-800 number and the "primary purpose of all aspects of the '1-800' number was to raise funds." (Id. at 12-13). The General Counsel then suggests that 50% of the total costs is a reasonable allocation.

The General Counsel's position makes absolutely no sense and is utterly inconsistent with the Commission's rulings, which support application of the DNC's methodology. First, treatment of any part of the costs of the television broadcast as a contribution is ludicrous. The General Counsel himself concedes that "there is no doubt that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election" (General Counsel's Brief at 10-11) and that "neither Mr. Clinton's presentation nor the telecast explicitly asked for money." (Id. at 10).

The General Counsel contends, nevertheless, that the broadcast "provided an opportunity" to solicit contributions (Id.) and was the "vehicle by which the viewing audience obtained knowledge of" the 1-800 number (Id. at 12). Manifestly, an "opportunity" to solicit is not a solicitation: every campaign communication, appearance, event, etc. provides an "opportunity" for a solicitation but if there is in fact no solicitation, then the event obviously cannot be treated as one. By the same token, that a communication may be a "vehicle" for "notice" of a separate communication that includes a solicitation cannot magically transform the first communication into a solicitation. Every piece

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of campaign literature, every brochure and every letter that gives a campaign message and asks voters or supporters to contact the campaign to help out, usually providing a phone number, address etc. is a "vehicle" by which, if the contact is made, the voter or supporter may be asked for a contribution. Obviously that does not transform every such piece of literature or letter into a solicitation. No part of the costs of the broadcast in this case can possibly be treated as costs of solicitation to the Clinton primary committee.

Second, even with respect to the costs of the 1-800 number, a 50% allocation is inconsistent with the Commission's rulings. In particular, Advisory Opinion 1988-6, on which the General Counsel relies, in fact supports application of the DNC's methodology. The issue in that A.O. was whether a presidential primary committee could allocate some of the costs of a television advertisement to its fundraising exemption, when most of the advertisement was devoted to issue discussion and a telephone number to volunteer or contribute was displayed during the last few seconds of the advertisement.

In the A.O., the Commission noted that, in the context of allocation generally, the Commission had looked to a "variety of factors." The Commission cited by way of example previous Commission rulings (pre-dating the 1991 allocation regulations) permitting political party committees to allocate communications between federal and non-federal accounts based on the time or space devoted to federal as opposed to non-federal elections (Advisory

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Opinions 1978-46, 1981-3 and 1982-5). The Commission then stated that:

> The cited advisory opinions . . . focused on how little could be reasonably attributed to federal activity, not how much. Thus, although those opinions would support attributing a relatively small portion of the expenditures in question as a fundraising expense based on the time used for the solicitation should you so desire, they also do not foreclose the reasonableness of a different allocation method in the situation presented here.

(emphasis added). The Commission then went on to find that the primary campaign could allocate as much as 50% of the costs to its fundraising exemption if it so desired.

Thus A.O. 1988-6 clearly does not mandate a 50% allocation; to the contrary, the Commission explicitly stated that the committee could allocate a "relatively small portion" of the costs to fundraising if it desired. Further, that statement was based on analogous Commission precedents (A.O. 1978-46, 1981-3 and 1982-5) permitting allocation among different activities based on the time or space devoted to each.

This approach is precisely the one the Commission itself adopted in this case, in its original RTB finding, in dividing the $120,000 cost among the three options. And that approach would be the correct one, except that the only sensible way to apply it is the one advocated by the DNC. The 1-800 number was not a communication that was sent out to people, like a brochure, mailing or advertisement, but was an inbound program--that is, people had to take the initiative to call into the number. In these circumstances, the only rational time and space allocation is one

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based on the number of people calling into each option. In this case, only 1.8% of the callers selected the contribution option, and that is the maximum percentage of the cost of the 1-800 number that could conceivably be treated as the costs of a solicitation to the Clinton primary campaign.

Thus, under the Commission's rulings, and the approach originally adopted by the Commission itself in this case, the costs of the 1-800 number should be allocated on a time and space basis. That allocation results in a maximum possible contribution of 1.8% of $120,000, or $2,160. Therefore, even if there was a contribution made by the DNC to the Clinton primary committee in this case (and there was not), the DNC did not contribute more than that amount to the Clinton primary committee.

IV. THERE WAS NO VIOLATION OF THE DISCLAIMER REQUIREMENT

As noted above, the General Counsel concedes that "there is no doubt" that the purpose of the town hall meeting was to influence the general election (General Counsel's Brief at 10-11) and, for the reasons set forth in Section I above, all of the costs of the broadcast were properly treated as coordinated expenditures in connection with the presidential general election campaign pursuant to section 441a(d). The broadcast notified viewers that it was "Paid for by the DNC." (General Counsel's Brief at 14). The Commission's current rules provide that a communication made by a party committee pursuant to section 441a(d) prior to the date the party's candidate is nominated satisfy the disclaimer requirements

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"if it clearly states who paid for the communication." 11 C.F.R. § 110.11(a)(2)(ii)(1996).

The current rule was made effective at the end of 1995. At the time of the broadcast, the Commission's regulations also required that a section 441a(d) communication state who authorized the communication. But the Commission's regulations purport to interpret a statutory provision, 2 U.S.C. § 441d. If the Commission has determined that a disclaimer without an authorization statement "satisfies the requirements" of the statute with respect to section 441a(d) communications (11 C.F.R. § 110.11(a)(2)(ii)), then that interpretation should be applied in all cases pending before the Commission. The statute itself has not been amended and it continues to mean what it means. The Commission's current interpretation of the statute should therefore be applied in this case.

Further, although agencies do not inherently possess the power to promulgate retroactive rules to the detriment of regulated entities, see e.g., Bowen v. Georgetown University Hospital, 488 U.S. 204 (1988), applying the Commission's current interpretation would be consistent with the principle that "government should accord grace to private parties disadvantaged by an old rule when it adopts a new and more generous one." Landgraf v. USI Film Products, 511 U.S. 244, ___ n. 30 (1994).

Finally, this was a live broadcast in which Governor Clinton appeared continuously. It is absurd to suppose that any viewer could possibly imagine that Governor Clinton had not authorized his

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own live appearance in the broadcast. The manifest purpose of section 441d(a)--that persons receiving a communication know who paid for it and who authorized it--was fully served in this case. To require that the "statement" called for by that section must be in words, rather than communicated by the candidate's own live, simultaneous appearance, would be a singularly silly example of elevating form over substance.

V. ANY FINDING OF PROBABLE CAUSE WOULD BE INVALID TO THE EXTENT IT WAS BASED ON THE STORCH DEPOSITION WHICH THE COMMISSION HAD NO AUTHORITY TO CONDUCT

To the extent any finding of probable cause would be based on information from the Storch deposition, such a finding would be invalid because the Commission had no authority to conduct that deposition. The deposition was conducted eight days before the decision in NRA. At that point, the deposition was being conducted pursuant to an RTB finding which had been made on July 27, 1993. That finding was clearly invalid under NRA, a fact which the Commission conceded by re-voting RTB on May 10, 1994.

Even assuming that the revoted RTB finding was valid, see FEC v. Legi-Tech, Inc., 75 F.3d 704 (D.C. Cir. 1995), there was no valid RTB finding in effect at the time (October 14, 1993) the Storch deposition was taken. The Commission obviously does not have authority to start taking depositions of whomever it pleases any time it pleases in the absence of an investigation; it is authorized to conduct an investigation only after finding RTB. 2 U.S.C. § 437g(a)(2). Accordingly, there was no authority to

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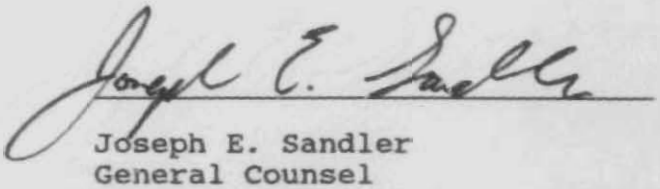
conduct the Storch deposition and, to the extent any probable cause finding would be based on that deposition, such a finding would be invalid.

CONCLUSION

For the reasons stated above, the Commission should find no probable cause to believe that the Respondents violated 2 U.S.C. § 441a(a)(2)(A) or § 441d(a), and should dismiss the complaint in this matter.

Respectfully submitted,



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Attorneys for Respondents
Democratic National Committee and
R. Scott Pastrick, as Treasurer

Dated: June 20, 1996

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of:	)	
	)	
Democratic National Committee	)	MUR 3546
and R. Scott Pastrick, as	)	
Treasurer	)	

DECLARATION OF GLENN HOFFMAN

1. My name is Glenn Hoffman. I currently reside at 1219 N. Quinn Street, Apt. 21, Arlington, VA 22209. I am currently self-employed as a marketing consultant.

2. During the month of June, 1992, and for the entire year of 1992, I was employed as the Director of Direct Mail at the Democratic National Committee in Washington, DC. In that capacity I supervised a staff of approximately 9 or 10 individuals.

3. During June 1992, Melvin Whitfield was an employee under my direct supervision in the Direct Mail department. His official title was Director of Operations. His primary responsibility was the production of direct mail, as well as the solicitation of bids from vendors for services that were needed for the production of direct mail products.

4. From May 6, 1992 through May 29, 1992, and from June 3, 1992 through June 26, 1992, Mr. Whitfield was loaned to the Clinton For President committee in Little Rock, Arkansas, for the purpose of facilitating the input by senior officials in the Clinton campaign into DNC direct mail copy, as well as to provide technical assistance to the direct mail efforts of the Clinton campaign. In Little Rock, Mr. Whitfield interacted with David Watkins and Eli Segal for the sole purpose of obtaining their input into direct mail copy. While in Little Rock, Mr. Whitfield had no responsibility for any political operations, nor did he serve as a liaison between the Clinton for President committee and the Democratic National Committee for any purpose other than as stated in this paragraph. To my knowledge, Mr. Whitfield supervised no one in his work in Little Rock.

5. To the best of my recollection, Mr. Whitfield was not loaned to the Clinton for President committee for the purpose of planning the town hall meeting broadcast or for the purpose of developing the content of the 1-800 number operated in connection with the broadcast.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 19, 1996.

Glenn Hoffman

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COMMISSION
OFFICE OF GENERAL
COUNSEL

JUN 21 10 51 AM '96

June 21, 1996

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 3546, Clinton for President Committee
J.L. Rutherford, as treasurer

Dear Larry:

Enclosed please find Clinton for President Committee's Brief in Support of No Probable Cause in the above-captioned MUR. Please note that when the Committee attempted to file the Brief yesterday, we were informed that the Commission was closing early and that filing would not be possible.

Should you have any questions, please let me know.

Sincerely,

Lyn Utrecht

Lyn Utrecht

Counsel for Respondent
Clinton for President Committee

Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave, NW
Suite 1100
Washington, DC 20006

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BEFORE THE FEDERAL ELECTION COMMISSION

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OFFICE OF GENERAL
COUNSEL
JUN 21 10 52 AM '96

	)	
Clinton for President Committee	)	**MUR 3546**
J.L. Rutherford, as treasurer	)	
	)	

BRIEF IN SUPPORT OF NO PROBABLE CAUSE

I. FACTUAL BACKGROUND

This MUR stems from a thirty minute televised nationwide broadcast featuring President Clinton (then Governor Clinton) in a Town Hall Meeting answering questions directly from an audience. This Town Hall Meeting program occurred on June 12, 1992, ten days after the final Democratic primaries which gave President Clinton a decisive majority of delegates in the upcoming National Nominating Convention. At the time of the program, President Clinton was virtually assured of the Democratic nomination.

During the initial planning stages, Clinton for President (hereinafter referred to as "CFP") was intending to pay all costs associated with the program. However, approximately seven to ten days before the program, it was decided that the Democratic National Committee (hereinafter referred to as "DNC") would pay for the broadcast under its authority to make Section 441a(d) expenditures in connection with the Presidential general election campaign.

Independent of any decision as to payment, CFP decided to incorporate into the program an 800 telephone number which would periodically appear on the screen during the broadcast with a tag line, as follows: "For a copy of the Clinton Plan or if you want to help call 1-800-551-

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5560." CFP's telemarketing vendor prepared a script for the 800 number based on CFP payment for the program. The script for the recorded message that callers would hear was as follows:

> Thank you for calling. To receive your free copy of Bill Clinton's plan for America's future, please press 1. If you agree that it's time for real change, help the Clinton Campaign and make a contribution by pressing 2. To leave a message for Governor Clinton press 3.

Deposition of Paul Storch, October 14, 1993 (hereinafter referred to as "Storch Deposition Transcript"), Deposition Exhibit 5.

As is reflected in the script, the main purpose of the 800 number was to distribute President Clinton's economic plan. Neither CFP, its telemarketing vendor, nor DNC personnel revised the script to reflect changes made in the payment arrangements for the broadcast. Hence, the recorded message heard by those calling the 800 number mistakenly included a solicitation of contributions to the Clinton campaign. Ultimately, the DNC paid for all costs associated with the broadcast, including the cost of the 800 number.

The 800 number was essentially an afterthought to the program, and the telemarketing vendor was not informed in advance of the program that a decision had been made that the DNC would pay for the program. In fact, decisions concerning payment for the program proceeded independently of any decisions concerning the script for the 800 number.

Essentially, this inadvertent error grew out of a failure to communicate coupled with the last minute nature of the arrangements for both payment for the program and the 800 number. This error was discovered during the program by DNC lawyers who would have reviewed the script prior to the program had they known of it. Corrective action was taken immediately, first by attempting to substitute the DNC in the solicitation portion of the message and then by

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completely disconnecting the 800 number on June 16. Thereafter, absolutely no fulfillment occurred on the contribution pledges. For those callers who provided credit card information, the transaction was never completed. Those callers who pledged contributions were never sent envelopes and information for making those contributions. No contributions were received by either the DNC or CFP as a result of the 800 number.

II. MUR CHRONOLOGY

The Republican National Committee filed a complaint in this MUR on June 19, 1992, naming CFP and DNC as co-respondents. More than one year later, on July 27, 1993, the Commission took its first action on that complaint by finding reason to believe ("RTB") against the DNC and deciding to "take no action" at the time against CFP. The Commission issued document requests to the DNC and to Mr. Paul Storch, President of Storch-Tele-Group, Inc., the telemarketing vendor for the 800 number. In addition, Mr. Storch was deposed on October 14, 1993. On October 22, 1993, the United States Court of Appeals, D.C. Circuit, declared the Commission unconstitutional. FEC v. NRA Political Victory Fund, 6 F.3d 821 (D.C. Cir. 1993); cert. dismissed, 115 S. Ct. 537 (1994). The Commission subsequently reconstituted itself and, on May 10, 1994, revoted its earlier reason to believe finding against the DNC. Also on that date, the Commission found reason to believe against CFP. Document requests were issued to several individuals and entities, and deposition testimony was taken from Mr. Eli Segal, Chief of Staff of the Clinton campaign (on August 25, 1994), Mr. Melvin Whitfield (on December 7, 1994) and Mr. Frank Greer, DNC media consultant (on January 11, 1995). In early January 1996, the Commission responded to an offer made many months earlier by CFP to enter into pre-probable cause conciliation. On January 31, 1996, CFP rejected the Commission's suggestion

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for pre-probable cause conciliation. On April 18, 1996, the General Counsel's office issued its probable cause brief to both CFP and the DNC.

III. LEGAL ANALYSIS

A. Town Hall Meeting Program Was Properly Treated As A General Election Expenditure.

1. Expenditures for the Program were "in connection with the general election campaign" and properly chargeable as Section 441a(d) expenditures.

The Town Hall Meeting broadcast was essentially a general election event in both its timing and purpose. It occurred at a time when President Clinton had virtually secured the Democratic nomination for the 1992 Presidential election. The program did not focus on the other candidates for the Democratic nomination, but instead focused on the issues relevant to the upcoming general election campaign. It was broadcast nationwide, rather than in specific States as would occur during a primary campaign.

In their depositions, both Mr. Greer and Mr. Segal testified to the general election purpose of the program. Mr. Greer stated as follows:

> [W]ith the end of the California primary, we had reached a new stage in the campaign.... We were reaching out to a national audience. We knew we were getting ready for the general election.... The main purpose of this program was to communicate with several million Americans, a message of Bill Clinton going direct to people, taking their questions and talking about their concerns.

Deposition of Frank Greer, January 11, 1995 (hereinafter referred to as "Greer Deposition Transcript"), p. 18, ln. 10-14, p. 32, ln. 11-14. Similarly, Mr. Segal testified that at the time of the Town Hall Meeting, President Clinton was "third in the polls and behind Ross Perot, as well

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as President Bush," and the broadcast was an event designed for him "to talk directly to the American people." Deposition of Eli J. Segal, August 25, 1994, (hereinafter referred to as "Segal Deposition Transcript," p. 8, ln. 10-20). Clearly, the attention of the campaign at that point in time was on Mr. Clinton's general election competition. The General Counsel's Brief, on the basis of the testimony of both Mr. Segal and Mr. Greer, indeed concludes that the Town Hall Meeting program had a general election purpose. Brief, p. 10.

Under 2 U.S.C. Sec. 441a(d)(2) of the Federal Election Campaign Act of 1971, as amended, (hereinafter referred to as "FECA"), the national committee of a political party is permitted to make limited expenditures "in connection with the general election campaign" of the party's Presidential candidate. This particular provision is designed to mesh with expenditure limitations applicable to Presidential candidates who elect to accept public funding. Together the provisions function to insure the integrity of expenditure limits for those candidates. It is for this reason that the Section 441a(d) expenditures are defined broadly as expenditures "in connection with" the Presidential general election campaign.

The Commission extensively analyzed Section 441a(d) limit applicable to national party expenditures in Advisory Opinion ("AO") 1984-15, interpreting significant aspects of the statutory provision. The Opinion concerned the 1984 Presidential election, at which time President Reagan was assured the Republican nomination and there was a likely Democratic nominee. The Republican National Committee planned to run television advertisements critical of the likely Democratic nominee prior to the National Nominating Convention of either party. The advertisements were to make no mention of the prospective Republican nominee, President Reagan, and would conclude with a general "Vote Republican" message. First, the Commission

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held that where a candidate appears assured of nomination, the national party may make Section 441a(d) expenditures prior to the formal nomination. Second, and most importantly, the Commission held that the "proper analytical focus is whether the expenditures ... are made for the purpose of influencing the outcome of the general election." Concluding that the advertisements "relate primarily, if not solely" to the Presidential general election campaign, the expenditures were held to be in connection with the presidential general election and therefore chargeable to the Section 441a(d) limit.

Application of the rationale in AO 1984-15 to the facts in this MUR leads to the inescapable conclusion that this Town Hall Meeting was a general election activity, and that it was perfectly legal for the DNC to pay expenses incurred for the Town Hall Meeting program under its Section 441a(d) authority. Additionally, the Commission relied on AO 1984-15 in determinations made in the Bush-Quayle '92 Primary Committee Audit. The Commission concluded that Bush-Quayle '92 had improperly paid from its primary committee for advertisements which appealed to Ross Perot supporters. Deciding that the expenditures were "to influence voters in the November general election," the Commission required the general election committee to pay the full costs of the ads. Audit Report, December 27, 1994, p. 31, 44.

Despite the fact that the Town Hall Meeting program was, in the word's of the Office of General Counsel in the Bush-Quayle '92 Primary Audit, "primarily related to the general election," the General Counsel's office seeks to apply a different standard to the Clinton campaign. OGC Comments, October 24, 1994, p. 7. In stark contrast, the Office of General Counsel in this MUR has concluded that there is "no doubt that the televised town hall meeting was intended to convince the television audience to vote for Mr. Clinton in the general election,"

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but nevertheless seeks to allocate 50% of the costs associated with that meeting to the primary election. General Counsel's Brief, p. 10. The General Counsel's Brief makes no attempt to distinguish the Town Hall Meeting program expenditures from the advertisements in the Bush-Quayle '92 Audit. Indeed, that Brief does not even cite the Audit, leaving the distinct impression that the Office of General Counsel has simply forgotten or overlooked applicable, and particularly pertinent, precedent on the issue. The Commission amended its regulations for the 1996 Presidential election cycle. However, the regulations in effect in 1992 must be applied in this MUR, and all campaigns in the 1992 cycle should be treated equally.

2. Mistaken inclusion of a contribution solicitation for the primary campaign in the telephone script does not alter the actual purpose of the program.

The General Counsel's Brief focuses its entire analysis of the MUR on the fact that the 800 number telephone script included a solicitation for contributions to CFP as one of three options offered callers. Disregarding the actual purpose of the program, the General Counsel's Brief views this mistaken inclusion of a solicitation in the telephone script as magically transforming the entire Town Hall Meeting program. In fact, the estimated millions of voters who viewed the entire 30 minute program neither heard nor saw any solicitation for contributions. Approximately 115,000 individuals elected to call the 800 number, and of those, there were only 2100 individuals who selected the solicitation message. The fact that this miniscule percentage of the viewing audience heard a contribution solicitation to CFP can not possibly transform the purpose or impact of an entire 30 minute television program into a solicitation.

Moreover, the General Counsel's Brief states that although neither President Clinton nor

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the presentation and telecast "explicitly" ask for money, the "program provided an opportunity for the committee to solicit contributions," thereby admitting that the program fell short of an actual solicitation. Brief, p. 9-10. Every appearance, advertisement or event provide an opportunity for the solicitation of contributions. That opportunity can not change the purpose, nature and impact of an event. Providing an opportunity to solicit contributions simply does not amount to a solicitation.

The basic fact remains that the Town Hall Meeting program was in connection with the general election campaign. Under every interpretation the Commission has issued concerning Section 441a(d) expenditures, costs incurred for that program were bona fide Section 441a(d) expenditures.

3. Since the actual purpose of 800 number was to distribute the Clinton economic plan, its cost was a valid general election expenditure.

The first words heard by those calling the 800 number were:

> Thank you for calling. To receive your free copy of
> Bill Clinton's plan for America's future, please press 1.

Storch Deposition Transcript, Deposition Exhibit 5. Over 98% of the approximately 115,000 callers chose option 1, meaning that these callers never heard the contribution solicitation. Only 2,107 callers selected option 3 to hear the solicitation message. These figures conclusively demonstrate that the primary impact and purpose of the 800 number was to distribute President Clinton's economic plan to the voting public.

The numerical evidence is buttressed by the deposition testimony of Mr. Segal, who stated repeatedly that the main purpose of the 800 number was to distribute the Clinton economic

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plan. In contrast, the solicitation of contributions was a "secondary or tertiary objective, as one could establish from looking at the result." Segal Deposition, p. 19, ln. 22 - p. 20, ln. 1. Mr. Segal also testified that the message would have been "substantially different" if the main objective of the 800 number had been to solicit contributions. Segal Deposition Transcript, p. 20, ln. 7. Mr. Storch also stated that the solicitation of contributions was only one of the three purposes of the 800 number. Storch Deposition Transcript, p. 40, ln. 14.

The numerical results, as well as the testimony, should end any discussion of the true purpose of the 800 number. It is conclusively established that the main objective was not fundraising. Nevertheless, the General Counsel's Brief concludes that all three options available on the 800 number were developed primarily as a means of raising money for CFP. General Counsel's Brief, p. 4. Although no specific citation to the evidence is provided for this statement, the Brief at a later point states that Mr. Melvin Whitfield testified that the "stated goal of the l-800 program was to take advantage of the success that Governor Jerry Brown had with his l-800 number and try to see if they could somehow parlay this into contributions for the Clinton campaign." General Counsel's Brief, p. 8.[1] This single statement is hardly sufficient to contradict the numerical evidence and the rest of the testimony on this issue.

Using Mr. Whitfield's statements in this way results in a complete distortion of his testimony and the facts surrounding the 800 number. Mr. Whitfield testified repeatedly that he was not involved in the Town Hall Meeting program and that he did not attend any meetings on

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[1]The 800 number was incorporated into the Town Hall Meeting program because the Clinton campaign had previously used it successfully. The decision had nothing to do with Jerry Brown, further discrediting Mr. Whitfield's reliability as a witness. See Storch Deposition Transcript, p. 31, ln. 18-19 and Greer Deposition Transcript, p. 22, ln. 20 - p. 23, ln. 4.

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it. Whitfield Deposition Transcript, p. 16, ln. 14-15, p. 17, ln. 13-14. He had no specific recollection of the 800 number script for the Town Hall Meeting although he vaguely asserted that he would have seen it, when, in fact, there is no evidence that he did see the script. Whitfield Deposition Transcript, p. 89, ln. 16 - p. 90, ln. 2.

Moreover, according to his own testimony, much of the information Mr. Whitfield provided was "overheard" or based on "rumors." Whitfield Deposition Transcript, p. 17, 19, 63, 93, and 94. Mr. Whitfield frequently stated that he could not remember or recall what had happened and often speculated when answering questions. Whitfield Deposition Transcript, p. 18, 19, 20, 22, 24, 27, 35, 37, 39, 45, 68, 90, 93, 94, 106, 137, 144. Initially, he could not even remember who Mr. Storch was, probably because in fact he had nothing to do with Mr. Storch in his day-to-day duties. Whitfield Deposition Transcript, p. 68, ln. 11 - p. 69, ln. 21. Encouraged by the General Counsel's Office to speculate, Mr. Whitfield, who was not represented by counsel, repeatedly testified about matters on which he had no first hand knowledge.[2]

It is important for the Commission to consider that Mr. Whitfield did not hold a position of decision-making authority at the DNC, as is reflected by his own testimony that he attended no meetings on the Town Hall Meeting program. Whitfield Deposition Transcript, p. 146, ln. 1-5. For example, Mr. Whitfield states that when Carol Darr, DNC General Counsel, visited campaign headquarters in June 1992, his role was limited to greeting her at the door and introducing her to Mr. Segal. He did not, however, participate in the ensuing meeting between

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[2]For example, in response to a question, Mr. Whitfield stated "I don't want to speculate," to which the General Counsel's Office responded "Speculation is good. We know what to do with speculations...." Whitfield Deposition Transcript, p. 39, ln. 8 -10. See also p. 20, ln. 2-4.

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the two. Whitfield Deposition Transcript, p. 92, ln. 19, p. 97, ln. 14-17.

Because Mr. Whitfield was not in a position to have and, in fact, did not have, first hand knowledge of the activities at issue, his testimony is unreliable and should be disregarded by the Commission. Mr. Whitfield's testimony can not possibly negate the conclusive evidence provided by the caller response figures which establish that only a miniscule percentage of callers ever heard the contribution solicitation. Those figures, coupled with testimony by management-level CFP staff and DNC consultants, clearly demonstrate that the 800 number was primarily used to distribute the Clinton economic plan. As such, the costs incurred for that number were general election campaign expenditures.

4. Identification of the person responsible for the mistaken inclusion of the solicitation to CFP in the 800 number script does not alter the legal status of expenditures for the program or the number.

The General Counsel's Office seems fixated on assessing blame for the mistaken inclusion of the solicitation to CFP in the 800 number script. The Brief states that written submissions in this MUR have "implied" that Mr. Storch was at fault for the script mistake. General Counsel's Brief, p.7. True to form, there is no citation to a specific document as support for that statement in the Brief.

The truth of the matter is that CFP has from the outset candidly admitted to the mistake and taken responsibility for it. Indeed, nearly two years ago Mr. Segal unequivocally took full responsibility for the mistake in the script.

There is no question that a mistake was made in the script. Anyone involved in it played some role in that mistake. The mistake essentially grew out of a failure to communicate between

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those people in the campaign who were working on the script and those who were making payment arrangements. The script never caught up with the change in the payment, in part, because the 800 number was essentially a miniscule part of the Town Hall Meeting program.

Most importantly, the mistake was correctable and both CFP and DNC took extreme measures to correct the error by not accepting contributions for which pledges were made. For the Commission to pursue tenaciously this matter is completely unfair in light of those extreme measures.[3]

Finally, the issue of who was a fault for the script mistake is totally irrelevant. It is difficult to understand the General Counsel's dogged pursuit of the issue of fault for the script mistake, especially since that pursuit results in confusing the real issues in this MUR. The only relevant facts are that the script error was inadvertent, immediate corrective action was taken on discovery of the error, and no contributions solicited through the erroneous script were received.

B. Costs Incurred For The Solicitation Did Not Result In A Contribution, Because CFP Did Not Receive Anything Of Value.

The FECA treats the receipt of "any gift, subscription, loan, advance or deposit of money or anything of value" as a contribution. 2 U.S.C. Sec. 431(8)(a)(i). Under this statutory provision, in order for a contribution to exist, there must be "something of value" given by the contributor to the recipient. Therefore, where nothing of value exists, no contribution exists, let alone been made or accepted.

In this MUR, the solicitation for contributions was negated when the 800 number was shut down, no fulfillment was made on contribution pledges, and no contributions were ever

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[3]The Commission should encourage swift remedial action, as occurred here.

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received by CFP. CFP undoubtedly received nothing of value. Moreover, the language of the solicitation message did not include a message advocating the election of President Clinton. The miniscule number of individuals who heard the solicitation did not hear an advocacy message as part of the solicitation. Those prospective contributors who spoke with an operator were not even provided information on how to contribute (e.g., to whom make out a check; where to send a check, etc.) Rather, the telemarketing vendor was either to send these individuals envelopes for contributing by check or to process credit card transactions for the contributions. See Storch Affidavit, para. 11. Neither occurred, since there was no fulfillment. Hence, the statutory definition of contribution was not met, and no contribution to CFP occurred. Similar reasoning is applicable to the Office of General Counsel's faulty theory that an "opportunity" to contribute was provided. Because there was no follow-up, no fulfillment, and no contributions made, it simply cannot be argued that the opportunity resulted in anything of value to CFP.

In consonance with the definition of contribution is the Commission's regulation on accidental or inadvertent solicitations by corporation or labor unions. 2 U.S.C. Sec. 441b prohibits labor unions and corporations from soliciting contributions to their respective separate segregated funds from persons who are not in their "restricted class." Thus, corporations are permitted to solicit contributions only from their stockholders, high level employees and their families, while labor unions are permitted to solicit contributions only from members and their families. Commission regulations interpreting this statutory provision provide that accidental or inadvertent solicitations beyond the restricted class by a corporation, labor union or their respective separate segregated funds will not be deemed in violation of the law, so long as best efforts were used to comply with the solicitation requirements and appropriate corrections were

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made after the discovery of the erroneous solicitation. 11 C.F.R. Sec. 114.5(h).

In keeping with the underlying philosophy expressed in its regulations, the Commission should follow the same approach in this MUR. The solicitation of contributions to CFP was inadvertent and accidental, reached a small number of people and was totally and immediately corrected upon discovery.

Similarly, Commission regulations permit political committees receiving contributions that are subsequently discovered to be illegal to correct the situation by promptly returning the contribution. 11 C.F.R. Sec. 103.3(a)(2). This regulation deals with a situation analogous to that presented in this MUR. Inasmuch as CFP and DNC immediately took steps to eliminate any possible gain from the mistaken solicitation, the Commission should conclude that no contribution occurred.

C. Assuming Something Of Value Was Received By CFP From The DNC, The Amount Of The Violation Is Really $2,160 Not $276,065, As OGC Claims.

Even assuming that something of value was received by CFP from the DNC, OGC vastly overstates the amount of the supposed violation. The highest value that could ever be placed on the nullified June 12, 1992 solicitation is $2,160 (applying the proportion of callers selecting the contribution option (1.8%) to $120,000). Unlike the amount in violation alleged by OGC, $2,160 is a realistic figure based on the actual purpose of the Town Hall Meeting program. This figure reflects the inadvertent and minor nature of the mistake that was made.

Despite the fact that most of the circumstances surrounding the solicitation at issue have been known from the outset, the Commission has inexplicably increased the dollar value of the alleged violation at each stage of the MUR process. The initial RTB finding against the DNC

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divided the cost of the telemarketing operation, $120,000, by the number of options offered to callers, 3, resulting in placing a $40,000 value on the solicitation. Factual and Legal Analysis, RTB Notice, August 10, 1993, p. 10. Nine months later, an initial RTB finding was made against CFP and a second finding against DNC. Factual and Legal Analysis, RTB Notice, May 24, 1994. The second notice tripled the amount of the violation to $120,000, the total cost of the 800 number. Although no reason was given, the report stated that the solicitation was not a mistake, and that "this contradicts the written response" of CFP. A third and most recent document, the Probable Cause Brief, appears to agree that a mistake occurred, although not by the telemarketing vendor. Brief, p. 4. However, the Brief calculates the violation by yet another method, concluding that the violation should be valued at one half of the entire cost of the broadcast and the 800 number for a total of $276,065.76. Brief, p. 14.[4]

Thus, even assuming that the mere hearing of a solicitation created something of value for CFP, placing a value of $2,160 on the alleged contribution is very reasonable. It is a figure grounded on a factual basis and should be accepted by the Commission.

D. Due To Evidence Gathered By The Commission Prior To The NRA Decision, The Commission Must Re-Initiate This MUR.

1. Prior to the NRA decision, the composition of the Commission violated the separation of powers doctrine.

In NRA, a political action committee, responding to a complaint for violation of federal

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[4]The General Counsel's brief cites AO 1988-6 to support its 50% analysis. However, that opinion was strictly related to the fundraising exemption at 2 U.S.C. Sec. 431(9)(B)(vi) which is not at issue here. The wide range in the amount in violation is not explained, and, indeed, OGC gives no indication of the reasons underlying this vast discrepancy. It can be surmised, however, that the highly inflated latest figure is simply OGC's attempt to make CFP's mistake appear more serious to the Commission.

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campaign finance laws, challenged the constitutionality of the Commission on separation of powers grounds. 6 F.3d at 823. The United States Court of Appeals for the District of Columbia Circuit held that the inclusion of two congressionally appointed *ex officio* members on the Commission was a violation of the separation of powers doctrine and found the Commission unconstitutional. Id. at 827. Accordingly, the Commission lacked the authority to bring or continue civil enforcement actions. Id. at 826-27; see Larouche v. Federal Election Commission, 28 F.3d 137, 139 (D.C. Cir. 1994).

In the wake of the NRA decision, the FEC took action to remedy its constitutional defects. The Commission reconstituted itself without the presence of the two *ex officio* members and continued to pursue open enforcement matters as a six member agency, thereby attempting to satisfy the constitutional requirements as to membership. NRA, 6 F.3d at 828.

2. Because the composition of the Commission was unconstitutional at the time of the Storch deposition, the RTB finding based on that deposition is invalid.

After finding RTB against the DNC on July 27, 1993, the Commission issued subpoenas for documents and, on October 14, 1993, deposed Paul C. Storch, president of Storch-Tele-Group, Inc. On May 10, 1994, approximately six months after reconstituting, the Commission reversed its earlier decision to "take no action" against CFP and voted to find RTB that CFP violated 2 U.S.C. Sec. 441a(f). The evidence gathered as a result of the subpoenas and deposition was cited by the Commission as the basis of the eventual RTB finding that CFP violated 2 U.S.C. Sec. 441a(f). Factual and Legal Analysis accompanying RTB finding of May 10, 1994, p. 5. The Storch deposition, however, occurred eight days *before* the NRA decision. Thus, at the time the General Counsel was pursuing its investigation, which included deposing

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Mr. Storch, the Commission was unconstitutionally structured. Because the structure of the Commission violated the separation of powers doctrine, all evidence gathered from the Storch deposition and subpoenas cannot be relied upon by the Commission to proceed against CFP.

In two Supreme Court opinions, the Court has held that new judicial decisions about federal law must be applied retroactively in civil cases. In James B. Beam Distilling Co. v. Georgia, the Court held that a rule of law newly announced in a decision must be applied retroactively to claims arising on facts antedating that decision." 501 U.S. 529, 532 (1991). In Harper v. Virginia Dep't of Taxation, the Court held that:

> [W]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.

113 S. Ct. 2510, 2517 (1993).

Both Beam and Harper require the retroactive application of the NRA decision in this MUR. The NRA decision must be applied retroactively to all on-going enforcement actions at the time the case was decided. Therefore, under the NRA decision, any investigation or evidence gathered while the Commission was unconstitutional cannot be relied upon because the Commission lacked constitutional authority to conduct any investigation under 2 U.S.C. Sec. 437g(a)(2). The Storch deposition on October 14, 1993, occurred while the Commission lacked constitutional authority since it took place prior to the NRA decision. Applying the "retroactivity doctrine" to this enforcement action invalidates any and all information and evidence gathered by the Commission prior to the NRA decision. Therefore, any RTB finding based on that

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information and evidence is invalid.

The Commission contends that its post-reconstitution ratification of its prior decisions is an adequate remedy for the NRA constitutional violations. See General Counsel's Brief, p. 15. However, this remedy is inadequate. Merely reconstituting itself to conform to the court's opinion in NRA cannot cure the defect that the Commission, in this MUR, relied on evidence gathered at the time it was unconstitutional for a RTB finding against CFP.

3. Because the Storch deposition and evidence gathered before reconstitution formed the basis for three later depositions, the later depositions must also be disregarded.

After the Commission's RTB finding against CFP, OGC deposed Mr. Segal, Mr. Whitfield, and Mr. Greer. OGC, however, relied upon the evidence and information gathered from the Storch deposition in deciding to pursue its investigation into this matter by deposing those three individuals. Factual and Legal Analysis accompanying RTB finding of May 10, 1994, p. 5. Throughout the depositions of Messrs. Segal, Whitfield, Greer, OGC makes reference to the information gathered and documents received from Mr. Storch.

Clearly, the evidence gathered as an unconstitutional body during the Storch deposition formed the basis for and is inseparable from the three later depositions. Thus, the evidence gathered from the Storch deposition was constitutionally tainted, and so, too, is the evidence gathered from the three later depositions. All such evidence must be disregarded.

4. The appropriate remedy would be for the FEC to re-initiate the entire administrative process prior to making an RTB finding because the outcome in this MUR would not necessarily be the same.

The recent decision of Federal Election Commission v. Legi-Tech, Inc. asserts that a remedy of repeating administrative process from the beginning may not be warranted unless

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there is some likelihood that the Commission would reach a different outcome. 75 F.3d 704, 707 (D.C. Cir. 1996). In light of the court's decision in Legi-Tech, it is conceivable that the Commission would now decide this matter differently than it did when originally addressing this MUR in July 1993 -- almost three years ago.

First, had the Commission re-deposed Mr. Storch after the NRA decision when the Commission was constitutionally structured and had CFP been afforded the opportunity to respond to an RTB finding based on that deposition and acquired evidence, different information may have been produced which might have altered the Commission's finding. Second, the Commission's current composition has changed since July 1993. Due to the resignation of one Commissioner, the Commission is operating with only five Commissioners, and of those five Commissioners, two are holding over in terms that have expired. Third, the instant MUR deals with a one-time event -- the mistaken inclusion of a solicitation to CFP in a script for a telemarketing event which was short-lived and resulted in no contributions to CFP. In contrast, Legi-Tech dealt with commercial use of contribution lists, an issue which is central to the disclosure provisions of the FECA.

Finally, the event at issue occurred over four years ago. The Commission's pace in this MUR has been so remarkably slow that, after four years, the probable cause stage of the MUR is just beginning. It took the Commission two years to complete the RTB stage of the MUR. (The second RTB finding against CFP was on May 10, 1994.) The four depositions were spread out over one and a half years. An entirely new Presidential campaign is in progress and this MUR is still dealing with a very minor matter from the last Presidential campaign. Indeed, were the Commission with its current composition, to look at this fact situation again, there is a high

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probability that the outcome would change significantly. This is especially true in light of the fact that the Commission has dismissed a large number of MURs in the last three years on the basis of their age. Indeed, in December 1993, the Commission dismissed 137 MURs, many on the basis that they were "stale, meaning the activity occurred prior to the 1990 cycle." FEC Press Release, December 13, 1993.

IV. CONCLUSION

For the reasons stated above, the Commission should find no probable cause to believe that the Clinton for President Committee and J.L. Rutherford, as treasurer, violated any provision of the Act or Commission regulations.

Respectfully submitted,

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and J.. Rutherford, as treasurer	)	MUR 3546
	)	
Democratic National Committee and R. Scott Pastrick, as treasurer	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("The Commission") on June 19, 1992, by the Republican National Committee ("RNC"). In this complaint the RNC alleged that the Clinton for President Committee ("the Clinton Committee") and its treasurer, violated 2 U.S.C. § 441a(f); and the Democratic National Committee ("the DNC") and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). On July 27, 1993, the Commission found reason to believe that the DNC violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). On that same date the Commission voted to take no action at this time with respect to the Clinton Committee and its treasurer.

On October 26, 1993, the Commission reconstituted itself to conform to the Court's opinion in FEC v. NRA Political Victory Fund, 778 F. Supp. 62,64, 65 (D.D.C. 1991), rev'd on other grounds, 6 F.3d at 821 (D.C. Cir. 1993), cert. dismissed for want of jurisdiction, 115 S. Ct. 537 (1994), ("NRA"). On May 10, 1994, consistent with its procedures to comply with the NRA opinion, the Commission voted to find reason to believe that the Clinton Committee and its treasurer, violated 2 U.S.C.

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§ 441a(f); and the DNC and its treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

The Commission conducted an investigation in this matter. Based on the information obtained from depositions, responses to interrogatories, and the submission of documents this report sets forth the basis for the General Counsel's recommendation that the Commission find probable cause to believe that the Clinton for President Committee and its treasurer, violated 2 U.S.C. § 441a(f), and probable cause to believe that the DNC and its treasurer violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a). This Office submitted its briefs to the DNC and the Clinton Committee stating the General Counsel's position on the issues in the case and informing respondents that this Office is prepared to recommend that the Commission find probable cause to believe that certain violations had occurred. On June 21, 1996, both the DNC and the Clinton Committee submitted their responsive briefs.

II. FACTUAL AND LEGAL ANALYSIS

On June 12, 1992, the Democratic National Committee sponsored a 30-minute nationwide televised town hall meeting at which President Clinton answered questions from the television audience. During the program, a "1-800" number appeared on the screen periodically. Callers to the "1-800" number were offered three options: receive President Clinton's "Plan for America's Future"; leave a message for President Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution."

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In addition to the "1-800" number, during the televised program an announcement appeared on the screen stating "paid for by the Democratic National Committee." The facts are set forth in more detail on pages 3 through 11, and pages 4 through 11 of the General Counsel's Briefs signed April 17, 1996 to the Clinton Committee and the DNC, respectively.

In their responsive briefs both the DNC and Clinton Committee basically made the following arguments: (1) the town hall meeting program was properly treated as a general election expenditure, rather than treating any part of the program as a primary expenditure; (2) the formula used to calculate the contribution amount is incorrect; and (3) the investigation was unconstitutional, and therefore, the Commission cannot use any information obtained from it.

With regard to the issue of the broadcast violating 2 U.S.C. § 441d(a), which requires notice of who pays for materials containing express advocacy and solicitation, and a statement whether or not such materials were authorized by the candidate or his committee, the DNC argues that a statement as to whether or not the program was authorized by the candidate or his committee was not required on the television broadcast of the town hall meeting program.

A. DISCUSSION

1. Whether the Town Hall Meeting Program was properly treated as a general election expenditure, rather than treating any part of the program as a primary expenditure.

In response to the position in the General Counsel's Brief that the town hall meeting was 50% primary and 50% general, both

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the Clinton Committee and the DNC make a number of arguments in support of their position that no part of the town hall meeting program was properly treated as a primary election contribution.

(a). Focus of Town Hall Meeting.

(1). Response

Respondents argued that the entire town hall meeting was a general election expenditure because: it did not focus on other candidates for Democratic nomination; it focused on issues relevant to the general election; and, as the broadcast was nationwide, it did not target one state as is characteristic of a primary campaign. Thus, its purpose according to respondents was to persuade voters to support Mr. Clinton in the general election.

(2). Analysis[1/]

This Office does not dispute the fact that the town hall meeting related partly to the general election, but believes that in determining whether this was strictly a general election event the Commission should consider all the facts. As stated in the General Counsel's Brief to the DNC (pp. 12 through 14) and in the General Counsel's Brief to the Clinton Committee (pp. 12 through 14) the town hall meeting broadcast was the method by which the "1-800" number was brought to the attention of the public. A contribution solicitation for the Clinton Committee was contained in the messages available to callers to this number. Therefore, a portion of the expenditures by the

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1/ The General Counsel's Brief is hereby incorporated by reference.

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DNC for the town hall meeting broadcast paid in part for making it possible for the Clinton Committee to seek contributions from individual contributors for Mr. Clinton's primary campaign committee.

(b). Purpose of Options heard on the "1-800" number.

(1). Response

Both the DNC and the Clinton Committee argue that the standard for determining when an expenditure counts against the section 441a(d) limits is not a subjective one but rather is objective, such that a person of "common intelligence" would have no difficulty understanding. Counsel for the DNC argues that the purpose of any communication must be measured solely by objective factors, and the fact that two of the three caller options contained no words of solicitation is thus objective proof that the main purpose of the "1-800" number was to convince callers to vote for Mr. Clinton in the general election, and not to solicit contributions for the Clinton Committee. Counsel for the DNC argues that this Office's conclusion that all three options callers heard on the "1-800" number were designed to raise funds for the Clinton Committee, is based on the subjective intent of the DNC and the Clinton Committee, as portrayed in the testimony of a lower-level DNC employee, Melvin Whitfield.

Respondents argue that Mr. Whitfield is not a reliable witness, and that Mr. Whitfield's testimony is based on speculation. Although respondents assert that Mr. Whitfield had no first hand knowledge about the Town Hall Meeting, respondents

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acknowledge that he was knowledgeable about, and responsible for certain aspects of the committee's overall direct mail operations. Respondents aver that Mr. Whitfield's testimony cannot negate evidence provided by the caller response figures, which show that over 98% of the approximately 115,000 callers chose option 1 (the Clinton Plan), meaning these callers never heard the contribution solicitation. Counsel for both committees state that only 2,107 callers selected option 3 to hear the solicitation message.

(2). Analysis

The DNC's attack on the level of Mr. Whitfield's knowledge about the town hall meeting is misplaced. This Office relied upon Mr. Whitfield's testimony as evidence concerning the purpose of the "1-800" number options. No one has disputed his knowledge about that and one of the three "1-800" number options had a direct mail component. Indeed, the DNC's description of Mr. Whitfield's responsibilities with respect to direct mail, which is consistent with Mr. Whitfield's own testimony, supports this Office's reliance on Mr. Whitfield. Both the DNC, through the affidavit of Glen Hoffman, the Director of Direct Mail, and Mr. Whitfield describe his responsibilities as being focused on direct mail products. In addition, the evidence shows that the purpose of all three options provided on the "1-800" number was to solicit contributions and to build a list of potential contributors for the Clinton Committee.

While Mr. Whitfield may not have attended meetings about the town hall meeting, Mr. Whitfield testified that he attended

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a couple of "1-800" number planning discussions with Eli Segal (Chief of Staff of the Clinton Committee) and David Watkins (Vice President of the Clinton Committee, and Deputy Campaign Manager), which respondents do not dispute. Based on his participation in these meetings, Mr. Whitfield informed this Office that the stated goal by the Clinton campaign for the "1-800" number program was to take advantage of the success that Governor Jerry Brown had with his "1-800" number and try to see if they could somehow parlay this into contributions for the Clinton campaign.

Respondents' assertion that Mr. Whitfield's testimony with respect to the purpose of the "1-800" number was based on rumor and speculation is not true. The portions of testimony to which respondents point when the witness was asked to speculate do not relate to the subject of the purpose of the "1-800" number program. In one instance, to determine whether there were other knowledgeable individuals this Office should consider deposing Mr. Whitfield was asked to speculate as to who from the DNC was involved when it came to light that there might be a problem with the DNC paying for the "1-800" number. See Whitfield deposition pages 19 and 20.

Respondents also refer to page 39 of the testimony by Mr. Whitfield about a letter dated June 17, 1992 from Mr. Whitfield to Kathy Harmon (DNC Staff Member). See Whitfield deposition starting on page 26 through page 39. In this letter Mr. Whitfield made a statement about working on fulfillment for

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the "1-800" number T.V. spot that had run on Friday.[2/] When asked whether this statement referred to the "1-800" number which appeared on the screen during the broadcast of the June 12, 1992 Town Hall Meeting, Mr. Whitfield's initial answer was that he did not want to speculate. However, after this Office furnished Mr. Whitfield a copy of this document, his memory was refreshed. Therefore, not only was his testimony on a point other than the purpose of the "1-800" number, but his testimony was not based on speculation. See Whitfield deposition page 39.

Respondents also criticize this Office's efforts to prod Mr. Whitfield's memory concerning whether any of the fulfillment materials promised in one of the "1-800" messages were ever mailed. See Whitfield deposition pages 92 to 94. Mr. Whitfield's speculative answers to these questions do not cast any doubt on the credibility of Mr. Whitfield's testimony concerning the purpose of the "1-800" number options.

(c). Bush-Quayle '92 Primary Audit treatment of Ads should apply

(1). Response

Counsel for the Clinton Committee also argues that the facts here are identical to certain facts examined in the Bush-Quayle '92 Primary Audit. In that audit, the Commission determined that certain advertisement expenditures made by the Bush-Quayle '92 Primary Committee were actually 441a(d)

2/ The Town Hall Meeting program was broadcast on Friday, June 12, 1992, which was five days before the date on this letter from Mr. Whitfield to Kathy Harmon.

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expenditures, rather than primary expenditures. Respondents argue that the conclusion should be the same with respect to the current matter. Counsel argues that the General Counsel's Brief does not attempt to distinguish the Town Hall Meeting program expenditures from the advertisements in the Bush-Quayle '92 Audit.

(2). Analysis

A national party committee may make limited expenditures on behalf of its presidential nominee for the general election. 2 U.S.C. § 441a(d)(2).[3/] However, such expenditures must be in connection with the general election campaign for the office of President of the United States and contain an electioneering message.

With regard to the Bush-Quayle '92 Primary Audit, the language contained in the newspaper advertisements at issue directly and specifically related to the general election. These newspaper advertisements appealed for the votes of Perot supporters after Ross Perot withdrew from the presidential race.

Consistent with the action taken in the Bush-Quayle '92

3/ The recent Supreme Court decision in Colorado Republican Federal Campaign Committee v. FEC, 116 S. Ct. 2309 (1996), does not impact on this Office's analysis in the present matter. In that case, the Court found the application of section 441a(d)(3) limits on party committee expenditures in a congressional race unconstitutional because there was no evidence that the expenditures were coordinated with the candidate. In the present matter, there is ample evidence of coordination. In addition, while the Court raised the issue whether any limits could be applied to party committee spending on behalf of congressional candidates, it did not decide that issue. Rather, it remanded the matter to the lower court. Finally, the Court specifically noted that it had not addressed any issues in the context of publicly funded presidential campaigns, which would fall under section 441a(d)(2). Id. at 2314 (plurality opinion).

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Primary Audit, this Office has recommended that the town hall meeting be treated in part as a general election expenditure because one of its goals was to persuade the audience to vote for Mr. Clinton in the general election. At the same time, this matter differs from the advertisements at issue in the Bush-Quayle '92 Primary Audit because the town hall meeting and "1-800" number, unlike the Bush-Quayle advertisements, were tied directly to the primary through a specific, unambiguous request for contributions to the Clinton primary campaign, and related efforts to gather names for additional contributions.

(d). AO 1984-15

(1). Response

According to the Clinton Committee, application of the rationale in AO 1984-15 to the facts in this MUR also leads to the inescapable conclusion that this Town Hall Meeting was a general election activity, and that it was perfectly legal for the DNC to pay expenses incurred for the Town Hall Meeting program under its Section 441a(d) authority.

(2). Analysis

The Ads paid for by the Republican Party which were the issue of AO 1984-15 denigrated the potential Democratic presidential candidates at a time prior to the nomination. The Commission determined that the contents of the Ads, despite the timing, were to influence the outcome of the general election. As previously noted, this Office agrees that the town hall meeting all by itself would have been a permissible general election expenditure. Indeed, this AO is the very basis for the

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recommendation that part of the cost of the town hall meeting be treated as a general election expenditure. What distinguishes AO 1984-15 from this matter is that the broadcast in this matter advertised a telephone number which when called callers heard a message which directly solicited contributions for the Clinton primary committee.

(e). Accidental or Inadvertent Solicitation

(1). Response

Counsel for the Clinton Committee asserts that the Commission should handle this present situation the same as the Commission handles accidental or inadvertent solicitations by corporations or labor unions. Counsel notes that the Commission has a regulation which provides that accidental or inadvertent solicitations beyond the restricted class by a corporation, labor union or their respective segregated funds, will not be deemed a violation so long as best efforts were used to comply with the solicitation requirements, and appropriate corrections were made after the discovery of the erroneous solicitation. 11 C.F.R. § 114.5(h). Alternatively counsel argues that the Commission should treat this situation in accordance with the regulations that permit political committees receiving contributions subsequently discovered to be illegal, to correct the situation by promptly returning the contributions. 11 C.F.R. § 103.3(a)(2). Counsel states that the situation covered by the foregoing regulation is analogous to the events in this matter, because the Clinton Committee and the DNC immediately took steps to eliminate any possible gain from the

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mistaken solicitation; therefore, the Commission should conclude that no contribution occurred.

(2). Analysis

The foregoing regulation, 11 C.F.R. § 114.5(h), which deals with contribution solicitations directed at individuals who were accidentally included in the solicitable class is not applicable to the facts of this matter. Furthermore, even if this regulation did apply, this was not an accidental or inadvertent solicitation. The Clinton Committee intended to solicit contributions.

11 C.F.R. § 103.3(b)(2) provides that if the treasurer in exercising his or her responsibilities determined that at the time a contribution was received and deposited, it did not appear to be made by a corporation, labor organization, foreign national or Federal contractor, or made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of receipt and deposit, the treasurer shall refund the contribution within thirty days of the date on which the illegality is discovered. If the political committee does not have sufficient funds to refund the contribution at the time the illegality is discovered, the political committee shall make the refund from the next funds it receives. This regulation does not support the Clinton Committee's argument, because 11 C.F.R. § 103.3(b)(2) requires that the actions taken after discovering the illegal contribution actually correct the situation, by refunding the illegal contribution. The illegal contribution in

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this matter occurred and was completed with the airing of the town hall meeting which displayed the "1-800" number. There is no way for the Clinton Committee to refund such an in-kind contribution. In addition, the Clinton Committee never refunded the $120,000.00 the DNC paid for the "1-800" number. In this matter the actions taken by both the DNC and the Clinton Committee, which included having the DNC to pay for the "1-800" number, in addition to the broadcast of the town hall meeting, did not correct the situation but inadvertently made things worse, by increasing the amount of the illegal contribution.

2. Whether the formula used to calculate the contribution amount is incorrect.

(a). Response

The Clinton Committee states that it has always admitted and taken responsibility for the mistake in the script, but argues the only relevant facts are that the script error was inadvertent, immediate corrective action was taken on discovery of the error, and that no contributions solicited through the erroneous script were received. Both the Clinton Committee and the DNC argue that since this solicitation resulted in nothing of value, there is no contribution, and therefore no making or accepting of a contribution.

According to the Clinton Committee and the DNC, the mistaken inclusion of a contribution solicitation option for the primary campaign in the telephone script does not alter the actual purpose of the program. The counsels for both committees argue that only a small number of persons heard the contribution solicitation to the Clinton Committee, and that that fact alone

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cannot possibly transform the purpose or impact of an entire 30 minute television program into a solicitation. Respondents argue further that the fact that the broadcast provided an opportunity to solicit contributions simply does not amount to a solicitation.

Respondents state that over 98% of the approximately 115,000 callers chose option 1 (the Clinton Plan), meaning these callers never heard the contribution solicitation. Counsel for both committees state that only 2,107 callers selected option 3 to hear the solicitation message. Thus, Respondents conclude these figures conclusively demonstrate that the primary impact and purpose of the "1-800" number was to distribute President Clinton's economic plan to the voting public.

The Clinton Committee and the DNC state that if the Commission concludes that something of value was received by the committee, the amount of the violation should be based on the proportion of callers selecting the contribution option, and not the formula presented in the General Counsel's Brief which considers the amount of the contribution as one-half of the entire cost of the "1-800" program ($120,000) and the broadcast cost ($432,131) or $276,065. Respondents argue that Advisory Opinion 1988-6 which is cited in the General Counsel's Brief does not support the one-half approach.[4/] According to respondents it supports the allocation of costs on a time and space basis, which was the approach initially approved by the

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4/ Counsel for the DNC argues that AO 1988-6 does not mandate a 50% allocation but allows the committee to allocate a relatively small portion to fundraising.

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Commission in this case.

Respondents argue that because only 1.8% of the callers selected the contribution option, 1.8% of $120,000 (cost of the "1-800" number) which equals $2,160 is a more realistic measure of the scope of any contribution and reflects the inadvertent and minor nature of the mistake that was made.

(b). Analysis

Under 2 U.S.C. § 441a(a)(2)(A), which is the provision that limits the extent of the DNC's primary contributions in this context, a multicandidate committee can only contribute $5,000.00 to a candidate's committee. Accordingly, the Clinton Committee could not accept primary contributions from the DNC in excess of this limitation. 2 U.S.C. § 441a(f). The scope of the violation of 2 U.S.C. § 441a(f), includes a portion of the cost of the telemarketing portion of the program, plus a portion of the remaining cost of the town hall meeting program which constitutes a primary contribution by the DNC to the Clinton campaign. This conclusion is based on the evidence that this town hall meeting telecast was the vehicle by which the viewing audience obtained knowledge of the "1-800" telephone number, and that the primary purpose of all aspects of the "1-800" number program was to raise funds. See, General Counsel's Brief pp. 12 through 14.

Respondents' formula based on the number of callers selecting the solicitation option is inappropriate because it fails to include any amount for the method and manner in which the callers obtained notice of the "1-800" number and its

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various options. Furthermore, this Office has evidence that all three options had the purpose of soliciting contributions, which the respondents' formula also fails to include.

In determining the portion of the cost of these programs to be treated as primary contributions, the Commission should follow the approach set out in AO 1988-6 (Gore Committee). The Commission concluded that in the Gore situation, when the program had two purposes, the Committee may allocate as much as 50% of the cost of broadcasting television commercials to exempt fundraising expenditures. Here, the Commission should follow a similar approach and take the position that 50% of the cost of the town hall meeting broadcast and the telemarketing program constituted fundraising and, therefore, a contribution in that amount. See, General Counsel's Brief, page 13.

Further support for the 50/50 approach stems from the Commission's resolution of certain related issues in the Bush-Quayle '92 Primary Audit. The Bush-Quayle '92 Primary Audit involved not only expenditures for advertisements but also expenditures including polling, focus groups surveys, direct mail, list rentals, shipping and materials, print media services, leased office space, and equipment. In viewing these expenditures, other than the advertisements at issue, the Commission reasoned that the correct standard for determining whether an expenditure is a primary qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15. To be "in connection with" the primary campaign, a qualified campaign expenditure must be

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primarily related to the primary campaign. A portion of an expenditure could be qualified and a portion non-qualified if the purpose of an expenditure is mixed. In the Bush-Quayle '92 Primary Audit, most of the expenditures apparently had a mixed purpose. Thus, in the Final Audit Reports, the Commission divided certain expenses 50/50% between the primary and the general campaigns to reflect that mixed purpose. See Statement of Reasons the Bush-Quayle '92 Primary Audit.[5/] In this present matter the town hall meeting broadcast with the "1-800" number had a mixed purpose, which was both related to the primary and the general election campaigns, therefore this Office as stated above recommends that the Commission also follow the 50% approach in this matter.

3. Whether the Investigation was unconstitutional, and therefore, the Commission cannot use any information obtained from it.

(a). Response

Throughout this investigation, the Clinton Committee and the DNC have argued that, under the NRA decision, any investigation or evidence gathered while the Commission was unconstitutionally constituted cannot be relied upon because the Commission lacked constitutional authority to conduct any investigation under 2 U.S.C. § 437g(a)(2). Respondents claim that because the Storch deposition and evidence gathered before reconstitution formed the basis for three later depositions (Eli Segal, Frank Greer and Melvin Whitfield), the later depositions

5/ The Final Repayment Determinations are presently the subject of litigation.

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must also be disregarded.

Respondents argue that this position is supported by the decision in Federal Election Commission v. Legi-Tech, Inc., 75 F.3d 704, 707 (D.C. Cir. 1996) which respondents describe as standing for the proposition that the remedy of repeating administrative process from the beginning may be warranted when there is a likelihood that the Commission would reach a different outcome. Respondents argue that under this standard, it is conceivable that the Commission would have decided this matter differently if it was voted on by the Commission after it was reconstituted. In their arguments both the DNC and the Clinton Committee indicate that had Mr. Storch been re-deposed after the Commission was constitutionally structured different information may have been disclosed, and had the Clinton Committee responded to reason to believe based on that deposition and acquired evidence, different information may have been produced, which might have altered the Commission's finding. In addition, counsel for the Clinton Committee states the event occurred over four years ago, and with the Commission's current composition looking at the facts there is high probability that the outcome would change.

(b). Analysis[6/]

During the preliminary stages of this matter, the Clinton Committee and the DNC challenged the Commission's authority to proceed in this matter, arguing that the ruling in NRA renders

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6/ The issues analyzed in this section are also discussed in the General Counsel's Brief to the DNC pp. 17-18 and the Brief to the Clinton Committee pp. 14-16.

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the Commission's findings void. The Commission acted in accordance with NRA when it reconstituted itself as a constitutionally structured six-member agency. Subsequently, as noted above, the Commission made new reason to believe findings with the reconstituted Commission. The Clinton Committee and the DNC have not provided any basis for treating this matter differently than the way in which the Commission has treated other matters affected by the NRA decision. Accordingly, the reconstituted Commission should proceed to make probable cause determinations.

The Clinton Committee argues that, since the current composition of the Commission may view the facts differently and may come to a new outcome, the court's holding in Legi-Tech, supra at 707, requires repeating the administrative process from the beginning. Contrary to respondents' argument, the Legi-Tech court upheld the Commission's post-reconstitution ratifications of its prior decisions as an adequate remedy for the NRA constitutional deficiencies. Id. at 709. As in the Legi-Tech case, in this present matter there had been no significant change in the membership of the Commission when it reconstituted itself, and ratified its earlier findings. Furthermore, the respondents have the added protection of a constitutionally constituted Commission voting on whether there is probable cause to believe violations occurred.

The Clinton Committee and the DNC also argue that a constitutional taint bars the use of evidence uncovered as a result of the investigation authorized by a Commission that was

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later determined to be unconstitutional under the NRA decision. Respondents appear to be arguing that the "Fruit of The Poisonous Tree Doctrine" is applicable to the Commission's civil enforcement proceedings. Under this rule evidence which is the direct result or immediate product of illegal conduct on the part of an official is inadmissible in a criminal trial against the victim of the conduct (or other person with standing) under the due process clause. The foregoing rule is not applicable in civil matters. Immigration and Naturalization Service v. Lopez-Mendoza et al., 468 U.S. 1034 (1984).

For all of the reasons set forth above, the past actions of the Commission are valid. Therefore, this Office recommends that the Commission find there is probable cause to believe that the Clinton for President Committee and its treasurer, violated 2 U.S.C. § 441a(f), and that the DNC and its treasurer violated 2 U.S.C. § 441a(a)(2)(A).

4. Whether the broadcast violated 2 U.S.C. § 441d(a).

(a) Response

With regard to the disclaimer issue, the DNC argues that the broadcast notified viewers that it was paid for by the DNC, and that it is absurd to suppose that any viewer could possibly imagine that Mr. Clinton had not authorized his own live appearance in the broadcast. Although the DNC impliedly acknowledges that the broadcast did not include the language required by the regulation at that time, the DNC argues that the language which appeared during the broadcast satisfies the manifest purpose of 2 U.S.C. § 441d(a).

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The DNC also states that the cost of the broadcast and the cost of the "1-800" number were coordinated expenditures in connection with the presidential general election pursuant to 2 U.S.C. § 441a(d). The DNC argues that the 2 U.S.C. § 441d disclaimer was not required because that statute as currently interpreted by the Commission, does not require an authorization statement on a communication made by a party committee pursuant to section 441a(d). Therefore, the Commission's current interpretation of the statute should be applied in this case.

Based on their foregoing responses both the Clinton Committee and the DNC assert that the Commission should find no probable cause.

(b). Analysis

Since the facts show that there was express advocacy and solicitation of contributions contained in the town hall meeting program, the disclaimer requirements under 2 U.S.C. § 441d(a) are applicable. Even though the program announcement on the screen displayed "paid for by the Democratic National Committee" the announcement failed to contain the additional required statement stating whether or not the program was authorized by the candidate or his committee.[7/]

7/ In MUR 3960, the Commission rejected the argument of Ed Whitfield, Whitfield for Congress, and E.O. Whitfield, as treasurer, that locating campaign signs inside the windows of a campaign headquarters obviates the disclaimer requirement. The Commission said that while an argument could be made that authorization of the sign may be apparent from its location in the front window of a campaign headquarters, to satisfy the requirements of the Act, the disclaimer must give notice of both authorization and who paid for the communication. See MUR 2771 in which the Commission found probable cause to believe that the Democratic Senatorial Campaign Committee violated 2 U.S.C.

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For all the reasons set forth above and in the General Counsel's Brief, the solicitation of contributions prevents the total cost of the program from being a 441a(d) expenditure. To begin with, the revised disclaimer rules, pursuant to 11 C.F.R. § 110.11(a)(2)(ii), were not in effect at the time. See MUR 4249, (in which the Commission did not apply the revised disclaimer rules to Clinton/Gore's "Victims" ad, which aired during June and July of 1995, because the rules did not become effective until December 20, 1995.) Accordingly, the prior version of the regulation was in effect, which was not satisfied by the DNC's disclaimer appearing on the broadcast.

Furthermore, even if 11 C.F.R. § 110.11(a)(2)(ii) had been in effect at the time of this activity, it would be inapplicable. Under the revisions to the Commission's Regulations at 11 C.F.R. § 110.11(a)(2)(ii), if a communication constitutes a general election expenditure made by a party committee, pursuant to 2 U.S.C. § 441a(d), prior to the date the party's candidate is nominated, the disclaimer satisfies the requirements of this section if it clearly states who paid for the communication. In this matter, however, the communication was, in part, a primary expenditure and, therefore, required a full disclaimer.

Since the facts show that there was express advocacy and solicitation of contributions contained in the town hall meeting

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(Footnote 7 continued from previous page)
§ 441d(a)(2) when a televised commercial ran on behalf of John P. Vinich during his 1988 senatorial campaign failed to state whether it was authorized by the candidate or his committee.

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program, the disclaimer requirements under 2 U.S.C. § 441d(a) are applicable. See the General Counsel Brief to the DNC pp. 15-16. In view of the foregoing there is probable cause to believe that the DNC and its treasurer violated 2 U.S.C. § 441d(a).

B. CONCLUSION

Based on the foregoing this Office recommends that the Commission find probable cause to believe that the Clinton for President Committee and its treasurer, violated 2 U.S.C. § 441a(f), and probable cause to believe that the DNC and its treasurer violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that the Clinton for President Committee and J. L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find probable cause to believe that the Democratic National Committee and R. Scott Pastrick, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

9704382317 0

3. Approve the attached conciliation agreements and appropriate letters.

11/19/96
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Conciliation Agreements [2]

Staff assigned: Phillip L. Wise

97043823171

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 25, 1996

SUBJECT: MUR 3546 - General Counsel's Report dated 11/19/96.

The above-captioned document was circulated to the Commission on **Wednesday, November 20, 1996**.

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

Commissioner Aikens	_
Commissioner Elliott	_
Commissioner McDonald	XXX
Commissioner McGarry	XXX
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for

Tuesday, December 03, 1996.

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

97043823172

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3546
Clinton for President Committee	)	
and J. Rutherford, as treasurer;	)	
Democratic National Committee and	)	
R. Scott Pastrick, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 3, 1996, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Find probable cause to believe that the Clinton for President Committee and J. L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f).

2. Find probable cause to believe that the Democratic National Committee and R. Scott Pastrick, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

3. Approve the conciliation agreements and appropriate letters as recommended in the General Counsel's November 19, 1996 report

(continued)

97043823173

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

Attest:

12-4-96
Date

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

97043823174

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1996

Joseph E. Sandler, General Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and R. Scott Pastrick, as treasurer

9704382317 5

Dear Mr. Sandler:

On December 3, 1996, the Federal Election Commission found that there is probable cause to believe your clients, the Democratic National Committee and R. Scott Pastrick, as treasurer ("the DNC"), violated 2 U.S.C. § 441a(a)(2)(A) in connection with the giving of an excessive contribution to the Clinton for President Committee, which resulted from the payment, by the DNC, of the expenditures related to the June 12, 1992 town hall meeting broadcast, and the "1-800" number which appeared thereon. On that same date the Commission also found that there is probable cause to believe the DNC, violated 2 U.S.C. § 441d(a) by failing to include a statement in the disclaimer, which appeared on the television broadcast of the town hall meeting, stating whether or not the program was authorized by the candidate or his committee. The foregoing statutes are provisions of the Federal Election Campaign Act of 1971, as amended.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make the check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Phillip Leo Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

9704382317 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 5, 1996

Lyn Utrecht, Esquire
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546
Clinton for President Committee
and J. L. Rutherford, as treasurer

Dear Ms. Utrecht:

On December 3, 1996, the Federal Election Commission found that there is probable cause to believe your clients, the Clinton for President Committee and J. L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with the acceptance of an excessive contribution from the Democratic National Committee ("the DNC"), which resulted from the payment, by the DNC, of the expenditures related to the June 12, 1992 town hall meeting broadcast, and the "1-800" number which appeared thereon.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make the check for the civil penalty payable to the Federal Election Commission.

97043823177

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Phillip Leo Wise, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

97043823178

Bill Clinton
FOR PRESIDENT COMMITTEE

January 13, 1997

Federal Election Commission
Office of General Counsel
6th Floor
999 E St., N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 31 10 31 AM '97

Attn: Lawrence Noble

RE: MUR 3546

Dear Mr. Noble:

I hereby authorize the Office of General Counsel to permit joint discussions with the Clinton for President Committee, the Clinton/Gore '92 Committee and counsel representing other respondents, including the Democratic National Committee.

Sincerely,

Skip Rutherford
Treasurer

9704382317 9

National Campaign Headquarters • P.O. Box 615 • Little Rock, Arkansas 72203 • Telephone (501) 372-1992 • FAX (501) 372-2292

Paid for by the Clinton for President Committee
Contributions to the Clinton for President Committee are not tax deductible
Printed on Recycled Paper

Democratic National Committee

Steve Grossman, *National Chair* ★ Governor Roy Romer, *General Chair*

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JAN 31 10 32 AM '97

January 29, 1997

Phillip L. Wise, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 3546

Dear Mr. Wise:

This is to notify you that the Democratic National Committee/DNC Services Corporation (the "DNC") and Carol Pensky, as Treasurer, hereby designate Lyn Utrecht, Esq. and Eric Kleinfeld, Esq. (counsel for Clinton/Gore '96 General Committee, Inc.), as additional counsel for the DNC and its Treasurer, for purposes of discussions with the Commission's Office of General Counsel with respect to settlement of the above-referenced MUR.

Thank you for your time and attention to this matter.

Sincerely yours,

Carol Pensky

Carol Pensky
Treasurer

cc: Joseph E. Sandler, Esq.
Lyn Utrecht, Esq.

9704382310

Democratic Party Headquarters 430 South Capitol Street, S.E. Washington, D.C. 20003 202-863-8000 Fax: 202-863-8174

Paid for by the Democratic National Committee. Contributions to the Democratic National Committee are not tax deductible.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CLOSED

May 12, 1997

MAY 13 12 09 PM '97

TWO WAY MEMORANDUM

TO: OGC Docket

FROM: Leslie D. Brown
Disbursing Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Clinton Campaign General Election**, check number **1657**, dated **April 30, 1997**, for the amount of **$10,000.00**. A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

==========

TO: Rosa E. Swinton
Accounting Technician

Leslie D. Brown
Disbursing Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of $10,000.00, the MUR/Case number is 3546 and in the name of Clinton Campaign General Election. Plac e this deposit in the account indicated below:

✓ Budget Clearing Account (OGC), 95F3875.16

___ Civil Penalties Account, 95-1099.160

___ Other: _____

Frankie Hampton
Signature

5-14-97
Date

9704382318 1

BILL CLINTON • AL GORE

May 6, 1997

Abigail Shaine, Esquire
Assistant General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAY 13 12 09 PM '97

9704382312

Re: MUR 3546, Clinton/Gore '92 Committee
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Shaine:

Enclosed please find a check from the Clinton/Gore '92 Committee (the "Committee") for the amount contained in the conciliation agreement submitted by the Committee to the Commission in the above-captioned MUR.

If you have any questions or desire any further information, please feel free to contact me at (202) 496-5051 or Lyn Utrecht at (202) 728-1010.

Sincerely,

Eric F Kleinfeld

Eric F. Kleinfeld

Enclosure

P.O. BOX 2741 • LITTLE ROCK, ARKANSAS 72203 • 501-375-1290 • FAX 501-376-8596
Paid for by the Clinton/Gore '92 Compliance Fund
Contributions to the Clinton/Gore '92 Compliance Fund are not tax deductible.

Printed on Recycled Paper

1657

CLINTON CAMPAIGN GENERAL ELECTION
LEGAL & ACCOUNTING COMPLIANCE FUND
P.O. BOX 2741
LITTLE ROCK, AR 72203

81-7/820

DATE APRIL 30, 1997

PAY TO THE ORDER OF U.S. TREASURY $ 10,000.00

TEN THOUSAND DOLLARS AND ZERO CENTS DOLLARS

BOATMEN'S NATIONAL BANK
OF ARKANSAS
LITTLE ROCK, ARKANSAS 72203

FOR MUR 3546

Shannon Tom
John R Tisdale

⑈001657⑈ ⑆082000073⑆ 008607⑈535⑈0⑈

970438231 8 3

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 16, 1997

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
MAY 19 10 37 AM '97

TWO WAY MEMORANDUM

TO: OGC Docket

FROM: Leslie D. Brown
Disbursing Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **DNC Services Corporation**, check number **1681**, dated **May 15, 1997**, for the amount of **$10,000.00**. A copy of the check and any correspondence is being forwarded. Please indicate below which account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

==========

TO: Rosa E. Swinton
Accounting Technician

Leslie D. Brown
Disbursing Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of $10,000.00, the MUR/Case number is 3546 and in the name of DNC Services Corp., et al. Plac e this deposit in the account indicated below:

✓ Budget Clearing Account (OGC), 95F3875.16

___ Civil Penalties Account, 95-1099.160

___ Other: _____

Retha L. Dixon
Signature

5/19/97
Date

9704382318 4

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

SOVRAN BANK DC NATIONAL
MAIN OFFICE
1801 K STREET, NW
WASHINGTON, D.C. 20006

1681

15-120/540 D01

May 15 1997

PAY Ten Thousand and 00/100 *** DOLLARS $10,000.00

TO THE ORDER OF
Federal Elections Commission
999E Street N.W.
Public Records
Washington DC 20463

⑈001681⑈ ⑆054001204⑆ 268614 7⑈

DNC SERVICES CORPORATION
NON FEDERAL ACCOUNT NO. 4

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

DELUXE - FORM WVCP-3 V-7

.97043823185

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

MAY 21 4 25 PM '97

In the Matter of	)	**SENSITIVE**
	)	
Clinton for President Committee and J.L. Rutherford, as treasurer	)	
Democratic National Committee and R. Scott Pastrick, as treasurer	)	**MUR 3546**

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was initiated on June 19, 1992, by a signed, sworn, and notarized complaint from the Republican National Committee ("RNC"). After a reason to believe finding by the Federal Election Commission ("Commission") an investigation was conducted. On December 3, 1996, the Commission found probable cause to believe that the Clinton for President Committee and J.L. Rutherford, as treasurer, ("Clinton Committee") violated 2 U.S.C. § 441a(f); and that the Democratic National Committee and R. Scott Pastrick, as treasurer, ("DNC") violated 2 U.S.C. §§ 441a (a)(2)(A) and 441d(a).

The Commission also determined to enter into probable cause conciliation on December 3, 1996, with the Clinton Committee and the DNC and approved agreements for each respondent

9704382316

III. RECOMMENDATIONS

1. Approve the attached conciliation agreements with Clinton for President Committee and J.L. Rutherford, as treasurer; and the Democratic National Committee and R. Scott Pastrick, as treasurer.

2. Approve the appropriate letters.

3. Close the file.

Lawrence M. Noble
General Counsel

Date 5/20/97

Attachments:

1. Conciliation Agreement with Clinton Committee
2. Conciliation Agreement with DNC

Attorney assigned: Abigail A. Shaine

97043823187

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton for President Committee and J.L. Rutherford, as treasurer;	)	MUR 3546
Democratic National Committee and R. Scott Pastrick, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on May 28, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 3546:

1. Approve the conciliation agreements with Clinton for President Committee and J.L. Rutherford, as treasurer; and the Democratic National Committee and R. Scott Pastrick, as treasurer, as recommended in the General Counsel's Report dated May 20, 1997.

2. Approve the appropriate letters, as recommended in the General Counsel's Report dated May 20, 1997.

3. Close the file.

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

Attest:

5-28-97
Date

Mary W. Dove
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., May 21, 1997 4:25 p.m.
Circulated to the Commission: Thurs., May 22, 1997 11:00 a.m.
Deadline for vote: Wed., May 28, 1997 4:00 p.m.

bjr

97043823188

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1997

Joseph E. Sandler, General Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003

RE: MUR 3546
Democratic National Committee
and R. Scott Pastrick, as treasurer

Dear Mr. Sandler:

On May 28, 1997, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. §§ 441a(a)(2)(A), and 441d(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.

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.

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) 219-3690.

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Assistant General Counsel

Enclosure
Conciliation Agreement

97043823189

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Democratic National Committee and	)	MUR 3546
R. Scott Pastrick as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Republican National Committee ("RNC"). An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that the Democratic National Committee and its treasurer,("Respondents" and/or "the DNC") violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), 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.

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

97043823190

1. The DNC is a political committee within the meaning of 2 U.S.C. § 431(4).

2. R. Scott Pastrick is the treasurer of the DNC.

3. Pursuant to 2 U.S.C. § 441a(a)(2)(A), 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 exceeds $5,000.

4. Pursuant to 2 U.S.C. § 441a(d), a national party committee may not make any expenditures on behalf of its presidential nominee for the general election which exceed an amount equal to 2 cents multiplied by the voting age population of the United States.

5. Pursuant to 2 U.S.C. § 441d(a), whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, such communication, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state that it is paid for by such other persons and

9704382319

authorized by such authorized political committee. If such communication is not authorized by a candidate, an authorized political committee of a candidate, or its agents, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. See 11 C.F.R. § 110.11(a)(1).

6. The DNC paid for a 30-minute nationwide televised town hall meeting broadcast on June 12, 1992, during which President Clinton answered questions from the television audience. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive President Clinton's "Plan for America's Future"; leave a message for President Clinton; or, make a contribution to the Clinton for President Committee. The entire cost of the broadcast was allocated to 2 U.S.C. § Section 441a(d) as a general election coordinated expenditure.

7. Prior to the airing of the program, the DNC decided to assume financial responsibility for the television broadcast, but it does not appear that anyone considered whether any changes to the content of the "800" number program were appropriate. After the town meeting aired, the DNC concluded that it should have paid for the "800" number, and the solicitation should have been on behalf of the DNC. The DNC ultimately paid the "800" number vendor $120,000 for the "800" number program, but terminated the project when it was not

9704382319 2

possible to change quickly the solicitation message to solicit money for the DNC rather than for the Clinton Committee.

8. The entire cost of the broadcast was allocated to 2 U.S.C. Section 441a(d) as a general election coordinated expenditure. The cost of the "800" number program was also allocated to 2 U.S.C. Section 441a(d).

9. The evidence obtained has not revealed that any callers were contacted or that any contributions were received by the Clinton Committee as a result of the "800" telephone number. In addition there was no evidence received to show that any of the other options available over the "800" number were honored.

10. The evidence obtained reveals that the vendor of the telemarketing program only gave the list of the names of callers to the "800" number to the DNC.

11. Nonetheless, because of the content of the "800" number program and because the "800" number appeared on the screen periodically during the televised town meeting, a portion of the cost of the program and the "800" number constituted a primary contribution to the Clinton for President Committee.

12. The televised town hall meeting included express advocacy. The program started with people stating that they were undecided voters. Mr. Clinton indicated near the beginning of the program that he wanted to help the listeners make the right decision in the Presidential race. Further, during the program Mr. Clinton explained his position on such things as taxes, gun control, balancing the budget, national health care,

97043823193

and social security; issues important to the 1992 presidential campaign. In answer to one question he also stated "[i]f I were president, I would submit a balanced budget plan over a five-year period." Mr. Clinton also made the statement that, "I am the only one of the three people running for President who is for the Brady Bill." In response to a question about affordable health care Mr. Clinton also stated that "I will do that if elected President."

13. During the program, an "800" number appeared on the screen periodically. This "800" number was included in a message on the screen which stated, "For a copy of the Clinton Plan or if you want to help call 1-800-551-5600." Callers to the "800" number were offered three options: receive Mr. Clinton's "Plan for America's Future"; leave a message for Mr. Clinton; or, "[i]f you believe that it's time for real change, help the Clinton campaign and make a contribution." The messages received by the callers to the "800" clearly shows that the help wanted by the Clinton Committee included contributions. Thus, this language appearing on the television screen, either alone or when considered along with the options provided to the callers, constituted a solicitation.

14. Since the facts show that there was express advocacy and solicitation of contributions contained in the town hall meeting program, the disclaimer requirements under 2 U.S.C. § 441d(a) are applicable. The televised program clearly displayed an announcement on the screen stating "paid for by the Democratic National Committee." However, the program

9704382319 4

announcement failed to contain the additional required statement stating whether or not the program was authorized by the candidate or his committee in violation of the disclaimer requirements under 2 U.S.C. § 441d(a).

V. By virtue of the appearance of the "800" number on the televised town meeting and by virtue of the failure to change the content of the "800" number message, both of which were paid for by Respondents, respondents made an excessive contribution to the Clinton Committee in excess of the allowable contribution limit of $5,000.00 in violation of 2 U.S.C. § 441a(a)(2)(A).

VI. Respondents' televised program failed to contain the required disclaimer stating who paid for the program and whether or not the program was authorized by the candidate or his committee in violation of the disclaimer requirements under 2 U.S.C. § 441d(a).

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars ($10,000.00), 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.

97043823195

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

Date 6/2/97

FOR THE RESPONDENT(S):

(Name)
(Position)

Date 5/15/97

97043823196

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 3, 1997

Lyn Utrecht, Esq.
Eric F. Kleinfeld, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546
Clinton For President Committee
and J.L. Rutherford, as treasurer

Dear Mr. Kleinfeld:

On May 5, 1997, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(f), 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.

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.

97043823197

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Assistant General Counsel

Enclosure
Conciliation Agreement

97043823198

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
APR 30 12 18 PM '97

In the Matter of	)	
	)	
Clinton for President Committee	)	MUR 3546
and J. L. Rutherford, as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by the Republican National Committee ("RNC"). An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that the Clinton for President Committee and its treasurer, ("Respondents" and/or "the Clinton for President Committee") violated 2 U.S.C. Section 441a(f).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pusuant to 2 U.S.C. Section 437g(a)(4)(A)(i), 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. Section 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.

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

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1. The Clinton for President Committee is a political committee within the meaning of 2 U.S.C. Section 431(4).

2. The Clinton for President Committee was the 1992 primary election committee for William J. Clinton.

3. J.L. Rutherford is the treasurer of the Clinton for President Committee.

4. Pursuant to 2 U.S.C. Section 441a(a)(2)(A), no multicandidate political committee shall make contributions to any candidate and his authorized political committees with response to any election for federal office which in the aggregate exceed $5,000.

5. Pursuant to 2 U.S.C. Section 441a(f), no candidate or political committee shall knowingly accept any contribution in violation of the provisions of this section. In addition, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate in violation of any limitations imposed on contributions under this section.

6. The Democratic National Committee ("DNC"), paid for a 30-minute nationwide televised town hall meeting broadcast on June 12, 1992, during which President Clinton answered questions from the television audience. During the program, an "800" number appeared on the screen periodically. Callers to the "800" number were offered three options: receive President Clinton's "Plan for America's Future"; leave a message for President Clinton; or, make a contribution to the Clinton for President Committee. The entire cost of the broadcast was allocated to 2 U.S.C. Section 441a(d) as a general election coordinated expenditure.

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7. Prior to the airing of the program, the DNC decided to assume financial responsibility for the television broadcast, but it does not appear that anyone considered whether any changes to the content of the "800" number program were appropriate. After the town meeting aired, the DNC concluded that it should have paid for the"800" number, and the solicitation should have been on behalf of the DNC. The DNC ultimately paid the "800" number vendor $120,000 for the "800" number program, but terminated the project when it was not possible to change quickly the solicitation message to solicit money for the DNC rather than for the Clinton Committee.

8. The entire cost of the broadcast was allocated to 2 U.S.C. Section 441a(d) as a general election coordinated expenditure. The cost of the "800" number program was also allocated to 2 U.S.C. Section 441a(d).

9. The evidence obtained has not revealed that any callers were contacted or that any contributions were received by the Clinton Committee as a result of the "800" telephone number. In addition, there was no evidence received to show that any of the other options available over the "800" number were honored.

10. The evidence obtained reveals that the vendor of the telemarketing program only gave the list of the names of callers to the "800" number to the DNC.

11. Nonetheless, because of the content of the "800" number program and because the "800" number appeared on the screen periodically during the televised town meeting, a portion of the cost of the program and the "800" number constituted a primary contribution to the Clinton for President Committee.

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V. By virtue of the appearance of the "800" number on the televised town meeting and by virtue of the failure to change the content of the "800" number message, both of which were paid for by the DNC, respondents accepted a contribution from the DNC that was in excess of the allowable contribution limit of $5,000.00 in violation of 2 U.S.C. Section 441a(f).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars ($10,000.00), pursuant to 2 U.S.C. Section 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. Section 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.

VII. 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.

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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 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

6/2/97
Date

FOR THE RESPONDENT(S):

4/29/97
Date

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BILL CLINTON • AL GORE

June 5, 1997

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUN 6 3 20 PM '97

Abigail A. Shaine, Esq.
Assistant General Counsel
Office of the General Counsel
Federal Election Commission
999 E St., NW
6th Floor
Washington, DC 20463

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Re: MUR 3546
Clinton for President Committee

Dear Ms. Shaine:

The Clinton for President Committee is in receipt of your letter of June 3 pertaining to the Commission's acceptance of the conciliation agreement in the above-captioned matter. While I understand that this is your standard correspondence, your letter appears to indicate that the Commission has not yet received a check for the civil penalty in this matter. The Committee's records indicate that your office received a civil penalty check on May 12th.

Please review the Office of General Counsel's records and determine whether this check has been lost or misplaced. If so, upon hearing from you, I will take steps to have another check issued.

Thank you for your attention to this matter.

Sincerely,

Eric F. Kleinfeld

Eric F. Kleinfeld

P.O. BOX 2741 • LITTLE ROCK, ARKANSAS 72203 • 501-375-1290 • FAX 501-376-8596
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3546

DATE FILMED 7-10-97 CAMERA NO. 2

CAMERAMAN JMH

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1997

Lyn Utrecht, Esq.
Eric F. Kleinfeld, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 3546
Clinton For President Committee
and J.L. Rutherford, as treasurer

Dear Mr. Kleinfeld:

We are sending you this letter to correct an error in the dates mentioned in the letter dated June 3, 1997. On May 20, 1997, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter. This letter supersedes the letter previously sent to you regarding this matter.

As previously stated, 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.

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).

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Assistant General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 14, 1997

Philip S. Friedman, Esq.
Ross & Hardies
888 16th Street, N.W.
Washington, D.C. 20006

RE: MUR 3546
William J. Clinton

Dear Mr. Friedman:

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) 694-3690.

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 11, 1997

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin L. Ginsberg, Esquire
Chief Counsel
Republican National Committee
310 First Street, S.E.
Washington, DC 20003

RE: MUR 3546

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Dear Mr. Ginsberg:

This is in reference to the complaint you filed with the Federal Election Commission on June 19, 1992, concerning possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by William Clinton, the Clinton for President Committee and the Democratic National Committee.

After conducting an investigation in this matter, the Commission found that there was probable cause to believe the Clinton for President Committee and J.L. Rutherford, as treasurer, violated 2 U.S.C. § 441a(f), and the Democratic National Committee and R. Scott Pastrick, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A), and 441d(a), provisions of the Act. On May 20, 1997, conciliation agreements signed by the respondents were accepted by the Commission, thereby concluding the matter. Accordingly, the Commission closed the file in this matter on June 2, 1997. A copy of these agreements are enclosed for your information.

On July 27, 1993, the Commission found, on the basis of the information in the complaint, and information provided by the respondent, that there is no reason to believe that William J. Clinton violated any provision of the Act or the Commission's regulations in connection with the complaint filed in MUR 3546, and on the same date, the Commission closed the file in connection with this matter. A copy of the General Counsel's report is enclosed for your information.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Abigail A. Shaine

Abigail A. Shaine
Assistant General Counsel

Enclosures
Conciliation Agreements
General Counsel Report

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