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[illegible] Division [illegible] as compliance matters [illegible] employer by the complainant [illegible] Itemization of refunds and rebates by the General [illegible] would not constitute the most efficient use of Commission resources. In both cases, the public record has been protected, but not timely.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Joe Stearingen, Alex Benlewicz or Joe [illegible] at 219-3728.

Attachments:

- FAR Finding II.A.1., Disclosure of Occupation and Name of Employer, FAR pp. 4-6
- FAR Finding II.B.2., Itemization of Refunds and Rebates, pp. 23-26
- FAR Finding II.B.3., Reporting of Debts and Obligations, pp. 26-28

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II. Findings and Recommendations Relative to [illegible] Matters

A. Clinton/Gore '92 General Election

1. Disclosure of Contributions

Section 434(b)(3)(A) of Title [illegible] States Code requires a political committee to [illegible] identification of each person who makes a [illegible] committee in an aggregate amount or value in [illegible] calendar year together with the date and amount [illegible] contribution.

Section 431(13)(A) of Title [illegible] Code defines the term "identification" to [illegible] individual, the name, the mailing address, and [illegible] such individual, as well as the name of his [illegible]

Section 432(i) of Title [illegible] states, in part, that when the [illegible] shows that best efforts have been used to [illegible] submit the information required by [illegible] committee, any report of such [illegible] compliance with this act.

[illegible] at if the [illegible] the committee and its affiliated [illegible] calendar year, the treasurer will [illegible] best efforts to obtain the [illegible] has made at least one effort [illegible] request or by an oral request [illegible] information from the contributor.

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their request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law.

The Audit staff reviewed contributions from individuals on a sample basis. The sample results revealed an error rate of 50% with respect to disclosure of occupation and name of employer. For some of the errors, the receipt documentation available for review did not contain information concerning related solicitations. Therefore, the Audit staff could not determine if best efforts had been employed. In other instances, the solicitation documentation provided did not contain a request for name of employer. Other errors resulted from instances where the information was obtained but not disclosed.

During the course of the audit, the Audit staff advised the Compliance Fund of the high error rate. The Compliance Fund was again advised of this matter at the exit conference but did not provide an explanation.

Subsequent to the exit conference, the Compliance Fund provided a form letter requesting occupation and name of employer along with a listing of names to whom the letter was reportedly sent. The letter is dated July 19, 1993. It was noted that approximately 85% of the names of the individuals included in the sample errors were contained on the listing provided. The Compliance Fund stated that "amended reports reflecting this information will be filed in the near future." The Audit staff was not made aware of this mailing during fieldwork and was not offered the opportunity to review any responses.

In the Interim Audit Report, the Audit staff recommended that the Compliance Fund submit documentation to demonstrate that best efforts were utilized and file Schedules A-P [illegible] occupation and name of employer information [illegible] July 19, 1993 mailing [illegible]

[illegible] that best efforts were made to obtain information. In addition, the Compliance Fund has filed [illegible] Schedules A-P disclosing the information [illegible] mailing.

The Compliance Fund further [illegible]

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inadvertent and may have been due to data entry errors. [illegible] Compliance Fund also provided copies of sample contribution [illegible]

Although sample contributor cards were [illegible] that contain a request for the necessary information, [illegible] samples do not obviate the fact that some of the [illegible] response devices reviewed by the Audit staff during [illegible] not contain a request for name of employer. In addition, [illegible] discussed above, the receipt documentation for some of the [illegible] did not contain information associating them with a particular solicitation or with the samples submitted. As a result, [illegible] Audit staff could not determine if best efforts had been [illegible] the Compliance Fund. The Audit staff is also of the opinion [illegible] a letter sent eight months after the election, and after the matter had been discussed with Compliance Fund representatives [illegible] the Audit staff during audit fieldwork, does not demonstrate [illegible] best efforts were made to obtain the information.

Although not submitted with its response [illegible] Interim Audit Report, the Compliance Fund has filed amended [illegible] reports which provide additional disclosures of occupation and name of employer.

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2. Itemization of Refunds and Rebates

Section 434(b)(3)(F) of Title 2 of the United States Code requires that each report include the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt. Section 431(13) of Title 2 of the United States Code defines, in part, the term "identification" to be the name and mailing address of such person. Section 431(11) of Title 2 of the United States Code defines, in part, the term "person" to include an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons.

The General Committee's receipt records were reviewed by the Audit staff to determine whether offsets to operating expenditures requiring itemization were disclosed properly. The Audit staff noted problems with respect to the disclosure of receipts from Worldwide Travel, Inc. ("Worldwide"). The General Committee utilized Worldwide to handle billings and receipts relative to press and U.S. Secret Service travel. As Worldwide received moneys, it would deduct credit card fees and a commission for its services. The net amount would then be transferred to the General Committee and reported on its disclosure reports as a receipt from Worldwide. There were no corresponding entries detailing the press organizations who actually paid for the travel. In addition, credit card fees and the fee charged by Worldwide for its services were not reported as a related disbursement.

When apprised of this at the exit conference, a General Committee official stated she thought that they had followed Commission guidance concerning this but said she would have to check before she could respond.

Subsequent to the exit conference, the General Committee stated that "Committee staff was advised by [illegible] that its methods of reporting receipts [illegible] Worldwide complied with the reporting [illegible]. The General Committee also responded that [illegible] reporting is consistent with the reporting [illegible]nts applicable when refunds and payments are received by [illegible] through a commercial vendor."

The Interim Audit Report concluded that, since [illegible] only as a billing/collection service, the amounts [illegible] press agency and the Secret Service should be [illegible] A-9 as a memo entry to support each amount [illegible] In addition, [illegible] the credit [illegible] and commission charged by Worldwide should have [illegible] as memo entries on Schedule B-P.

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The Interim Audit Report recommended that the General Committee file amended Schedules A-P and B-P to disclose the offsets to expenditures, credit card fees, and commissions.

In response to the Interim Audit Report, Counsel for the General Committee states that "the Committee contends that it properly disclosed these reimbursements as received from Worldwide Travel and that further itemization is not required by the Act, regulations or other Commission precedents. The General Committee's response states that:

> "2 U.S.C. § 434(a) requires committees to file reports of receipts and disbursements. Generally, all reporting under the Act, other than debts and obligations is on a cash basis. The Commission has addressed a virtually identical issue to this one as to disbursements made by presidential committees. In AO [Advisory Opinion] 1983-25, the Commission concluded that the itemization of disbursement requirements were met when a publicly financed campaign reported payments to its media vendor, and further held that the committee was not required to itemize payments subsequently made by the vendor on behalf of the committee. Thus, although committee vendors are required to maintain documentation of disbursements made to subvendors on behalf of a committee, the committee is not required to report or itemize such disbursements. The collection and receipt of reimbursements though [sic] a third party vendor is indistinguishable from the situation in AO 1983-25.
>
> "11 C.F.R. § 104.3(a)(4)(v) requires only that a committee identify each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year. The Committee satisfied that requirement by reporting the receipt of press and secret service reimbursements from Worldwide Travel which was operating as a vendor to the Committee in billing and collecting press and secret service reimbursements. All records pertaining to these collections were made available for audit as in AO 1983-25. The reporting requirements, however. were fully met by reporting the receipts form [sic] Worldwide. As in AO 1983-25, the Primary Committee's travel vendor was a distinct legal entity which entered into an arm's length commercial arrangement with the Committee. Worldwide Travel was neither set up by the Primary Committee, nor was the Primary Committee its only client. It is and was an ongoing travel business."
>
> "The Committee sought informal advice from the audit staff regarding whether these reimbursements must be itemized and was advised that they need not be. We

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believe that advice was fully consistant [sic] with the requirements of § 434(b)(3)(f), § 104.3(a)(4)(v) of the regulations and AO 1983-25. The Committee believes that the auditors now are taking the position that the Worldwide reimbursements must be itemized simply because most committees have collected these refunds themselves and have not used a third party vendor to collect press and secret service reimbursements.

"Although the Committee believes that its reporting was in full compliance with the requirements of the Act, the Committee has prepared amendments as directed by the auditors itemizing the receipts from each press and secret service entity to the extent possible, and will be filing them shortly."

Advisory Opinion ("AO") 1983-25 addresses a media vendor, contracted by a committee to administer its media production and media buys, and who, in the course of performing its duties would make disbursements to various advertising entities. In the case at hand, the General Committee paid for the chartering of aircraft, maintained travel manifests which identified the number of press, secret service and General Committee personnel traveling on a particular trip, and the cost of each trip. This information was subsequently provided to Worldwide Travel which acted as a billing and collection agent for the General Committee. The monies received from Worldwide did not represent a refund of General Committee funds paid to Worldwide Travel for services rendered. The monies represent refunds for travel incurred by the various press organizations and Secret Service personnel.

In AO 1983-25, the following factors were considered significant in making its determination: (1) the consultants had a legal existence that was separate and distinct from the committee's operations; (2) the consultants' principals did not hold any committee staff positions; (3) the committee was conducting arms-length negotiations with the consultants that resulted in a formal contract; (4) the consultants were not required to devote their full efforts to the contract with the committee, and the consultants expected to have other media contracts with other committees and business entities during the campaign period, and (5) the committee had no interest in the consultants' other contracts.

Based on its responses and documentation provided to date, the General Committee has not addressed all the factors noted above.

Therefore, the receipts should have been disclosed as refunds from the organization which was the actual source of those funds. The press and Secret Service were the providers of the refunds to the General Committee. Worldwide Travel was merely a conduit for the receipts of those refunds.

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The General Committee also states that "informal advice" was received from the Audit staff. The Audit staff is unaware of any advice given to the General Committee concerning this matter. In addition, the General Committee has been unable to identify the person who provided this advice.

Although amended Schedules A-P were not submitted with its response to the Interim Audit Report, the General Committee has recently filed amended reports that adequately address this matter.

3. Reporting of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code states that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefor.

Section 104.11 of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. In addition, a debt, obligation, or written promise to make an expenditure, the amount of which is $500 or less, shall be reported as of the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first. Any loan, debt or obligation, the amount of which is over $500, shall be reported as of the date on which the debt or obligation is incurred.

From the Audit staff's review of selected disbursements, we determined that the General Committee did not materially disclose its debts and obligations on Schedule D-P. Our review of General Committee invoices and related payments indicated outstanding debts and obligations totaling $1,207,730 which were not reported as required on the General Committee's disclosure reports.

At the exit conference, General Committee representatives were provided photocopies of schedules detailing these debts and obligations. General Committee officials provided no explanations for these omissions.

Subsequent to the exit conference, documentation submitted by the General Committee stated that "the Committee reported its debts and obligations as of the time the check request was approved and received in the accounting department. The Committee believes that its method of reporting debts was in full compliance with the reporting requirements." In addition, the General Committee provided a detailed schedule listing the dates on which the invoices were recorded.

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The Audit staff found the General Committee's response to be without merit. The Regulation determines when a debt shall be reported. The date the obligation is incurred is relevant, not the date on which a committee records an obligation.

The Interim Audit Report recommended that the General Committee file amended Schedules D-P to disclose the debts and obligations.

In response to the Interim Audit Report, Counsel for the General Committee states that "subsequent to the exit conference, the Committee provided the auditors with a schedule listing the dates on which the invoices questioned by the auditors were reported. The Committee sees no sense in amending its reports to disclose information that the Committee did not have in its possession at the time those reports were originally filed.

"The Committee does not dispute that debts and obligations in excess of $500 must be reported when the obligation is 'incurred.' 11 C.F.R. § 104.11. However, the Committee's accounting staff which was responsible for entering debts and compiling the information to produce the debt schedules had no information concerning those debts until such time as the information regarding the debts was submitted to the accounting department. The Committee is somewhat mystified as to how it was supposed to know about debts prior to the time they were entered into the accounting system. The only way the Committee could have done this during the course of the campaign would have been to amend the prior month's debt schedule each month when the current month's disclosure report was filed. Certainly it would be a complete waste of time and serve no purpose to amend the debts schedules now to move debts from one monthly period to another monthly period."

In addition, the General Committee states that its CPA discussed this issue with a member of the Audit staff who "acknowledged that the Committee could not very well report debts of which it was unaware." The General Committee then concludes that no further action regarding this recommendation is warranted."

Again, the Audit staff does not find the General Committee's position to be convincing. While the Audit staff does understand that something not known to the General Committee can not be reported, it is noted that reports are not filed the day after the end of a reporting period. Committees have a reasonable period of time to insure that reports filed are accurate and complete. Further, there is nothing to preclude a committee from filing amended disclosure reports once additional information becomes known. In addition, the review allowed a period from the date of the invoice for delivery to the General Committee when determining which debts were to be reported. Thus, we believe that the General Committee was allowed ample opportunity to receive invoices and report them as debts as necessary.

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To date, amended Schedules D-P have not been filed by the General Committee.

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Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 4173
STAFF MEMBERS: Peter Blumberg
Andre G. Pineda

SOURCE: I N T E R N A L L Y G E N E R A T E D

RESPONDENTS: Clinton/Gore '92 Committee
J.L. "Skip" Rutherford, as Treasurer
Clinton/Gore '92 General Election Compliance Fund
J.L. "Skip" Rutherford, as Treasurer

RELEVANT STATUTES/
REGULATIONS:

2 U.S.C. § 431(13)(A)-(B)
2 U.S.C. § 434(b)(3)(F)
11 C.F.R. § 104.3(a)(4)(v)
11 C.F.R. § 104.11(b)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(8)
11 C.F.R. § 104.5(b)(1)(i)(A)
11 C.F.R. § 9004.6(b) and (c)

INTERNAL REPORTS CHECKED: Audit Documents

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

The Clinton/Gore '92 Committee ("the Committee") was the principal campaign committee for the presidential general election campaign of William J. Clinton and Albert Gore, Jr. William J. Clinton also registered the Clinton/Gore '92 General Election Compliance Fund ("the GELAC") as his legal and accounting compliance fund under 11 C.F.R. § 9003.3. J.L. "Skip" Rutherford

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is the current Treasurer of the Committee and the GELAC. The Committee received $55,240,000 in federal funds for the general election. Pursuant to 26 U.S.C. § 9007(a), the Commission conducted an audit and examination of Committee and GELAC receipts, disbursements, and expenses. This matter was generated from information obtained during the audit of the Committee and GELAC. 11 C.F.R. § 9007.1(a). The Audit Division's referral materials are attached.[1/] Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

A. DISCLOSURE OF CONTRIBUTOR INFORMATION

The Federal Election Campaign Act, as amended, ("the Act") requires political committees to file reports that disclose the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). The term "identification" of an individual means the name, mailing address, occupation, and name of employer of the individual. 2 U.S.C. § 431(13)(A). "Identification" for any other person

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1/ On June 1, 1995, the Commission made a final determination that President Clinton and the General Election Committee must repay $84,421 to the United States Treasury. Clinton-Gore '92 Statement of Reasons supporting the Final Repayment Determination. On this same date, the Commission also made a final determination that President Clinton and the General Election Committee must pay $24,640 to the United States Treasury for stale-dated checks. Id. On January 30, 1995, President Clinton and the General Election Committee submitted a $109,061 check made payable to the United States Treasury. This check represented the full amount owed to the United States Treasury.

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means the full name and address of such person. 2 U.S.C. § 431(13)(B).

In cases where the treasurer of a committee can show that best efforts have been used to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or any records of such committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i). Pursuant to 11 C.F.R. § 104.7(b), the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. An effort to collect the required information shall consist of a clear request for the information (i.e., name, mailing address, occupation and name of employer) and shall inform the contributor that the reporting of such information is required by law.[2/] 11 C.F.R. § 104.7(b).

The Audit staff tested contributions on a sample basis to determine if the GELAC reported the occupation and name of employer information from contributors. Attachment 1, p. 4. The Audit staff found that 50% of the sampled contributions did not contain the occupation and/or name of employer of the

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2/ On October 27, 1993, the Commission amended its regulations regarding the requirements of 11 C.F.R. § 104.7(b). See 58 Fed. Reg. 57729. Since the alleged violations in this matter took place during the 1991-1992 election cycle, this Office used the regulations applicable in that election cycle to form the basis of its factual and legal analysis.

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contributors. Id. The Audit Division sampled approximately 126,700 contributions from about 98,000 individuals totaling almost $8,473,000. However, pursuant to 2 U.S.C. § 434(b)(3)(A), the Audit Division determined that only $6,872,627.38 of these contributions were from persons whose contribution or contributions had an aggregate amount or value in excess of $200 within the calendar year that required identification information, e.g., occupation and/or name of employer. See 2 U.S.C. § 431(13)(A) and (B).

A review of GELAC solicitations revealed that several solicitation devices failed to properly request the employer information. Devices failed to state that "federal law" required the information and instead stated that the "Federal Election Commission" required the information. Attachment 2, p. 1-3. Other devices carried no disclaimer at all. Id., p. 4. Several devices only requested the individuals' names and addresses, and no employer information. Id., p. 5-6. In some cases, the information was obtained by the GELAC, but not reported. Attachment 1, p. 5. Further, the GELAC did not have a system to permit the Audit Division to match the GELAC's received contributions to the solicitation devices, thereby making it impossible to determine how many contributions were tied to the defective solicitation devices. Id.[3/]

3/ The GELAC argues that the original mailings satisfy "best efforts" since the solicitation devices contained a request for the information. However, the existence of defective solicitation devices belies this assertion.

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During audit fieldwork and at the Exit Conference, the Audit Division notified the GELAC of the large amount of errors in the reporting of its contributors' employer information. Id. Subsequent to the Exit Conference, the GELAC submitted a sample letter to the Audit Division dated July 19, 1993 which requested contributors' occupation and employer information. Id. The GELAC also submitted a list of the persons who received the letter. Id. The GELAC asserted that the list contained 85% of the individuals identified as missing employer information. Id.

In response to the Interim Audit Report, GELAC's counsel stated that the July 19, 1993 mailing "demonstrates that best efforts were made to obtain the information." Id. GELAC's counsel further noted that "all solicitations for contributions to the Compliance Fund were accompanied by a request for contributor information in compliance with 11 C.F.R. § 104.7 . . . [and] that the Compliance Fund made best efforts to request contributor information as required by 11 C.F.R. § 104.7 at the time of solicitation." Id. On November 3, 1994, the GELAC filed amended disclosure reports providing information retrieved through the July 1993 letter.

The GELAC did not comply with the reporting obligations set forth at 2 U.S.C. § 434(b)(3)(A) prior to its filing of the amended disclosure reports in response to the Interim Audit Report. As a result, the GELAC had incomplete disclosure information on the public record for a substantial period of time,

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thus defeating the purpose of public disclosure - the reporting of accurate and complete contributor information.

The GELAC also did not execute best efforts to retrieve the occupation and employer information. In order to exercise best efforts, the treasurer must make one effort per solicitation and the effort shall consist of a clear request for the information which informs the contributor that the reporting of such information is required by law. 11 C.F.R. § 104.7(b). Contrary to the Committee's argument, the original solicitation devices did not satisfy best efforts. Several of the GELAC's original solicitation devices were defective, and the GELAC was unable to demonstrate that the persons who were missing occupation and employer information had received a solicitation device that contained no defects. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Clinton/Gore '92 General Election Compliance Fund and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

B. ITEMIZATION OF REFUNDS AND REBATES

The Act requires political committees to file reports that disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

During the audit process, the Audit staff found that the Committee received reimbursements for travel from the Secret

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Service and various press organizations. Attachment 1, p. 6. The Committee had Worldwide Travel, Inc. ("Worldwide") receive these reimbursements and transfer the proceeds, less any fees charged, to the Committee's operating account.[4/] Id. The Committee then itemized the reimbursements in its disclosure reports as receipts from Worldwide, rather than from the specific entity that provided the reimbursement to Worldwide.[5/] Id.

The Committee contends that it properly itemized the reimbursements it received from Worldwide since the disclosure requirements of 2 U.S.C. § 434(b)(3)(F) are satisfied when an independent vendor collects reimbursements on behalf of the Committee. Id. at 7-8. Specifically, the Committee references Advisory Opinion ("AO") 1983-25 where the Commission permitted the Mondale for President Committee to report only disbursements to its media vendor and not the vendor's disbursements to media outlets to be hired by the vendor. AO 1983-25. This AO stressed

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4/ The Audit Division determined that between August 1992 and September 1993, Worldwide received reimbursements for travel from the Secret Service and various press organizations totaling $6,041,740.46. Of this amount, Worldwide deposited $5,494,819.56 in the Committee's operating account. This deposit represented the total reimbursements received by Worldwide, minus credit card fees and commissions for its services ($6,041,740.46 - $546,920.90 = $5,494,819.56). See Attachment 1, p. 6.

5/ Worldwide was the Committee's travel agent for arranging Committee personnel flights on commercial aircraft. Committee charter travel was arranged directly between the Committee and charter aircraft vendors. The press and Secret Service reimbursements at issue relate to charter trips. Worldwide had no role in arranging the original trips for the press and Secret Service, it only acted as an administrator for the Committee for the collection of the reimbursements.

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that the vendor was indeed an independent "vendor of media services" and not an arm of the political committee. Id. In contrast to the facts in AO 1983-25 Worldwide was collecting press and Secret Service reimbursements, rather than making disbursements.[6/] Further, these reimbursements were for services to which Worldwide had no relation in that the Committee paid for the charter flights itself. Worldwide was merely acting as an administrator to collect the reimbursements, rather than as a "vendor" collecting reimbursement for travel that Worldwide had originally booked in its capacity as a vendor of travel services.

The Committee filed amended disclosure reports on October 14, 1994 which identified each press organization and the Secret Service who provided a reimbursement to Worldwide. Attachment 1, p. 9. The Committee's failure to do so until this date resulted in incomplete disclosure information on the public record for a substantial period of time. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

6/ The Commission's regulations at 11 C.F.R. § 9004.6(b) permit the Committee to accept pro rata reimbursements from the media. The purpose of this provision is to eliminate the possibility that the media or other individuals will subsidize the campaign. Explanation and Justification for Regulations on Public Financing of Presidential General Election Campaigns, 45 Fed. Reg. 43,376 (June 27, 1980). Therefore, it is important that the Committee report "any reimbursement received ... for transportation or ground services." 11 C.F.R. § 9004.6(c).

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C. REPORTING OF DEBTS AND OBLIGATIONS

Political committees must disclose the amount and nature of all the debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). A debt, obligation, or written promise to make an expenditure under $500 shall be reported as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. 11 C.F.R. § 104.11. Any obligation over $500 shall be reported as of the date that the obligation was incurred. Id.

During the audit, the Audit Division discovered that $1,207,730 in Committee debts were not reported in accordance with the Commission's regulations. Attachment 1, p. 9. In most cases, the Committee failed to report debts of over $500 as of the date that the debts were incurred. Rather, the Committee reported the debts as of the date that the Committee's accounting department received and approved check requests. Id. The Committee states that the debts at issue were not reported by Committee employees to the Committee accounting staff in time for the debt to be reported in the disclosure reports. Id. The Committee states that it has complied with the statutory and regulatory requirements by reporting the debts once the Committee's accountants became aware of them. Id.

The Committee did not timely report its debts and obligations and failed to report the date that the debts were incurred. The regulations require that debts over $500 be reported once incurred. 11 C.F.R. § 104.11. Since the Committee did not report

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[illegible] debts as they were incurred, the goal of [illegible]

[illegible] not include the debts that were incurred for that [illegible] 11 C.F.R. § 104.5(b)(1)(i)(A). Therefore, the Committee's disclosure reports did not include the Committee's actual debt position at any specific date, and it failed to explain the amount of debt incurred on any specific date for any specific [illegible] purpose. Thus, this Office recommends that the Commission [illegible] reason to believe that the Clinton/Gore '92 Committee and [illegible] "Skip" Rutherford, as treasurer, violated 2 U.S.C. 434(b)(8).

The Committee's argument that its accounting staff was unaware of many of the reportable debts does not relieve the Committee and its Treasurer from its reporting duties. Moreover, [illegible] reports from a principal campaign committee of [illegible] must be filed no later than the [illegible] each month, thus allowing for adequate time [illegible]

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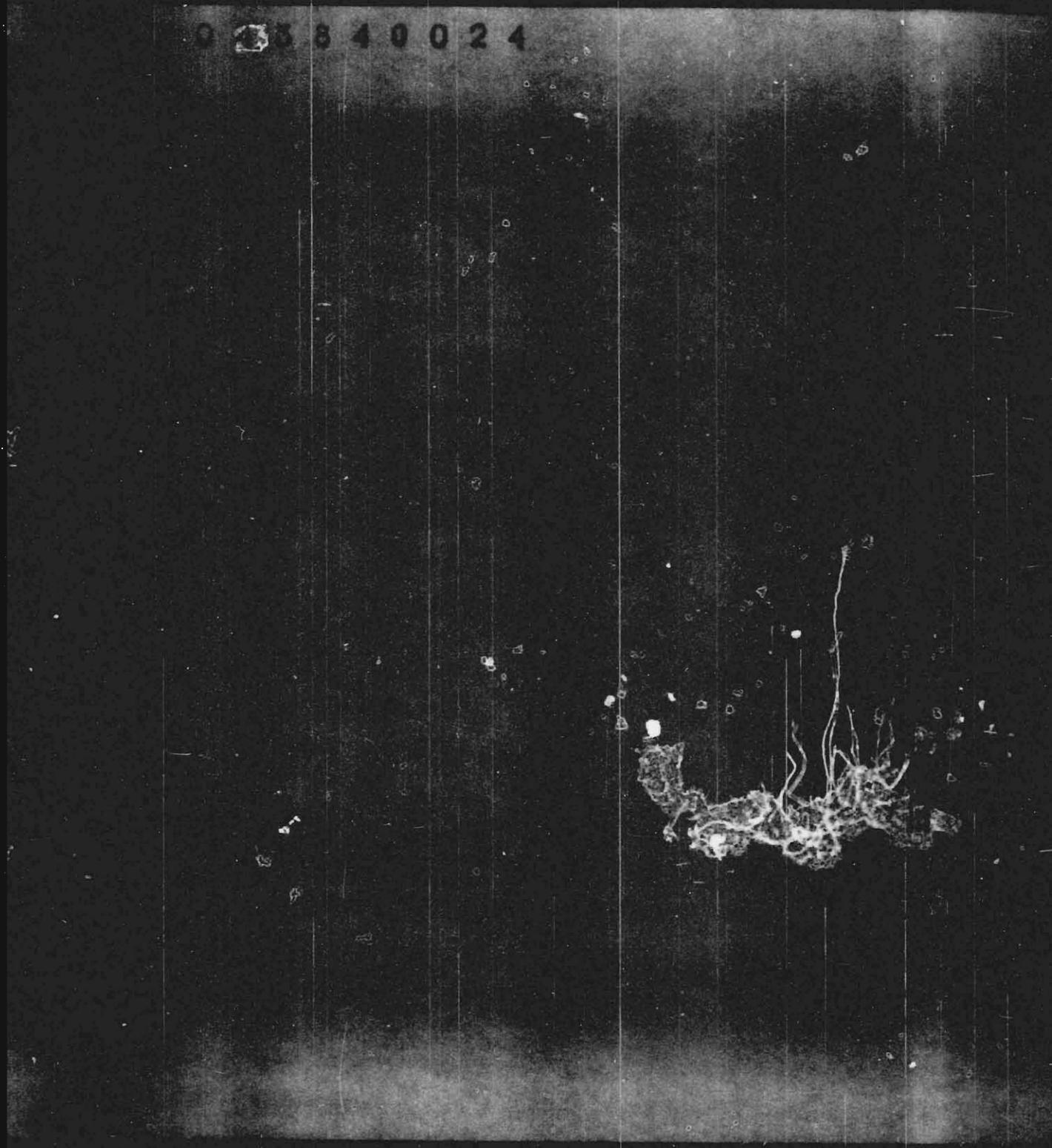

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4. Find reason to believe [illegible]

[illegible]

2 Exhibits

6. Order into pre-probable cause conciliation [illegible] Clinton/Gore '92 Committee, and J.L. "Skip" [illegible] Treasurer;

5. Enter into pre-probable cause conciliation [illegible] Clinton/Gore '92 General Election Committee [illegible] "Skip" Rutherford, as treasurer;

[illegible] the attached [illegible]

7. Approve the attached conciliation agreement [illegible] Clinton/Gore '92 General Election Committee [illegible] "Skip" Rutherford, as treasurer;

8. Approve the attached factual and legal [illegible]

9. Approve the appropriate letters.

FEDERAL ELECTION COMMISSION

Washington, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: August 2, 1995

SUBJECT: 1rst GC Report - MUR [illegible]

The attached is submitted as an item for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTIONS
72 Hour Tally Vote	[XX]	Complian[illegible]
Sensitive	[XX]	
Non Sensitive	[ ]	Audit[illegible]
24 Hour Tally Vote	[ ]	Litig[illegible]
Sensitive	[ ]	
Non Sensitive	[ ]	
Low Priority	[ ]	
Tally Vote	[ ]	

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d) Approve the conciliation agreement with the Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as Treasurer, as recommended in the General Counsel's report dated August 2, 1995

e) Approve the factual and legal analyses attached to the General Counsel's report dated August 2, 1995, subject to revision of the analysis for the Clinton/Gore '92 Committee to explain the failure to report the disbursements to Worldwide Travel, Inc.

f) Approve appropriate letters.

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

Attest:

Date

Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

J.L. "Skip" Rutherford
Clinton/Gore '92 General Election
Compliance Fund
124 West Capitol Street
Suite 1150
Little Rock, AR 72201

Re: MUR 4173

Dear Mr. Rutherford:

On August 16, 1995, the Federal Election Commission ("the Commission") found that there is reason to believe that the Clinton/Gore '92 General Election Compliance Fund ("the GELAC"), and you, as treasurer, violated 2 U.S.C. § 434(b)(3)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual and legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

[illegible] matter pending [illegible]

Enclosed is a conciliation agreement that the [illegible] has approved.

If you are [illegible] as soon as possible.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five (5) days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days.

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

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Peter Blumberg or Andre G. Pineda, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald
Chairman

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

cc: William J. Clinton

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondents: Clinton/Gore '92 General Election Compliance Fund

J.L. "Skip" Rutherford, as Treasurer

I. GENERATION OF MATTER

Pursuant to 26 U.S.C. § 9007(a), the Federal Election Commission ("the Commission") conducted an audit and examination of the receipts, disbursements, and expenses of the Clinton/Gore '92 General Election Compliance Fund ("the GELAC"). In addition, the audit included an evaluation of whether the GELAC complied with the Federal Election Campaign Act, as amended ("the Act"). 11 C.F.R. § 9007.1. This matter was generated from information obtained during the audit of the GELAC. 11 C.F.R. § 9007.1.

II. FACTUAL AND LEGAL ANALYSIS - DISCLOSURE OF CONTRIBUTOR INFORMATION

The Act requires political committees to file reports that disclose the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). The term "identification" of an individual means the name, mailing address, occupation, and name of employer of the individual. 2 U.S.C. § 431(13)(A). "Identification" for any other person means the full name and

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address of such person. 2 U.S.C. § 431(13)(B).

In cases where the treasurer of a committee can show that best efforts have been used to obtain, maintain and submit the information required by 2 U.S.C. § 431(13), any report or any records of such committee shall be considered in compliance with the Act. 2 U.S.C. § 432(i). Pursuant to 11 C.F.R. § 104.7(b), the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. An effort to collect the required information shall consist of a clear request for the information (i.e., name, mailing address, occupation and name of employer) and shall inform the contributor that the reporting of such information is required by law.[1/] 11 C.F.R. § 104.7(b).

The Audit staff tested contributions on a sample basis to determine if the GELAC reported the occupation and name of employer information from contributors. The Audit staff found that 50% of the sampled contributions did not contain the occupation and/or name of employer of the contributors. The Audit Division sampled approximately 126,700 contributions from about 98,000 individuals totaling almost $8,473,000. However, pursuant

---

1/ On October 27, 1993, the Commission amended its regulations regarding the requirements of 11 C.F.R. § 104.7(b). See 58 Fed. Reg. 57729. Since the alleged violations in this matter took place during the 1991-1992 election cycle, this Office used the regulations applicable in that election cycle to form the basis of its factual and legal analysis.

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to 2 U.S.C. § 434(b)(3)(A), the Audit Division determined that only $3,757,865 of these contributions were from persons whose contribution or contributions had an aggregate amount or value in excess of $200 within the calendar year that required identification information, e.g., occupation and/or name of employer. See 2 U.S.C. § 431(13)(A) and (B).

A review of GELAC solicitations revealed that several solicitation devices failed to properly request the employer information. Devices failed to state that "federal law" required the information and instead stated that the "Federal Election Commission" required the information. Other devices carried no disclaimer at all. Several devices only requested the individuals' names and addresses, and no employer information. In some cases, the information was obtained by the GELAC, but not reported. Further, the GELAC did not have a system to permit the Audit Division to match the GELAC's received contributions to the solicitation devices, thereby making it impossible to determine how many contributions were tied to the defective solicitation devices.[2/]

During audit fieldwork and at the Exit Conference, the Audit Division notified the GELAC of the large amount of errors in the reporting of its contributors' employer information. Subsequent to the Exit Conference, the GELAC submitted a sample letter to the Audit Division dated July 19, 1993 which requested contributors'

2/ The GELAC argues that the original mailings satisfy "best efforts" since the solicitation devices contained a request for the information. However, the existence of defective solicitation devices belies this assertion.

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occupation and employer information. The GELAC also submitted a list of the persons who received the letter. The GELAC asserted that the list contained 85% of the individuals identified as missing employer information.

In response to the Interim Audit Report, GELAC's counsel stated that the July 19, 1993 mailing "demonstrates that best efforts were made to obtain the information." GELAC's counsel further noted that "all solicitations for contributions to the Compliance Fund were accompanied by a request for contributor information in compliance with 11 C.F.R. § 104.7 . . . [and] that the Compliance Fund made best efforts to request contributor information as required by 11 C.F.R. § 104.7 at the time of solicitation." On November 3, 1994, the GELAC filed amended disclosure reports providing information retrieved through the July 1993 letter.

The GELAC did not comply with the reporting obligations set forth at 2 U.S.C. § 434(b)(3)(A) prior to its filing of the amended disclosure reports in response to the Interim Audit Report. As a result, the GELAC had incomplete disclosure information on the public record for a substantial period of time, thus defeating the purpose of public disclosure - the reporting of accurate and complete contributor information.

The GELAC also did not execute best efforts to retrieve the occupation and employer information. In order to exercise best efforts, the treasurer must make one effort per solicitation and the effort shall consist of a clear request for the information which informs the contributor that the reporting of such

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information is required by law. 11 C.F.R. § 104.7(b). Contrary to the Committee's argument, the original solicitation devices did not satisfy best efforts. Several of the GELAC's original solicitation devices were defective, and the GELAC was unable to demonstrate that the persons who were missing occupation and employer information had received a solicitation device that contained no defects. Therefore, the Commission has found that there is reason to believe that the Clinton/Gore '92 General Election Compliance Fund and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1995

J.L. "Skip" Rutherford
Clinton/Gore '92 Committee
124 West Capitol Street
Suite 1150
Little Rock, AR 72201

Re: MUR 4173

Dear Mr. Rutherford:

On August 16, 1995, the Federal Election Commission ("the Commission") found that there is reason to believe that the Clinton/Gore '92 Committee ("the Committee"), and you, as treasurer, violated 2 U.S.C. § 434(b)(8), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). On the same date, the Commission also found reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v). However, after considering the circumstances of this matter, the Commission also determined to take no further action against the Committee, and you, as it pertains to 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

With respect to the Commission's finding reason to believe that the Committee and you, as treasurer, violated 2 U.S.C. § 434(b)(8), you may submit any factual and legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of the 2 U.S.C. § 434(b)(8) violation prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

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

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Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five (5) days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel concerning the issues relating to 2 U.S.C. § 434(b)(8), 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, including the Commission's reason to believe finding pertaining to 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v) and its subsequent determination to take no further action, will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless the Committee and you notify the Commission in writing that you wish the investigation to be made public.

Notwithstanding such confidentiality, the Commission reminds you that the reporting activity stemming from reimbursements from Worldwide Travel, Inc. is a violation of 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v). Therefore, you should take steps to ensure that this activity does not occur in the future.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Peter Blumberg or Andre G. Pineda, the attorneys assigned to this matter, at (202) 219-3690.

Sincerely,

Danny L. McDonald

Danny L. McDonald
Chairman

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

cc: William J. Clinton

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 4173

Respondents: Clinton/Gore '92 Committee

J.L. "Skip" Rutherford, as Treasurer

I. GENERATION OF MATTER

This matter was generated by information obtained by the Federal Election Commission ("the Commission") in the formal course of carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"). 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. ITEMIZATION OF REFUNDS AND REBATES

The Act requires political committees to file reports that disclose the identification of each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such receipt. 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

During the audit process, the Audit staff found that the Committee received reimbursements for travel from the Secret Service and various press organizations. The Committee had Worldwide Travel, Inc. ("Worldwide") receive these reimbursements and transfer the proceeds, less any fees charged, to the

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Committee's operating account.[1/] The Committee then itemized the reimbursements in its disclosure reports as receipts from Worldwide, rather than from the specific entity that provided the reimbursement to Worldwide.[2/]

The Committee contends that it properly itemized the reimbursements it received from Worldwide since the disclosure requirements of 2 U.S.C. § 434(b)(3)(F) are satisfied when an independent vendor collects reimbursements on behalf of the Committee. Specifically, the Committee references Advisory Opinion ("AO") 1983-25 where the Commission permitted the Mondale for President Committee to report only disbursements to its media vendor and not the vendor's disbursements to media outlets to be hired by the vendor. AO 1983-25. This AO stressed that the vendor was indeed an independent "vendor of media services" and not an arm of the political committee. Id. In contrast to the facts in AO 1983-25, Worldwide was collecting press and Secret

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1/ The Audit Division determined that between August 1992 and September 1993, Worldwide received reimbursements for travel from the Secret Service and various press organizations totaling $6,041,740.46. Of this amount, Worldwide deposited $5,494,819.56 in the Committee's operating account. This deposit represented the total reimbursements received by Worldwide, minus credit card fees and commissions for its services ($6,041,740.46 - $546,920.90 = $5,494,819.56).

2/ Worldwide was the Committee's travel agent for arranging Committee personnel flights on commercial aircraft. Committee charter travel was arranged directly between the Committee and charter aircraft vendors. The press and Secret Service reimbursements at issue relate to charter trips. Worldwide had no role in arranging the original trips for the press and Secret Service, it only acted as an administrator for the Committee for the collection of the reimbursements.

Service reimbursements, rather than making disbursements.[3/] Further, these reimbursements were for services to which Worldwide had no relation in that the Committee paid for the charter flights itself. Worldwide was merely acting as an administrator to collect the reimbursements, rather than as a "vendor" collecting reimbursement for travel that Worldwide had originally booked in its capacity as a vendor of travel services.

The Committee filed amended disclosure reports on October 14, 1994 which identified each press organization and the Secret Service who provided a reimbursement to Worldwide. The Committee's failure to do so until this date resulted in incomplete disclosure information on the public record for a substantial period of time. Moreover, the Committee only reported the amounts that it received from the Secret Service and the press organizations. The Committee did not report $546,920.90 in fees and commissions that Worldwide charged the Committee. 11 C.F.R. § 9004.6(c). Therefore, the Commission found reason to believe that the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(3)(F) and 11 C.F.R. § 104.3(a)(4)(v).

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3/ The Commission's regulations at 11 C.F.R. § 9004.6(b) permit the Committee to accept pro rata reimbursements from the media. The purpose of this provision is to eliminate the possibility that the media or other individuals will subsidize the campaign. Explanation and Justification for Regulations on Public Financing of Presidential General Election Campaigns, 45 Fed. Reg. 43,376 (June 27, 1980). Therefore, it is important that the Committee report "any reimbursement received ... for transportation or ground services." 11 C.F.R. § 9004.6(c).

C. **REPORTING OF DEBTS AND OBLIGATIONS**

Political committees must disclose the amount and nature of all the debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). A debt, obligation, or written promise to make an expenditure under $500 shall be reported as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. 11 C.F.R. § 104.11. Any obligation over $500 shall be reported as of the date that the obligation was incurred. Id.

During the audit, the Audit Division discovered that $1,207,730 in Committee debts were not reported in accordance with the Commission's regulations. In most cases, the Committee failed to report debts of over $500 as of the date that the debts were incurred. Rather, the Committee reported the debts as of the date that the Committee's accounting department received and approved check requests. The Committee states that the debts at issue were not reported by Committee employees to the Committee accounting staff in time for the debt to be reported in the disclosure reports. The Committee states that it has complied with the statutory and regulatory requirements by reporting the debts once the Committee's accountants became aware of them.

The Committee did not timely report its debts and obligations and failed to report the date that the debts were incurred. The regulations require that debts over $500 be reported once incurred. 11 C.F.R. § 104.11. Since the Committee did not report the debts as they were incurred, the goal of immediate and complete disclosure was not met. The Committee's reports were not

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complete as of the last day of each month because the reports did not include the debts that were incurred for that month. 11 C.F.R. § 104.5(b)(1)(i)(A). Therefore, the Committee's disclosure reports did not include the Committee's actual debt position at any specific date, and it failed to explain the amount of debt incurred on any specific date for any specific activity or event. Thus, the Commission found reason to believe that the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. 434(b)(8).

The Committee's argument that its accounting staff was unaware of many of the reportable debts does not release the Committee and its Treasurer from its reporting duties. Election year reports from a principal campaign committee of a Presidential candidate must be filed no later than the 20th day after the last day of each month, thus allowing for adequate time to comply with reporting requirements. See 11 C.F.R. § 104.5(b)(1). Further, the vast number of untimely reported debts indicates that the Committee had no system in place for the timely reporting of debts by campaign staff to the accounting staff.[4/]

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4/ There is no indication that the Treasurer informed Committee employees of an obligation to submit check requests, invoices or other documents in a timely manner to ensure accurate and timely reporting of debts and obligations. There is also no indication that employees who failed to submit invoices in a timely manner were reprimanded or instructed to alter their check request practices.

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

September 12, 1995

VIA HAND-DELIVERY

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

Re: *MUR 4173 – Statement of Designation of Counsel and Request for Extension of Time to Respond to Reason-to-Believe Finding*

Dear Mr. Noble:

Enclosed please find a Statement of Designation of Counsel designating myself, Eric F. Kleinfeld, Laura A. Ryan and Elizabeth E. Towne as counsel for the Clinton/Gore '92 Committee in connection with this Matter Under Review. In addition, this letter is to request an extension of time of 20 days, until October 12, 1995, in which to respond to the Commission's reason-to-believe finding of August 16, 1995 against Clinton/Gore '92 Committee.

An extension of time of 20 days is necessary because it will be time-consuming and require significant personnel resources for the Clinton/Gore '92 Committee to review and compile the necessary information to present a comprehensive legal and factual response to the reason-to-believe finding.

In addition, counsel has numerous other conflicting deadlines and commitments during this period.

In light of these circumstances, the Clinton/Gore '92 Committee requests an extension of 20 days (until October 12, 1995) in which to respond to the Commission's reason-to-believe finding.

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Should you have any questions, please call me at (202) 728-1010. Thank you.

Respectfully yours,

Lyn Utrecht

Lyn Utrecht
Counsel to
Clinton/Gore '92 Committee

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STATEMENT OF DESIGNATION OF COUNSEL

MUR 4173

NAME OF COUNSEL: Lyn Utrecht

ADDRESS: Oldaker, Ryan & Leonard
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20007

TELEPHONE: (202)728-1010

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. *** (See additional designated counsel attached.)

9/11/95
Date

J.L. "Skip" Rutherford as treasurer
Signature

RESPONDENT'S NAME: Clinton/Gore '92 Committee and
J.L. "Skip" Rutherford, as treasurer

ADDRESS: 124 West Capitol Street, Suite 1150
Little Rock, AR 72201

HOME PHONE:

BUSINESS PHONE: (501)375-1290

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MUR 4173

ADDITIONAL DESIGNATED COUNSEL

Eric F. Kleinfeld
P.O. Box 19300
Washington, D.C. 20036-9300
(202)331-1996

Laura A. Ryan
7 Acorn Lane
Dedham, MA 02026
(617)329-5698

Elizabeth E. Towns
P.O. Box 19300
Washington, D.C. 20036-9300
(202)331-1996

9/11/97
DATE

SIGNATURE

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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 MAIL ROOM
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September 12, 1995

RECEIVED FEDERAL ELECTION COMMISSION OFFICE OF GENERAL COUNSEL
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VIA HAND-DELIVERY

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

Re: ***MUR 4173 – Statement of Designation of Counsel and Request for Extension of Time to Respond to Reason-to-Believe Finding***

Dear Mr. Noble:

Enclosed please find a Statement of Designation of Counsel designating myself, Eric F. Kleinfeld, Laura A. Ryan and Elizabeth E. Towne as counsel for the Clinton/Gore '92 General Election Compliance Fund. In addition, this letter is to request an extension of time of 20 days until October 12, 1995 in which to respond to the Commission's reason-to-believe finding of August 16, 1995 against the Clinton/Gore '92 General Election Compliance Fund.

An extension of time of 20 days is necessary because [illegible] time-consuming and require significant personnel resources for the Clinton/Gore '92 General Election Compliance Fund to review and compile the necessary information to present a comprehensive legal and factual response to the reason-to-believe finding.

In addition, counsel has numerous other conflicting deadlines and commitments during this period.

In light of these circumstances, the Clinton/Gore '92 General Election Compliance Fund requests an extension of time of 20 days (until October 12, 1995) in which to respond to the Commission's reason-to-believe finding.

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Should you have any questions, please call me at (202) 728-1010. Thank you.

Sincerely,

Lyn Utrecht

Lyn Utrecht
Counsel to
Clinton/Gore '92
General Election Compliance Fund

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0 3040052

MDR 4[illegible]

[illegible]

Eric F. [illegible]
P.O. Box [illegible]
Washington, D.C. [illegible]
(202)331-1996

Laura A. [illegible]
7 Acorn Lane
Dedham, MA [illegible]
(617)[illegible]

[illegible]
P.O. Box [illegible]
Washington, D.C. [illegible]
(202)331-1996

9/11/95
DATE

[illegible]

3 8 4 0 0 5 3

[illegible] DC [illegible]

[illegible] Clerk [illegible]

[illegible] Leonard
[illegible] Ave., N.W.
Washington, D.C. 20007

Re: [illegible] 4575

Dear Mr. [illegible]:

[illegible] Questions, please contact us at [illegible] 202-[illegible] 2F-1696.

Sincerely,

[illegible]

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 29, 1995

VIA FACSIMILE AND FIRST CLASS MAIL

Lyn Utrecht
Oldaker, Ryan & Leonard
818 Connecticut Ave., N.W.
Washington, D.C. 20007

Re: MUR 4173

Dear Ms. Utrecht:

This is in response to your letter on behalf of the Clinton/Gore '92 General Election Compliance Fund dated September 12, 1995. This letter requests an extension of 20 days to respond to the Federal Election Commission reason to believe finding in connection with MUR 4173. After considering the circumstances presented in your letter, the Office of General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on October 12, 1995.

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

Sincerely,

Peter G. Blumberg
Attorney

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 Committee	)	**MUR 4173**
and J.L. "Skip" Rutherford,	)	
as treasurer	)	

RESPONSE OF CLINTON/GORE '92 COMMITTEE TO REASON-TO-BELIEVE FINDING

On August 16, 1995, the Commission found reason-to-believe that Clinton/Gore '92 Committee (the "Committee") violated 2 U.S.C. 434(b)(8) by failing to disclose $1,207,730 in debts in a timely fashion. However, as the legal and factual evidence set forth herein clearly demonstrates, the General Counsel's analysis is flawed and the Committee complied materially with the disclosure of debt requirements of 2 U.S.C. 434(b)(8). Therefore, the Committee requests that the Commission take no further action and close the file in this matter.

The Federal Election Campaign Act of 1971, as amended, (the "Act") [illegible] political committees disclose the amount and nature of all debts and [illegible] the committee. 2 U.S.C. 434(b)(8). A debt, obligation [illegible] expenditure under $500 shall be reported as of the time the payment is [illegible] days after such an obligation is incurred, whichever is first. 11 C.F.R. [illegible] obligations which are over $500 "shall be reported as of the date [illegible] is incurred, except that any obligation incurred for [illegible] administrative expense shall not be reported as a debt before the [illegible]

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The Factual and Legal Analysis erroneously states that Committee debts in the amount of $1,207,730 were not reported in a timely manner. It states that Committee reports were not complete as of the last day of each month because the reports did not include the debts that were incurred for that month and further that the "vast number of untimely reported debts indicates that the Committee had no system in place for the timely reporting of debts by campaign staff to accounting staff." These assertions are both legally and factually untenable.

I. THE COMMITTEE HAD A WELL-ESTABLISHED SYSTEM FOR PROCESSING AND REPORTING DEBTS AND DISBURSEMENTS IN A TIMELY MANNER

The Committee had a well-established system and set of procedures for the timely recording and reporting of debts and disbursements for timely disclosure. As the attached affidavits from Barbara Yates, the Committee's accounting consultant, and Ellen Johnson, Director of Accounting, demonstrate, a procedure for the receipt, review, approval and timely payment of invoices was established. See Exhibit 1 attached hereto. A separate post office box for accounts payable was set up on July 7, 1992. All mail was picked up from the post office box on a daily basis. Committee procedures required that staff open the mail, stamp date the invoices and forward the invoices to Ms. Johnson for processing on a daily basis. [illegible] reviewed by accounts payable staff to ensure accuracy and avoid duplicate payments. Once reviewed, a Committee check request form was attached and payment was processed.

In addition, contrary to the General Counsel's assertions, the Committee [illegible] informed of such policies. See Exhibit 2. The importance of following C[illegible] receipt and forwarding of vendor invoices was stressed to all employees of the Committee.

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were authorized to make disbursements on behalf of the Committee. These individuals were advised at a staff meeting to have all vendors forward invoices for payment directly to the accounts payable post office box whereupon the invoices were forwarded to the Accounting Department immediately upon receipt by any staff person.

These procedures ensured prompt payment of all invoices. Generally, there was no backlog of mail, thus once an invoice was received by Campaign staff it was forwarded directly to the Accounting Department for processing The Committee did not delay payment to any vendor unless a duplicate payment had been discovered.

Despite the procedures which the Committee established, some invoices were received by the Committee well after the invoice date. These instances occurred for a variety of reasons over which the Committee had no control. For example, some invoices (such as telephone bills) from out-of-state vendors were sent to state offices that had closed immediately after the election. This mis-routing by the vendors created delay in delivery to the Committee.

Some invoices were never received by the Committee. Certain vendors contacted the Committee advising staff that they had not received payment. After thoroughly reviewing Committee records and failing to find invoices, the Committee so advised the vendor. Under these circumstances, the vendor was permitted to fax copies of the invoice to the Committee for payment. The date of the fax, therefore, is the date the Committee first received these invoices. Upon receipt of the fax, the debt was verified and processed for payment.

The Committee promptly processed bills when they were received and accurately reported outstanding debts based on accounts payable on hand at the close of each reporting period.

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II. THE AUDITORS' INTERPRETATION OF WHEN A DEBT IS INCURRED IS CONTRARY TO LAW AS WELL AS COMMISSION POLICY AND IS UNTENABLE FROM A PRACTICAL PERSPECTIVE

The recording of the Committee's accounts payable, and, the reporting of its debts fully complied with the reporting requirements of 11 C.F.R. 104.11. Debts were properly reported as incurred, i.e., a payable was incurred on the date that the Committee received the vendor invoice. The position of the Auditors and the General Counsel that the date incurred for reporting purposes is the date of the invoice is directly contrary to FEC policy as explicitly provided in the Financial Control and Compliance Manual. The Manual explicitly states that "accounts payable consist of bills on hand which are unpaid at the end of the reporting period." Financial Control and Compliance Manual, January, 1992 at page 146. See Exhibit 3. Accordingly, regardless of the invoice date of a payable, the invoice does not become a payable until it is received, and, therefore, is not incurred until the date of receipt. It is incomprehensible that the Audit Division and the General Counsel's office can, despite this clear enunciation of policy, arrive at their conclusions with respect to the Committee's reporting of debts and obligations. According to the Manual, the Committee is only obligated to report bills which are "on hand" at the end of the reporting period. "On hand" is not the bill close date nor is it the date of the invoice. Clearly "on hand" means when the Committee receives the invoice. The Committee could not have reported its debts incorrectly when its practice comported with the guidelines provided by the Commission -- which is now seeking to apply a completely different standard during an enforcement proceeding.

In addition, the current newly-adopted staff position articulated in the Factual and Legal Analysis directly contradicts the advice given to the Committee by the Audit Division The

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Audit Division itself in discussion with the Committee's accountant regarding the amendment of debt schedules for the primary acknowledged the complexity and ambiguity in debt reporting as well as the practical impossibility of reconciling debt schedules to disbursement schedules.[1]

The staff's current new interpretation of when a debt is incurred, is also completely unworkable from a practical perspective. Such an interpretation makes the timely reporting of debts either impossible (because an entity cannot know the amount of a debt until it receives an invoice) or unreasonably burdensome (requiring a committee to amend its debt schedule every reporting period during an election cycle to reflect invoices dated prior to the close of the previous period but not received until thereafter).

If the Commission were actually to adopt this new date of invoice rule, committees would be forced to report estimated debts or to amend every debt schedule the following month. At best, any such reporting would result in the disclosure of inaccurate estimates of anticipated debts that would be regularly amended. The public record would not be clarified by this -- it would be confused.

The staff position that there is adequate time to comply with the new date of invoice rule because Presidential campaigns have 20 days after the last day of each month in which to file

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[1]In fact, the Deputy Assistant Staff Director of the Audit Division, Joe Stoltz confirmed the Committee's position with the Committee's Accounting consultant in a discussion regarding whether it was necessary for the Primary Committee to amend its debt schedules. See Exhibit 4. Mr. Stoltz informed the Committee's Accounting consultant that a Committee could not report debts of which it was unaware. At the time Mr. Stoltz was presumably following the FEC's written guidance in the Manual. Some time subsequent to that conversation, he apparently adopted a different position.

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their report is similarly flawed in several respects[2]. First, the bulk of the Committee's alleged debt reporting violations involve debts and payments on the Pre-General and Post-General reports. In fact, these reports allowed much fewer than 20 days after the cut-off date for receipt of invoices. In addition, the problems created by having such a limited period of time in which to prepare these reports was further compounded by the fact that these reports were due at the height of the campaign -- just prior to and just after the election.

Second, the new interpretation does not take into account the fact that although an invoice may be dated at the end of a reporting period it may not be received by a committee until after the reporting deadline. Outside of establishing efficient procedures such as the Committee had in place, the Committee had no other mean of acquiring debt information. Committees have no control over when they receive vendor invoices. Under the date of invoice method, no matter what procedures were followed, a committee would be required to go back and amend its debt schedule to reflect invoices that were received after the reporting deadline. This is problematic for several reasons. While filing an amendment to the debt schedule, the Committee will likely have already paid the invoice in the next reporting period and, accordingly, the debt would no longer exist. This unreasonably forces committees to amend a prior month's debt schedule while at the same time payment for that very invoice would be included on the next monthly report's disbursement schedule which would be filed either immediately prior to or simultaneously with the amended debt schedule. Requiring a committee

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[2] In 1992 general election reports were due on August 20 (7/1 - 7/31); September 20 (8/1 - 8/31); October 20 (9/1 - 9/30); October 22 (10/1 - 10/14) (Pre-General); December 3 (10/15 - 11/23) (Post General); January 31, 1993 (11/24 - 12/31) (Year End)

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to do this would be unreasonably burdensome, serve no legitimate public policy purpose of disclosure since the "debt" and "payment" would be disclosed at the same time and would, in fact, be misleading.

Finally, auditors' workpapers demonstrate that the date used by the auditors in their analysis of the Committee's reporting of debts and obligations (the invoice date) is inconsistent. Often the dates recorded as the "invoice date" were not the actual date of the invoice, but sometimes were the bill close date[3]. The inconsistency in the Auditors' use of dates is further evidence of the capriciousness of their current new interpretation of the law. Exhibit 5 is a schedule showing the correct dates of receipt for all of the debts questioned by the auditors. Using the correct dates, any remaining reporting errors would be minor and immaterial[4].

III. THE AUDIT ANALYSIS ERRONEOUSLY INCLUDES AS UNREPORTED DEBTS TELEPHONE EXPENSES WHICH ARE NOT DEBTS BECAUSE THEY WERE EITHER OFFSET BY DEPOSITS MADE TO TELEPHONE VENDORS OR QUALIFIED AS REOCCURRING ADMINISTRATIVE EXPENSES.

The Regulations specifically provide that regularly reoccurring administrative expenses

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[3]The Bill Close Date reflects the end of the billing cycle. It neither indicates the date the invoice was issued, nor the date the Committee received the invoice. Accordingly, it is an unreasonable and erroneous standard to use for the date on which the debt is incurred.

[4]As Ms. Johnson's affidavit states, Committee policy required that staff open mail, stamp date the invoice and forward the invoice to Ms. Johnson for processing. The stamp date on the invoice reflected the date of receipt. In certain cases, Committee staff failed to stamp date an invoice, so they were instructed to immediately staple a Committee check request form to the invoice date and write the check request date as the date of receipt. However, despite the Committee's policy sometimes the stamp date was not recorded and the date of receipt used by the Accounting Department on the check request form was the vendor's invoice date and not the actual check request date.

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should not be reported on the debt schedule. 11 C.F.R. § 104.11. The Financial Control and Compliance Manual similarly states that a reoccurring debts is "[a]ny obligation incurred for rent, salary or other regularly reoccurring administrative expense." Financial Control and Compliance Manual, January, 1992. Telephone expenses which are incurred and paid on a monthly basis qualify as such administrative, reoccurring expenses which are not considered debts.[5] Telephone bills are a regular, monthly expense incurred by the Committee. The regular commercial practice permits payment of these bill within the month following receipt of the bill.

The Committee complied with the regular, acceptable commercial practice of paying telephone invoices within one month following the receipt of the bill. The Committee's prompt payment of telephone bills demonstrates that these expenses satisfy the criteria for reoccurring administrative expenses set forth in 11 C.F.R. § 104.11. See Exhibit 5. Thus, these bills should not have been included in the debt schedule analysis.

The auditors' analysis of the reporting of the telephone bills is also erroneous because it uses the close of the billing cycle date as the date on which a debt is incurred. The close of the billing cycle represents only the cutoff date that the telephone company uses to determine the billing amount. It is neither the date that the telephone company prepares nor sends out the invoice. Accordingly, the use of such date to determine when the debt was incurred for reporting purposes is simply incorrect.. Under no circumstances would a committee have a telephone invoice on hand on the closing day of the billing period even if the invoices were promptly mailed to the correct address.. As to telephone bills for the state offices this date is even less

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[5]Telephone expenses are also considered administrative expenses in other contexts within the Regulations.

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valid. Many of these bills were in fact received well after the billing cycle date and invoice date through no fault of the Committee's. At the conclusion of the election, all of the state offices were closed. Some of the telephone invoices for these state offices were sent directly to the state offices, despite the Committee's communication with each particular vendor to forward final invoices to the Accounting post office box. Invoices erroneously sent by the telephone company to the state office were returned from the closed state offices to the local post office, and then forwarded to the Accounting post office box in accordance with the forwarding address left by state office staff members. The re-routing of these invoices in some instances caused considerable delay in the Committee's receipt, processing and payment, through no fault of the Committee.

Finally, the inclusion of telephone payments as debt reporting errors is flawed in another significant respect. The Committee was required by all of its telephone vendors including all of those listed on the auditors' workpapers to pledge letters of credit or pay deposits to the telephone company prior to obtaining telephone service[6]. This means that the Committee paid in advance for service it anticipated using[7] and no debt was incurred. Deposit and letter of credit amounts were fully disclosed by the Committee. No debt is incurred when a Committee's outstanding obligation is less than the amount it has prepaid. The Audit analysis made absolutely no effort to offset the amount payable by the amount of the Committee's deposit to

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[6]The Committee had letter of credit with AT&T between $100,000 and $200,000; with U.S. West in the amount of $55,000 and with Southwest Bell between $50,000 and $115,000.

[7]As with many reoccurring expenses, the security deposits or letters of credit assured the vendor that the Committee would never be in a debt situation with regard to obligations to that vendor.

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determine whether the questioned invoices even represented a debt. The auditors thus included as reportable debts amounts which the Committee had actually pre-paid, and which, therefore, were not debts of the Committee at all. Reporting these amounts as debts would have been misleading.

Accordingly, many hundreds of thousands of dollars in telephone expenses were erroneously included in the Audit analysis as reporting violations.

IV. THE AUDIT ANALYSIS INCLUDES ADDITIONAL ERRORS

Further errors in the auditors schedules include:

A. Future Now

One payment made to Future Now (check number 10758 in the amount of $45,285.59) was erroneously treated as an unreported debt. The amount of the invoice was not a debt but rather a duplicate billing, and, therefore, the Committee was not obligated to report it as a debt. The duplicate billing issue required extensive research to rectify because the vendor had previously submitted invoices for identical computer equipment which had previously been paid by the Committee. Once the duplication issue was resolved, the Committee made immediate and timely payment. Had the Committee reported the entire amount of the invoice as a debt, it would have presented a distorted picture of the Committee's financial position. See Exhibit 6.

B. Bank Drafts

The auditors erroneously included payments made by bank drafts in their analysis. Bank drafts are preprinted in denominations of $25, $50, $100 and $500 and were written for amounts not to exceed this face value. Drafts were used for immediate payment of expenses such as car

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rental, notel rooms, etc. which must be paid at the time the invoice is presented. They were not used to pay outstanding obligations that had been previously billed to the Committee; they were used only for circumstances in which immediate payment was required. Once the individual using the draft had the invoice in hand, the draft was exchanged as payment. See Exhibit 7. TOTAL $4,276.96.

C. Debts Not Reported on Debt Schedules but Timely Paid

Among the debts questioned by the auditors, a number of invoices were paid within 15 days of the date received by the Committee. In addition, a significant number of invoices were paid within 30 days of the invoice receipt date. See Exhibit 5. These payments illustrate that once received by the Committee, invoices were immediately processed for payment.

Some of the debts fell over the closing date for the particular reporting quarter, yet they were paid prior to the date that the report was due. Although this may be a technical violation, it is not a material one. The Committee showed good faith in processing invoices for payment in a timely manner. Once paid, the invoices did not represent debts to the Committee. Amending debt schedules would have been unreasonably burdensome as well as unnecessary for public disclosure purposes since the debt would have been reported on an amended debt schedule filed at the same time as the Schedule B showing it was paid. This did not misrepresent the Committee's debt position as alleged by the staff.

V. FINALLY, EVEN IF THE COMMISSION ADOPTS THE NEW INVOICE DATE RULE, THE ALLEGED AMOUNT OF THE VIOLATION SET FORTH IN THE REASON-TO-BELIEVE FINDING IS ERRONEOUS BECAUSE THE AMOUNT INCLUDES MULTIPLE COUNTING OF THE SAME DEBTS

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Even if the Commission adopts a new debt reporting rule in the context of this enforcement action, the Audit Division's method of calculating the amount of the violation must be rejected because it unfairly exaggerates the amount of under-reported debt. For example, an invoice by Hogan & Hartson in the amount of $34,954 was purportedly not reported on three reports. The violation was calculated at an amount of $104,862, three times the reporting error. Double and triple counting one debt occurred frequently in the audit analysis. This approach does not accurately reflect the type, number and amount of violations. Such a method of calculating the amount of the violation results in a violation amount totally out of proportion with the nature of and number of errors. Accordingly, the Commission must reject the auditors' $1.2 million number, even if a new debt reporting rule is adopted without benefit of revised regulations.

Finally, it is our belief that the audit department never previously scrutinized the debts of any other campaign in the same manner it has in this instance. The Committee cannot be expected to report a debt that it does not know about. The suggestion that a debt must be reported prior to receipt of any invoice by the Committee represents a new policy that compels the implementation of definitive FEC guidance as to how the debts should be properly reported prior to application against a Committee. Further, the proposed treatment of these alleged reporting errors in the 1991-92 election cycle as violations would result in disparate treatment of the Committee vis a vis prior presidential campaigns subject to identical regulations. The Committee contends that application of a new debt reporting rule in this context also violates fundamental principles of equity.

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VI. CONCLUSION

For the reasons set forth above, the Committee respectfully requests that the Commission take no further action and close the file in this matter.

Respectfully submitted,

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 General	)	
Election Compliance Fund,	)	**MUR 4173**
and J.L. "Skip" Rutherford,	)	
as treasurer	)	
	)	

RESPONSE OF CLINTON/GORE '92 GENERAL ELECTION LEGAL AND ACCOUNTING COMPLIANCE FUND TO REASON-TO-BELIEVE FINDING

On August 16, 1995, the Commission found reason-to-believe that Clinton/Gore '92 General Election Legal and Compliance Fund (the "Committee" or "GELAC") violated 2 U.S.C. 434(b)(3)(A). As the reasons set forth herein clearly demonstrate, the General Counsel's Analysis is factually and legally flawed, and the Committee complied with the requirements of 2 U.S.C. 434(b)(3)(A). Therefore, the Committee respectfully requests that the Commission adopt the Committee's attached counter proposal.

I. THE GENERAL COUNSEL'S ANALYSIS APPLIES THE WRONG "BEST EFFORTS" STANDARD TO THE COMMITTEE'S ACTIVITY BY RETROACTIVELY APPLYING THE 1994 "BEST EFFORTS" REG

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires that

> political committees report the identification of each . . . person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should elect, together with the date and amount of any such contribution." 2 U.S.C. 434(b)(3).

A political committee will have complied with this reporting requirement if it has disclosed

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name, address, occupation and employer of the donor or, failing disclosure, if it has exercised "best efforts" to obtain, maintain and submit this information. 11 C.F.R. 104.7. Although Commission regulations have consistently provided that the reporting requirements of 2 U.S.C. 434(b)(3) will be satisfied if the treasurer of a committee has exercised best efforts, the specific actions that constitute "best efforts" has changed significantly from the regulations in effect during the 1991-92 election cycle (the "1980 Regulations") to the current regulations. On October 27, 1993, well after the 1991-92 election cycle, the Commission promulgated new best efforts regulations that became effective on March 4, 1994. These regulations contain additional, affirmative requirements from the earlier regulations in effect for the 1991-92 election cycle that must be implemented in order to satisfy the best efforts standards.

While the General Counsel's Office recognizes in its Factual and Legal Analysis that current regulations at 11 CFR 104.7 are inapplicable to the 1991-1992 election cycle, the analysis applies the current, i.e., the wrong, standard to Committee activity. Administrative law is clear that rules may not be applied retroactively when the retroactivity is unjustified and unfair. See e.g. NLRB v. Majestic Weaving Co., 355 F.2d 854, 861 (2d Cir. 1966); Leedom v. International Union of Electrical Workers, 278 F.2d 237, 243 (D.C. Cir. 1960); NLRB v. Guy F. Atkinson Co., [illegible] (9th Cir. 1957).[1]

Clearly, it would be both unjustified and unfair to apply the current regulations to the

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[illegible] cases where retroactive regulations pass legal muster are in the tax and economic [illegible] if the proposed change is perceived to be disadvantageous to parties, [illegible] rate of engaging in such transactions. Conversely, if the proposed [illegible] will deter engaging in such transactions. The [illegible] can yield major dislocations in markets." Administrative [illegible] C. Davis, 1994 at page 255.)

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1991-92 election cycle. First, the current regulations contain new, affirmative duties which a treasurer must undertake in order to satisfy best efforts, i.e. each committee solicitation must contain specific language in the solicitation -- " Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contributions aggregate in excess of $200 in a calendar year." 11 C.F.R. 104.7 (1994). The regulations in effect in the 1991-92 election cycle did not prescribe any specific language but simply provided that in order to satisfy best efforts the treasurer had to have made at least one effort per solicitation to obtain such information from the contributor. The effort must include "a clear request for the information (i.e. name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law." 11 C.F.R. 104.7 (1980). The common practice among political committees (Clinton/Gore '92 GELAC being one of them) was to include the following phrase on their solicitations: "The Federal Election Commission requires . . ." There is no basis for asserting that the "Federal Election Commission requires..." does not comply full with the requirements of the 1980 regulations. Significantly, this language was never challenged or invalidated as contrary to 11 C.F.R. 104.7 by the Commission until now. In fact, the very reason the Commission issued the specific, required language in the current regulations is because of the lack of clarity regarding what language was required for the disclaimer under the 1980 regulations. Moreover, the current regulations, in contrast to the prior regulations, require that this disclaimer be printed in a comparable size type to the print of the solicitation and response materials.

Under the regulations in effect during the 1991-92 election cycle, to demonstrate "best efforts", the treasurer had to make at least one written or oral request per solicitation for

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contributor information. If the solicitation corresponding to a contribution requested the information and notified the contributor that the committee is required to report such information, no further action had to be taken.[2] In contrast, under the current regulations, treasurers who receive itemizeable contributions lacking complete contributor identifications, must make an additional written or oral request for such information. These follow-up measures are now required, whenever complete contributor identifications are lacking, even if the solicitation associated with the itemizeable contribution asked for the information.

The current regulations require that the written or oral request be made within 30 days of receipt of the contribution, and that committees file amended reports if additional contributor information is obtained after the applicable reporting period. However, the regulations in effect during the 1991-92 election cycle provide no definitive time standard for obtaining and disclosing the information. Indeed, prior to the new regulations, there was pervasive confusion as to whether a committee was even required to amend its reports to disclose information obtained by a follow-up request.

Therefore, from both a legal and practical perspective, the retroactive application of the 1994 "best efforts" regulations is untenable. Administrative law clearly provides that regulations may not be applied retroactively when it would result in unjust and unfair results. It would clearly be unjust and unfair to apply the new regulations retroactively since it would have been a practical impossibility for the Committee to comply with these new regulations. The regulations

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[2]"The treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor." 11 C.F.R. 104.7(1980).

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were not enacted until almost two years after the election and as a result, the Com[illegible] not have included the prescribed language of the current regulations in its solicit[illegible] language was not known at the time of the Committee's activity.

II. THE COMMITTEE DID, IN FACT, EXERCISE BEST EFFORTS WITH RESPECT TO ITS ENTIRE CONTRIBUTOR BASE, AND, THEREFORE, COMPLIED WITH THE REPORTING REQUIREMENTS OF 2 U.S.C. 434(b)(3)(A)

The Committee exercised "best efforts" as required under the 1980 Regulations with respect to its contributor base. The Committee satisfied "best efforts" by either the inclusion of a disclaimer on the solicitation or by requesting occupation and employer information [illegible] separate mailing on July 19, 1993 and filing amended reports containing that information in November, 1994.[3] Nothing in the regulations, at that time, required that the mailing or amendments be accomplished by a date certain. Even if a significant number of contributor entries are missing, occupation and employer information, the absence of the information is not a violation. The committee treasurer must simply exercise "best efforts" to obtain and submit such information. All the Committee is required to do is request such [illegible] A contributor is not obligated to provide it.

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[3] The General Counsel's Office maintains that on July 19, 1993 [illegible] efforts because it was not done in a timely manner because "GELAC [illegible] information on the public record for a substantial period of time." However, [illegible] Regulations which were applicable to the Committee's activity at that time [illegible] the mailing or amendment of reports be accomplished by a date certain. [illegible] Regulations did not even address the filing of amended reports. In [illegible] its reports accordingly.

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The Explanation and Justification to the 1980 Regulations stated that [illegible] whether or not a committee has exercised "best efforts", the Commission is [illegible] on whether the Committee has in place a systematized method for complying [illegible] disclosure requirements." The Committee clearly had such a systematized method [illegible] Solicitations were subject to legal review and authorization before distribution to [illegible] communications complied with the law (i.e. that they contained the proper request for [illegible] and employer). Absent receipt of the information, follow-up mailings were done on [illegible] 3, 1992 and July 13, 1993 requesting occupation and employer information [illegible] lacking the information. The July 1993 mailing was distributed to over 85% of the [illegible] contributors. See Exhibit 1.

In addition, the General Counsel's Office maintains that the Committee's treasurer [illegible] not have exercised "best efforts" because its review of Committee solicitations revealed [illegible] several were defective. The Committee sent out ten solicitations with respect to [illegible] Contrary to the General Counsel's conclusion that many of the [illegible] defective, the occupation and employer information was requested on all but one [illegible]

[illegible]

[illegible]

[illegible]

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[redacted]

[redacted]

highly unstable. The new [redacted]

and did not become effective until [redacted]

to include the new specific [redacted]

[redacted]

According to the General [redacted]

[redacted]

[redacted]

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[illegible] these contributions as violations under the 1991 [illegible] the Commission itself notes that the regulations in effect during [illegible] relieve the responsibility a political committee has if the [illegible] are unrelated to a particular solicitation and it is not possible to know if the proper request and notice were provided.[5] The prior regulations do not even address miscellaneous contributions but only address contributions received as a result of a solicitation stating that "the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request . . . to obtain such information from the contributor." In direct contrast to the regulations in effect during the 1991-92 election cycle, the new regulations require just a committee send a follow-up mailing to any miscellaneous donor if the miscellaneous contribution received lacks occupation and employer information. The Commission cannot now retroactively impose the best efforts standard established for miscellaneous contributions in the [illegible] prior to the enactment of these regulations [illegible] which were subject to regulations that failed to address the miscellaneous

current regulations to the Committee's 1992 activity. Accordingly, 40 contributions, over 30% of the Audit sample alleged errors are incorrectly treated as errors.

IV. THE AUDITORS' DETERMINATION THAT 50% OF THE ENTIRE GELAC CONTRIBUTION POPULATION VIOLATES THE BEST EFFORTS REQUIREMENTS IS SERIOUSLY FLAWED BECAUSE IT IS BASED UPON AN UNREPRESENTATIVE SAMPLE

The Auditors' determination that $1,878,932 in contributions are in violation of the best efforts requirements is both factually and legally baseless.[6] The Auditors' conclusion that 50% of the total amount of contributions received by the Committee in excess of an aggregate of $200 is based on an faulty premise -- that the sample is not only accurate, but representative. The sample is neither.

Of the 129 alleged errors in their sample, 28 items, over 20% of these alleged errors, resulted from contributions received in response to a single defective solicitation. See Exhibit 4. Although the solicitation was defective because it did not contain a disclaimer requesting the occupation and employer information, this solicitation was sent to only 6,644 donors out of a total number of mailings of 559,194.[7] See Exhibit 5. Accordingly, this solicitation represented

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[6] The Audit Division apparently arrived at this figure by the following method. It concluded from its sample that 50% of the Committee's contributions in excess of an aggregate amount of $200 violated the reporting requirements. Therefore, the Audit Division extrapolated its 50% finding to the total amount of contributions received from donors contributing in excess of $200 ($3,757,865) to conclude that $1,878,933 in contributions violated the reporting requirements of 2 U.S.C. 434(b)(3)(A).

[7] The Committee concedes that the solicitation attached as Exhibit 2 does not contain a proper request for employer and occupation information. However, the Committee had an established system for legal review that required that all communications, including solicitations, be reviewed and approved by Committee legal staff before they could be distributed. It is the Committee's belief that this particular communication was never provided to the Committee

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only 1% of the total solicitations mailed by GELAC. Moreover, only 694 contributors responded to that mailing out of a total number of 5,699 contributors who contributed in excess of $200 to GELAC. See Exhibit 6. Even if all of these 694 contributions gave over $200, the 694 figure would represent only 12% of the total contributors who contributed in excess of $200 to GELAC.[8] Furthermore, the Committee received approximately $488,587.90 as a result of this solicitation which is only 13% of the $3,757,865. Based upon these figures it is clear that the Auditors' sample was not random and, therefore, the conclusions reached were based upon these solicitations which when extrapolated throughout the entire contributor population have resulted in skewed, unrepresentative conclusions -- i.e. that $1,878,932. in contributions violated the Act's requirements[9].

Finally, the asserted basis for calculating the amount of the violation is seriously flawed. The General Counsel's analysis uses 50% of the total amount of contributions received in excess of $200. However, the violation should not be based upon the **amount** of the contributions, but

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legal staff for review and authorization by the Committee's direct mail vendor. This mailing was the last solicitation mailed out by the Committee and was distributed during an extremely hectic period -- within several weeks of the election. Moreover, the Committee distributed nine other solicitations all of which contained the proper disclaimer. See Exhibit 2.

[8]Please note that this 694 contributor figure is inflated, and, accordingly, the resulting percentage is inflated because the Committee is unable to determine how many of these 694 contributors contributed in excess of $200.

[9]The Auditors assert that the Committee did not maintain information allowing them to tie any particular solicitation to a contribution. This information was available from the Committee's direct mail vendor had the auditors simply asked the Committee for it. They never did.

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rather upon the number of contributors from whom the information was not properly [illegible]. Under the General Counsel's analysis, a failure to report occupation and employer for a contribution of $1000 would be more serious than a failure to report occupation and employer for a $500 contribution.

V. THE AUDIT SAMPLE IS ALSO INVALID BECAUSE IT CONTAINS OTHER ERRORS

With the limited time which remained for the Committee to review of the Auditors's sample, the Committee discovered several other errors in the sample.

- 3 items were double-counted – that is, the same contribution was twice in calculating their total of 129 errors. See Exhibit 7.
- 3 items contained solicitations with proper disclaimers and, thus, satisfied best efforts, contrary to the Audit Division's finding. See Exhibit 7.
- 4 items were included on the 9/3/92 mailing list. See Exhibit 7.

VI. THE DISPARATE TREATMENT OF COMMITTEES IN THE 1992 ELECTION CYCLE VIS A VIS PRIOR PRESIDENTIAL CAMPAIGNS VIOLATES FUNDAMENTAL PRINCIPLES OF EQUITY

In no other election cycles, have Presidential campaigns been [illegible] of penalty for reporting errors, particularly for an [illegible] Commission has conceded was unclear and which the Commission [illegible] disparate treatment violates fundamental notions of equity. In addition, [illegible] established administrative law principles which prohibit the [illegible] it is unjustified or unfair.

This is particularly true when the Commission [illegible]

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Committee. The Committee thus obviously made significant efforts to comply with the law to the best of its understanding of its requirements.

The Committee is aware of the importance of the disclosure of contribution information and the public's right to know and, accordingly, attempted in good faith to comply with 2 U.S.C. 434(b)(3)(A) and 11 C.F.R. 104.7. The Committee is aware that a single defective solicitation was mistakenly sent to approximately 6,644 donors. This resulted in contributions from 694 individuals totaling $488,000. However, the Committee also sent out a mailing requesting the occupation/employer information to 85% of its donors. Based upon this, the Committee contends that, at most, the Commission could conclude that 15% of the donors who received the defective mailing did not receive any request for occupation and employer information and, therefore, that best efforts were not exercised with respect to 15% of the 694 contributors who gave $73,200, (assuming that each of these 694 gave in excess of $200 which is clearly no the case).

VII. CONCLUSION

For the reasons stated herein, the Committee respectfully requests that the Commission accept the Committee's conciliation agreement and proposed civil penalty.

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Respectfully submitted,

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Counsel to Clinton/Gore '92 General Election Legal

and Accounting Compliance Fund

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CLINTON GORE 96

November 30, 1995

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

RE: Clinton/Gore '92 Committee -- MUR 4173 -- Supplemental Response

Dear Mr. Noble:

On November 14, 1995, Peter Blumberg of your office contacted me regarding MUR 4173. In an effort to assist the Commission in addressing the issues raised by the General Counsel's office in our telephone conversation, Clinton/Gore '92 Committee (the "Committee") is submitting this letter which responds to the issues raised by the General Counsel's office and further supports the Committee's position set forth in its October 12, 1995 reason-to-believe response.

The Committee requests that the Commission give consideration to the information contained herein and further requests that the General Counsel's office provide each Commissioner with a complete copy of this letter including exhibits.

I. INTRODUCTION

On August 16, 1995, the Commission found reason-to-believe that [illegible] violated [illegible] U.S.C. 434(b)(8) by failing to [illegible]

[illegible] paragraph.[1] The Committee filed a response to the [illegible] reason-to-believe finding on October 12,1995 which contained legal and factual arguments that [illegible] the reason-to-believe finding and, accordingly, which requested that the Commission [illegible] matter.

[illegible]

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Subsequent to its October 12, 1995 response, the General Counsel's office contacted Committee Counsel. The Committee is submitting this supplemental filing in response to issues raised by the General Counsel's office and in further support of its position. A summary of the amounts of each category of properly reported debts set forth in the Discussion section below is attached as Exhibit 1.

II. DISCUSSION

A. The Commission's Interpretation of when a Debt Is Incurred For Purposes Of The Committee's Reporting Obligations Is Arbitrary And Capricious -- Contrary To Law As Well As Commission Policy And Is Untenable From A Practical Perspective

1. The Compliance Manual's Correct Standard

The Financial Control and Compliance Manual - January, 1992 (the "Manual") explicitly states that a debt is incurred when an invoice is received. The Manual states that "debts owed by the committee usually fall into two categories: accounts payable in the ordinary course of business and loans to the committee (or to the candidate if the candidate receives a loan which in turn is loaned to the committee)." Manual at page 146. *See* Exhibit 3. The Manual then goes on to define "accounts payable". "Accounts payable consist of bills on hand which are unpaid at the end of the reporting period." Id. (emphasis added.) There is no ambiguity as to what "on hand" means. It means when a committee has received the invoice.

Nothing in the Manual, or the Regulations for that matter, limits "on hand" to a time certain, e.g., invoice date plus 10 days, as the auditors now assert. In fact, a reasonable reading of the Manual makes clear that this explicit enunciation of the standard for reporting debts directly contradicts the Commission's position that a debt is incurred either on the date of the invoice or the date of the invoice + 10 days.

The Commission cannot dismiss the literal language of the Manual [illegible] official Commission written guidance, prepared and published by [illegible] Obviously, Presidential committees rely heavily on the Manual [illegible] their accounting and FEC reporting responsibilities. In particular, [illegible] the guidance provided by the Manual in areas of compliance which are complex and confusing such as the reporting of debts and obligations. For the Commission to [illegible] for following the Commission's own written guidance is unfair and contrary [illegible]

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[2] Even if the written guidance that the Commission provided in the [illegible] Regulations, the Commission cannot penalize the Committee for following the [illegible] set forth in its Manual.

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2. The Audit Division's Erroneous Standard

Up until this MUR, the Commission has given only the limited written guidance described above to either Presidential committees or others as to how to determine the date a debt is incurred. Since filing its Reason-to-Believe finding response, the Committee has been informed that the current new standard for the date a debt was "incurred" -- the standard used by the auditors in calculating the Committee's alleged misreported debts and obligations -- was not the "invoice date" as the Committee was led to believe from the Reason-to-Believe finding and auditors' work papers. *See* Exhibit 2.[3]

According to this new information provided to the Committee in a telephone conversation with the General Counsel's office on November 14, 1995, the auditors used the "invoice date + 10 days" as the date a debt was "incurred".[4] There is absolutely no support for this standard in the Act, the Regulations or the Manual. The standard is not only contrary to law and Commission policy, but was never communicated to any of the parties who are subject to this standard -- the Presidential committees.

However, despite this new information, the standard is still unclear. In fact, in some cases, the auditors also used another standard for the date that a debt was "incurred" -- the billing cycle close date.[5] Is the standard for when a debt is "incurred" the date of the invoice, the billing cycle closing date, the date of the invoice + 10 days or some other standard of which the Committee is still unaware. This egregious inconsistency in the treatment of the Committee's debts is conclusive proof that the Commission would be acting in an arbitrary and capricious manner by adopting the auditors' standard in this enforcement action.

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[3]The Committee requested all backup work papers for the allegedly improperly reported amounts of MUR 4173. The work papers provided to the Committee were the auditors' debt and obligations work papers which contained the following categories: "vendor name", "invoice #", "invoice date", "invoice amount", "check # and payment", "payment amount" and "error amount" clearly indicating that the auditors used the invoice date as the [illegible] date.

[4] The Committee was never informed prior to submitting its October 12, 1995 response that the auditors used "the invoice date + 10 days" as the standard. The Committee was only informed that the standard was "the invoice date + 10 days" in a telephone conversation with the General Counsel's office on November 14, 1995. Because the auditors withheld this information, the Committee was unable to respond completely to the Commission's findings in its earlier response. In addition, actions such as this clearly indicate the ambiguity surrounding when a debt is "incurred" and demonstrate that the "invoice date + 10 days" standard used by the auditors is not a [illegible] date.

[5] [illegible] In the case of [illegible] the billing cycle close date as the [illegible] date. [illegible] only the [illegible] the vendor prepared and sent out [illegible] invoice date that the Committee received the invoice.

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Finally, the staff's confusing interpretation of when a debt is incurred (either the date of the invoice, the billing cycle closing date or the date of the invoice + 10 days), is completely unworkable from a practical perspective. Such an interpretation makes the timely reporting of debts either impossible (because an entity cannot know the amount of a debt until it receives an invoice -- and invoices often are not received within 10 days from the date of the invoice) or unreasonably burdensome (requiring a committee to amend its debt schedule every reporting period during an election cycle to reflect invoices dated prior to the close of the previous period but received after the close of the period.)[6]

If the Commission were actually to adopt this new position (whether it is the date of the invoice, or the date of the invoice + 10 days or the billing cycle close date), committees would be forced to report estimated debts or to amend every debt schedule the following month. At best, any such reporting would result in the disclosure of inaccurate estimates of anticipated debts that would be regularly amended. The public record would not be clarified by this -- it would be confused. Neither the public nor the Commission itself could ever reconcile debt schedules, as amended, with expenditures.

Furthermore, the application of the "invoice date + 10 days" standard clearly demonstrates that the Commission **does not** consider the invoice date to be the date that a debt is incurred but rather considers the date that a debt is incurred to be the date that the invoice is received when the Committee has provided proof of the date of receipt through either the stamp date or the check request date.[7]

As the Committee noted in its reason-to-believe response, the recording of the Committee's accounts payable, and, the reporting of its debts fully complied with the reporting requirements of 11 CFR 104.11. Debts were properly reported as incurred, i.e., a payable was incurred on the date that the Committee received the vendor's invoice.

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[6] In fact, the Deputy Assistant Staff Director of the Audit Division, Joe Stoltz confirmed the Committee's position with the Committee's Accounting consultant in a discussion regarding whether it was necessary for the Primary Committee to amend its debt schedules. *See* Exhibit 6. Mr. Stoltz informed the Committee's Accounting consultant that a Committee could not report debts of which it was unaware. At the time, Mr. Stoltz was presumably following the FEC's written guidance in the Manual. Some time subsequent to that conversation, he apparently adopted a different position.

[7] Both the stamp date and check request date are accurate dates of receipt. As Exhibit 4 demonstrates, where an invoice had both a stamp date and check request date, in almost every instance, the stamp date and the check request date were the same day or one day later. It is clear that check requests were prepared by the Committee immediately upon receipt of the invoice. Therefore, the check request date is an accurate date of receipt. The only situations where the Committee cannot determine the date of receipt is where the check request date is the same date as the date of the invoice. This occurred because, in a few situations, staff mistakenly used the invoice date as the check request date when preparing the check request form. The Committee's Debts Timely Reported category does not include any of these debts although it is likely that in most of these situations, these debts were timely reported.

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Exhibit 5 is a schedule showing the total amount of debts by vendor which the auditors contend was unreported but which was properly reported based upon use of the correct standard -- the date of receipt of the invoice by the Committee. *See also* Exhibit 4 which shows the correct dates of receipt for the debts questioned by the auditors. Accordingly, $270,019.95 should not be included as unreported debts.

TOTAL $270,019.95

B. The Audit Analysis Erroneously Includes As Unreported Debts Telephone Expenses Which Are Not Debts Because They Were Either Offset By Letters Of Credit Made To Telephone Vendors Or Qualified As Reoccurring Administrative Expenses

The Regulations specifically provide that regularly reoccurring administrative expenses should not be reported on the debt schedule. 11 C.F.R. 104.11. The Manual similarly states that a reoccurring debt is "[a]ny obligation incurred for rent, salary or other regularly recurring administrative expense. . ." Manual at page 146. *See* Exhibit 3. Telephone expenses which are incurred and paid on a monthly basis qualify as such reoccurring administrative expenses which are not considered debts.[8]

The Committee complied with the regular, acceptable commercial practice of paying telephone invoices approximately one month following the receipt of the bill. The Committee's prompt payment of telephone bills demonstrates that these expenses satisfy the criteria for reoccurring administrative expenses set forth in 11 C.F.R. 104.11. Thus, these bills should not have been included in the debt schedule analysis. *See* Exhibit 3 and Exhibit 6.

The inclusion of telephone payments as debt reporting errors is flawed in another significant respect. The Committee was required by telephone vendors to pledge letters of credit to the telephone company prior to obtaining telephone service.[9] This means that the Committee **paid in advance** for service it anticipated using and no debt was incurred. Letters of credit amounts were fully disclosed by the Committee.

No debt is incurred when a Committee's outstanding obligation is less than the amount it has prepaid. The Audit analysis made no effort to offset the amount payable by the amount of the Committee's deposits to determine whether the questioned invoices even represented debts. The auditors thus included as reportable debts amounts which the Committee had

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[8]Telephone expenses are also considered administrative expenses in other contexts within the Regulations, i.e. corporate PACs (*see* 11 CFR 114.1(b)) and convention committees (*see* 11 CFR 9008.7(a)(4)(x)).

[9]The Committee had the following letters of credit: AT&T from 8/8/92 -10/25/92 ($200,000) and 10/26/92 to 1/1/93 ($100,000); Southwestern Bell from 8/4/92 to 9/4/92 ($50,000); 9/5/92 to 10/6/92 ($75,000) and 10/7/92 to 1/1/93 ($115,000); U.S. West Communications from 3/4/92 to 3/31/93 in the amount of $55,000.

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actually pre-paid, and which, therefore, were not debts of the Committee at all. Reporting these amounts as debts would have been misleading and would have presented an inaccurate financial picture, since the letters of credit were already reported as outstanding committee obligations.

Accordingly, $503,665.35 (the amount of the telephone expenses) should not be included as unreported debts. *See* Exhibit 7.

TOTAL-- $503,665.35

C. Bank Drafts

The auditors erroneously included payments made by bank drafts in their analysis. Bank drafts are preprinted in denominations of $25, $50, $100 and $500 and were written for amounts not to exceed the face value. Drafts were used for immediate payment of expenses such as car rental, hotel, etc... which must be paid at the time the invoice was presented. Drafts were not used to pay outstanding obligations that had been previously billed to the Committee; they were used only for circumstances in which immediate payment was required. Once the individual using the draft had the invoice in hand, the draft was exchanged as payment. *See* Exhibit 8. Accordingly, $4,276.96 should not be included as unreported debt.

TOTAL -- $4,276.96

D. Future Now

The auditors erroneously contend that $119,366.12 in debt to Future Now was not properly reported by the Committee. The actual amount of debt which was allegedly misreported is $34,191.91. ($119,399.12 - $85,174.21 (multiple counting of the same amount by the auditors.) However, $34,191.91 was not an amount which the Committee could have or was obligated to report as debt, because Future Now issued duplicate bills to the Committee.[10]

The duplicate billing issue required extensive research to rectify because the vendor had previously submitted invoices for identical computer equipment which had previously been paid for by the Committee. Once the duplication issue was resolved, the Committee made

[10]The Manual specifically states at page 150 that a "committee shall report a disputed debt in accordance with 11 C.F.R. 104.3(d) and 104.11 if the creditor has provided something of value to the committee." (emphasis added). *See* Exhibit 3. In this situation, since the amounts represented duplicate billings, the creditor had not provided something of value to the committee. Moreover, had the Committee paid these invoices, the amounts would have been treated as non-qualified campaign expenses since there were duplicate billings.

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immediate and timely payment. Had the Committee reported the entire amount of the Future Now invoices as a debt, it would have presented a distorted picture of the Committee's financial position. Accordingly, $119,399.12 should not be included as unreported debts.

TOTAL -- $119,366.12

E. Debts Not Reported on Debt Schedules but Timely Paid

Among the debts questioned by the auditors, a number of invoices were paid within 15 days of the date received by the Committee. In addition, a significant number of invoices were paid approximately 30 days from the invoice receipt date. *See* Exhibits 4 and 9. These payments illustrate that once received by the Committee, invoices were immediately processed for payment. These payments also illustrate that the Committee had a systematic procedure in place to timely pay bills. The Commission has long recognized that payments made within 30 days have been made within a commercially reasonable time.

Some of the debts fell over the closing date for the particular reporting period, yet they were paid prior to the date that the report was due. Although this may be a technical violation, it is not a material one. The Committee showed good faith in processing invoices for payment in a timely manner. Once paid, the invoices did not represent debts to the Committee.

Amending debt schedules would have been unreasonably burdensome as well as unnecessary for public disclosure purposes since the debt would have been reported on an amended debt schedule filed at the same time as the Schedule B showing that the debt had been paid. In other words, amending debt schedules would be unnecessary because payment of the debt would have been reported as a disbursement at the same time or before the Committee filed its amended debt schedules showing the amount as a debt. Therefore, the Committee's financial position was accurately represented at all times and the staff's allegations that the Committee misrepresented its debt position is meritless.

Accordingly, the invoices paid within 15 or 30 days (totaling $43,731.92) should not be included as unreported debts.

TOTAL -- $43,731.92

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F. Finally, Even If The Commission Adopts The Invoice Date Rule, The Alleged Amount Of The Violation Set Forth In The Reason-to-Believe Finding Is Erroneous Because The Amount Includes Multiple Counting of the Same Debts

Even if the Commission adopts a new debt reporting rule (such as the date of the invoice or the date of the invoice + 10 days) in the context of this enforcement action, the Audit Division's method of calculating the amount of the violation must be rejected because it unfairly exaggerates the amount of unreported debt. *See* Exhibit 10. For example, an invoice by Hogan & Hartson in the amount of $34,954. was purportedly not reported on three reports. The violation was calculated at an amount of $104,862.00, three times the alleged reporting error and three times the actual invoice amount. Double and triple counting one debt occurred frequently in the audit analysis.[11] This approach does not accurately reflect the type, nature and amount of violations. Such a method of calculating the amount of the violation results in a violation amount totally out of proportion with the nature and number of errors.

Moreover, even if the auditors have used multiple counting of debts in the past to calculate reporting errors in the audit context, it is totally inappropriate to use the multiple counting of debts in an enforcement context to determine the amount of a violation when the Commission has never before pursued debts and obligations reporting errors against Presidential committees in the enforcement context.

It is disingenuous for the Audit Division to devise an amount in violation which bears no relation to the amount allegedly required to be disclosed. Accordingly, $483,210.69 (of exaggerated amounts in violation) should not be included as unreported debts.

TOTAL -- $483,210.69

III. CONCLUSION

For the Commission's convenience, the Committee has attached as Exhibit 11, a summary of the amounts of properly reported debts by category which demonstrate that the Committee complied materially with the disclosure of debt requirements of 2 U.S.C. 434(b)(8). Specifically, of the $1,207,730 reporting error amount set forth in the Reason-to-Believe finding, the Committee has demonstrated that the alleged reporting error amount is, at a maximum, **only $164,184.62.**

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[11] The amount of the actual debt does not double every 30 days, and it is disingenuous for the audit staff to double it, simply to inflate the apparent amount of the violation.

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An alleged reporting error of $164,000, out of a general election expenditure [illegible] of some $55 million, is a nominal amount which should be taken into consideration by the Commission. Clearly, the Committee Treasurer had procedures in place, so that nearly all of the Committee's expenditures were correctly reported. The procedures, along with the nominal amount of the actual reporting error, demonstrate that the Committee's Treasurer exercised best efforts to comply with the record keeping and reporting requirements of the Act.

Where, as here, a Treasurer exercises such best efforts, the reporting requirements of the Act are satisfied, and a committee need not take corrective action, nor is a civil penalty required. In the legislative history accompanying the 1979 amendments to the Act, Congress specifically clarified the effect of the exercise of best efforts--

> "The best efforts test is specifically made applicable to record keeping and reporting requirements in both Title 2 and Title 26. The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain and submit the information required by the Act. If the Treasurer has exercised his or her best efforts, the committee is in compliance. Accordingly the application of the best efforts test is central to the enforcement and record keeping reporting provisions of the Act. It is the opinion of the Committee that the Commission has not adequately incorporated the best efforts test into its administrative procedures..."(emphasis added).[12]

By unfairly exaggerating the amount in violation, the auditors would mislead the Commission into believing that the Committee kept artificially large amounts of spending off the public record. This is simply not the case. The Committee exercised best efforts to ensure full and accurate disclosure.

Furthermore, it is our belief that the Audit Division has never previously [illegible] the debts of any other campaigns in the same manner it has in this instance. The [illegible] assessment of these alleged reporting errors in the 1991-92 election cycle as vi[illegible] [illegible] in disparate treatment of the Committee vis a vis prior [illegible] [illegible] regulations. This application of a new debt reporting rule in this [illegible] [illegible] the clear and explicit intent of the law, it also violates fundamental prin[illegible]

[12] P.L. 96-187

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For the reasons set forth above, the Committee respectfully requests that the Commission take no further action and close the file in this matter.

Respectfully submitted,

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7043840091

CLINTON/GORE '92 COMMITTEE -

SUPPLEMENTAL RESPONSE

Exhibit 1 -- Summary Schedule of Properly Reported Debt

Exhibit 2 -- Auditors' workpapers - "Determination if Reporting of Debt is

Exhibit 3 -- Financial Control and Compliance Manual, January , 1992 -

Exhibit 4 -- Committee spreadsheet showing dates of receipt for invoi

Exhibit 5 -- Schedule of Total Amounts of Debt Properly Reported

Exhibit 6 -- Memorandum by Committee Accountant re: discussion wi
Director of the of theAudit Division, Joe Stolz on proper
obligations

Exhibit 7 -- Total Amount of Telephone Invoices that Were Improp
Debts

Exhibit 8 -- Schedule of Drafts Improperly Treated as Unsupported Debts

Exhibit 9 -- Schedule of Timely Reported Debts

Exhibit 10 -- Schedule of Duplicate Amounts of Alleged Debt Rep

Exhibit 11 - Total Amount of

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TOTAL
REASON-

TOTAL
WORK

TOTAL
DATE OF

TOTAL

TOTAL

840093

EXHIBIT 2

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CLINTON/GORE '92 COMMITTEE

Schedule of Debts Not Reported Correctly

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amount	Check # or Payment	Amount Reported	Error Amount
Hertz Rental Car						
September Expenses - Richmond/Atlanta	—	9/14/92	21.38	[illegible]	—	21.38
Pre-Legal - Same		9/14/92	21.38	[illegible]	—	21.38
Hitel Mobile						
August (501) 660-1002	67100000	8/14/92	11.44	5062		
(501) 680-4574	8/1/92	8/14/92	1.00	6183		
(501) 680-1024	8/1/92	8/14/92	31.3	6418		
(501) 680-1023	8/1/92	8/14/92	39	6583		
(501) 680-3712	8/1/92	8/14/92	22	6951		
(501) 680-6577	8/1/92	"	220	"		
(501) 680-0780	8/1/92	"	792	7005		
(501) 680-3693	8/1/92	"	624	7248		
Total Debt - Aug. Report			92.11		—	92.11
September Report - (501) 680-8571	9/1/92	8/18/92	10.58	6132		
(501) 680-6555	9/1/92	8/18/92	31	6414		
(501) 680-3712	9/1/92	"	22	"		
(501) 680-1024	9/1/92	8/18/92	31.3	"		
(501) 680-0780	9/1/92	8/18/92	325	"		
(501) 680-1023	9/1/92	8/18/92	39	6583		
(501) 680-3683	9/1/92	8/18/92	164	"		
(501) 680-6555	9/1/92	8/18/92	769	"		
(501) 680-3721	9/1/92	8/18/92	409	"		
(501) 680-3712	9/1/92	8/18/92	22	6951		
(501) 680-6577	9/1/92	"	220	"		
(501) 680-0780	9/1/92	"	792	7005		
(501) 680-3693	9/1/92	"	624	7248		
(501) 680-6577	9/1/92	9/18/92	69	"		
(501) 680-2601	9/1/92	"	8284	9589		
(501) 680-1024	9/1/92	"	160	10750		
(501) 680-1023	9/1/92	"	27	"		
Total Debt - Sept. Report			13385		7921	5463
Pre-Legal Report - (501) 680-3712	9/1/92	8/18/92	22	6951		
(501) 680-6577	9/1/92	"	220	"		
(501) 680-0780	9/1/92	"	792	7005		
(501) 680-3693	9/1/92	"	624	7248		
(501) 680-6577	9/1/92	9/18/92	69	"		
(501) 680-2601	9/1/92	"	8284	9589		
(501) 680-1024	9/1/92	"	160	10750		
(501) 680-1023	9/1/92	"	27	"		
Total Debt - Pre-Leg. Report			10116		1021	9095
Page Total of Errors						23037

SOURCE: Disbursements review / vendor files

PURPOSE: To document reporting of debt problems

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1•144•19+
1•059•58+
313•18+
38•55+
27•37+
220•77+
782•89+
624•49+

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4•211•14+

1•059•58+
31•67+
27•07+
313•18+
375•16+
38•55+
164•94+
769•13+
489•75+
27•37+
220•77+
782•89+
624•49+
68•98+
8•204•22+
160•31+
27•20+

017

13•305•38+

13•305•35+
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9•483•94+

27•37+
220•77+
782•89+
604•48+
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8•204•22+
160•31+
27•20+

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18•116•38+
1•031•23-

000

9•003•19+

[illegible]

000

23•097•21+

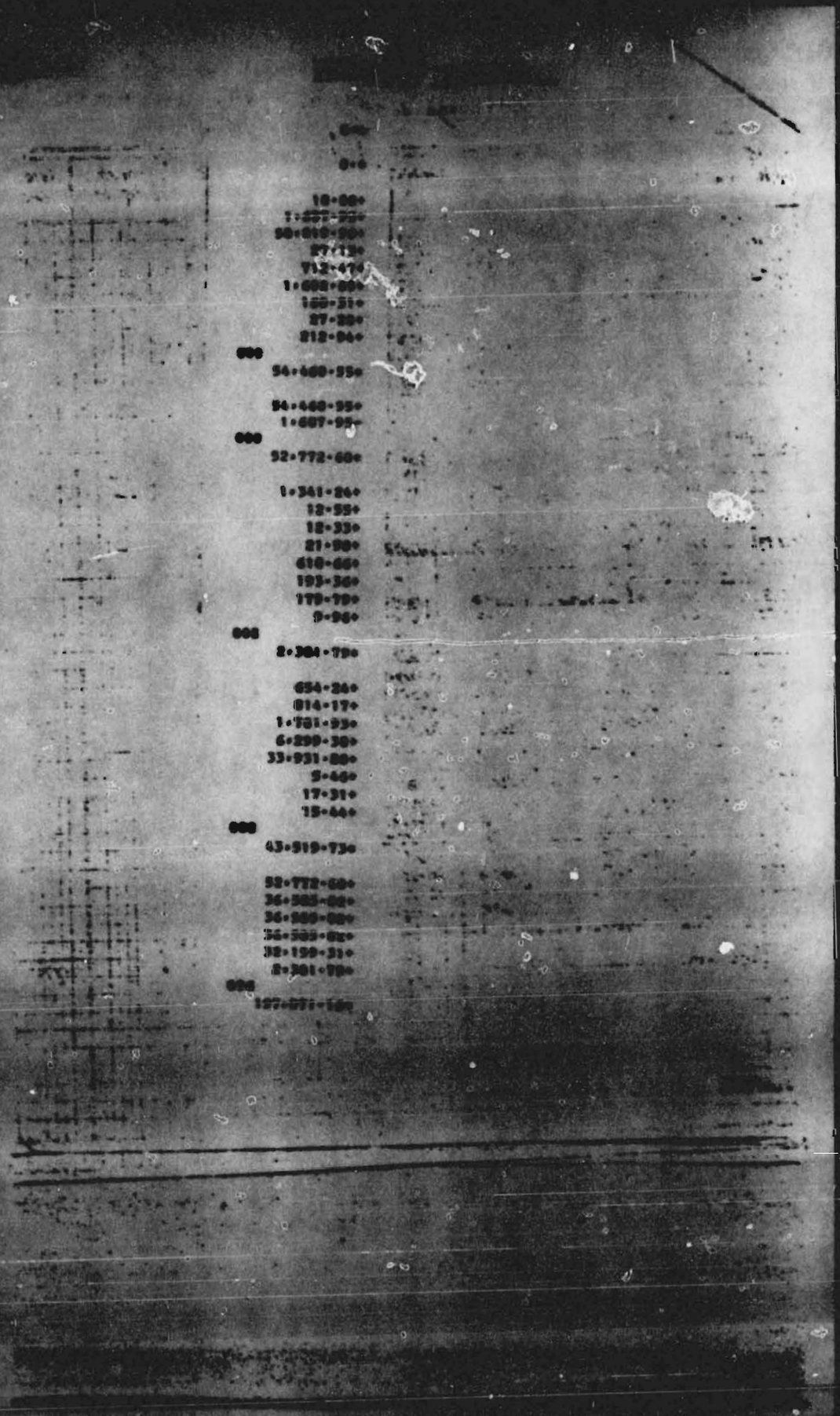
CLINTON/GORE '92 COMMITTEE

See Page 6

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amt	Check #	Amount Reported	Error Amount
AT&T Mobile - continued						
Post-General Rept - (501) 686-3125	110	8/4/92	10	9743		
(501) 686-4974	10	10/1/92	16.92	9723		
(501) 686-7601	10	10/1/92	50.15	9721		
(501) 686-3721	10	10/1/92	37	"		
(501) 680-4974	10	10/1/92	7.12	"		
(501) 280-8245	11	11/5/92	1.02	"		
(501) 686-10324	9	9/8/92	1.60	10230		
(501) 686-1873	8-18-92	"	37	"		
(501) 678-8669	11	8/4/92	2.12	"		
Total Debt - Post-General			54.46		16.87	52.72
Arkansas Employment Security						
Pre-General	—	9/30/92	36.95	12002	—	36.95
Post-General	—	"	36.95	"	—	36.95
Year-End	—	"	36.95	"	—	36.95
AT&T (Hunt, AJ)						
Year-End Report	12/1/92	12/1/92	20.59	10702	—	20.59
AT&T (Kansas City)						
Pre-General Rept (20592-8000)	10	10/3/92	13.91	9129	—	—
(615) 735-0173	9	9/8/92	.12	10400		
(615) 735-0173	9	9/8/92	.12	"		
(512) 338-[illegible]	9	9/2/92	.21	10551		
(502) 695-4824	8-4-92	8/26/92	6.18	Drafts		
(304) 344-5092	3-4-92	9/3/92	1.93	8-4-92 3942		
(405) 236-2535	3561.2	9/24/92	1.75	Draft 3942		
(405) 235-7337	936.28	9/6/92	9.[illegible]	Draft 3942		
Total Pre-General Debt			23.71		—	23.71
Post-General Report (502) [illegible]	10	10/5/92	6.54	9720		
(502) 695-[illegible]	10	10/1/92	9.14	"		
(315) 346-[illegible]	11	11/3/92	1.71	"		
(302) 552-[illegible]	11	11/3/92	6.99	"		
(501) 370-[illegible]	11	11/4/92	339.31	9872		
(501) 378-[illegible]	10	10/6/92	5	10031		
"	9	9/8/92	17	"		
"	11	10/8/92	15	"		
Amount to Complete Carried			438.15			
Page Total						197.21
POSTS } See Page 6						

9704384000097

9704384009 8



Vendor Name	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Applied	Error Amount
Invoices Paid						
[illegible]						
[illegible]						
[illegible]

9.0

0.0

43,519.73+
12.50+
12.33+
132,130.46+
21.90+
547.00+
996.22+
9.46+
613.43+
449.11+
5.49+

011

178,313.68+

132,130.46+
21.90+
161.59+
7,082.43+
547.00+
996.22+
5.46+
329.23+
613.43+
190.37+
76.69+
36.16+
559.52+
449.11+
53.80+
176.78+
5.49+
21.25+
5.70+
5.15+
7.66+
5.45+
5.66+
5.46+
182.83+
5.70+
26.46+
5.15+

028

143,727.91+

9 7 0 4 3 8 4 0 1 0 C

CLINTON/GORE '92 COMMITTEE

See Page 1

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amt	Check #	Amount Reported	Error Amount
AT&T (Dallas)						
September - Acct # 131 097-5837	2497 5826	9/7/92	74	5596		
Acct # 131 097-5853	1285 1958	"	71	6056		
Acct # 131 097-5865	980 797	"	495	6159		
Acct # 131-097-5848	980 792	"	71	6415		
Total Sept Debt			713		641	71
Post-G - Kansas City			1,783.13			
# 131 097-3990	10/7/92	10/7/92	86	9289		
# 131-097-5530	11/7/92	11/7/92	2,838	9747		
# 131 097 5836	11-07-92	"	25	"		
# 131 097 5853	11/7/92	"	20	9827		
# 131-097-9542	11-7-92	"	5,1036	"		
# 131 097-3990	11/7/92	"	97	10,030		
# 131 097-5865	11-7-92	"	1,696.3	"		
# 131 100-3390	11/7/92	"	229	10209		
# 131 100-3351	11-7-92	"	79	"		
# 131 097-5848	11/7/92	"	20	"		
Total Post-G Debt			24,917.76		65,629	1,288,146
New End - Kansas City			1,437.27			
Acct # 131 097-5530	12/7/92	12/7/92	13	10410		
# 131 100-3390	11/7/92	11/7/92	229	10209		
# 131 100-3351	11-07-92		79	"		
# 131 097-5848	11/07/92	"	20	"		
# 131 097-9542	11-07-92	12/7/92	2,848	"		
# 131 097-5865	12/07	"	405	"		
Total New End Debt			4,723.68		161,169	—
Carville & Begala						
September	8/6/92	8/6/92	4,131			
	9/3/92	9/3/92	543			
Total September Debt			4,674		—	4,674
City of Philadelphia						
September	10/5/921	8/4/92	23,570	10,054	—	23,570
Pre-General			23,570		—	23,570
Post-General	10/5/921	8/6/92	1/ 19,776	10,054		
	10/20/92	10/6/92	2/ 30,116	10,054		
Total Post-General Debt			49,892		—	49,892
Page Total						

1/ Remainder of bill paid 10-22-92 per check # 10002
2/ " " " " " " 9: 5903

SOURCE } See Page 1
PURPOSE }

9704384010 1

6.0

0.0

74.75+
71.65+
495.36+
71.65+
004
713.61+

713.61+
641.96-
000
71.69+

178.313.68+
86.57+
2.838.16+
25.26+
20.60+
51.256.65+
93.34+
16.963.39+
278.49+
79.89+
20.60+
011
249.976.63+

249.976.63+
65.629.89-
000
184.345.74+

143.727.91+
13.41+
278.49+
79.89+
20.60+
2.840.46+
408.12+
007
147.363.88+

4.121.42+
553.55+
002
4.674.97+

19.276.48+
30.116.17+
002
49.392.65+

49.392.65+
23.570.99+
23.570.99+
4.674.97+
184.345.74+
71.65+
006
285.627.99+

9704384010 2

CLINTON/GORE '92 COMMITTEE

See Page 1

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Reported	Error Amount
Copy Systems, Inc.						
September	2091900005	9/19/92	633 -	5904		
	2091900006	"	1066 -	"		
	2091900008	"	917 43	"		
	2091900010	"	7184 52	"		
	2091900012	"	7229 81	"		
	2091900015	"	10361 16	"		
	2091900017	"	865 [illegible]	5948		
	2091900016	"	381 [illegible]	"		
	2091900013	"	424 -	"		
	2091900001	"	211 -	"		
	2091900018	"	381 22	"		
	2091900013	"	1672 45	6166		
	2091900004	"	633 -	"		
	2091900007	"	1180 45	6430		
	2091900019	"	791 [illegible]	"		
	2091900209	"	12 [illegible]	"		
	2091900010	"	844 -	"		
	2092600129	8/28/92	895 [illegible]	6959		
	2092600200	8/26/92	227 [illegible]	"		
	2092600258	"	105 [illegible]	"		
	2092600252	"	13 [illegible]	"		
	2092600254	"	475 [illegible]	"		
	2092900186	"	63 [illegible]	"		
	2092900112	9/29/92	949 [illegible]	"		
	2091900021	9/19/92	263 [illegible]	7011		
	2092600251	8/26/92	147 [illegible]	"		
	2091900210	9/19/92	1582 [illegible]	7222		
	2091900009	9/19/92	922 -	"		
	91792	9/17/92	395 -	8419		
	2091900037	9/19/92	363 [illegible]	"		
	2091600096	9/16/92	506 [illegible]	9603		
	2092900097	9/29/92	8818 [illegible]	10804		
	2092900107	9/29/92	1721 [illegible]	12011		
Total September Debt			47579 [illegible]		35639 62	11939 [illegible]
Personal	2092900129	8/28/92	895 [illegible]	6959		
	2092600200	8/26/92	227 [illegible]	"		
	2092600258	"	105 [illegible]	"		
	2092600252	"	13 [illegible]	"		
	2092600254	"	475 [illegible]	"		
	2092900186	"	63 [illegible]	"		
	2092900112	8/29/92	949 [illegible]	"		
Total to Carry Forward			2327 [illegible]			11939 [illegible]
Page Total						

SOURCE: PURPOSE: } See Page 1

97043840103

0.0

0.0

633.00+
1,265.00+
817.63+
7,104.69+
7,773.01+
10,351.10+
859.10+
301.89+
422.00+
211.00+
331.79+
1,572.64+
633.00+
1,193.13+
711.25+
10.50+
814.00+
485.30+
227.89+
105.50+
13.19+
474.75+
63.30+
949.50+
253.75+
147.70+
1,572.50+
422.03+
395.00+
353.99+
525.40+
4,410.87+
033 1,721.19+

47,379.45+

47,379.45+
000 35,639.64-

11,739.91+

485.30+
227.89+
105.50+
13.19+
474.75+
63.30+
037 949.50+

2,319.47+

9704384 0104

CLINTON/GORE '92 COMMITTEE

See Page 1

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Reported	Error Amount
Copy Systems Inc.						
Previous - continued			2317			
	209190023	9/9/92	263	7011		
	209240251	9/24/92	147	"		
	209240008	9/24/92	1155	7272		
	210010053	10/1/92	1139	"		
	209180040	9/18/92	1582	"		
	209190009	9/19/92	422	"		
	209240009	9/24/92	9114	8419		
	91282	9/28/92	385	"		
	209190035	9/19/92	263	"		
	209160006	9/16/92	506	8603		
	209250017	9/25/92	9410	10804		
	209280138	9/28/92	132	"		
	209080167	9/8/92	1221	12011		
Total Previous Debt			23698		2030	20947
Post-General	211030017	11/3/92	560	9258		
	211030016	"	2019	"		
	211060582	11/6/92	949	10594		
	211060581	"	900	"		
	209250017	9/25/92	4410	10804		
	211100038	11/10/92	1392	"		
	211060014	11/6/92	19	"		
	211030011	11/3/92	1266	"		
	211030021	11/3/92	3560	"		
	210290017	10/29/92	132	"		
	210130177	10/13/92	685	"		
	210130187	10/5/92	495	"		
	209280138	9/28/92	132	"		
	210210031	10/21/92	787	12010		
	209080167	9/8/92	1221	12011		
Total Post General Debt			18940			18940
Per End	211200010	11/20/92	301	10594		
	211060582	11/6/92	949	"		
	211190004	11/19/92	49	"		
	211060581	11/6/92	900	"		
	211170003	11/17/92	156	10714		
	211270001	"	63	"		
	211270005	"	333	"		
	211270006	"	1469	"		
	211270007	"	1318	"		
Total to Next Page			5619			
Page Total						

SOURCE: } See Page 3
PURPOSE: }

97043840105

0.0

0.0

2,319.42+
263.75+
147.70+
1,159.40+
1,139.40+
1,582.50+
422.00+
9,114.09+
395.00+
363.98+
506.40+
4,410.87+
132.93+
1,721.18+

014

23,678.62+

23,679.62+
2,730.87-

000

20,947.75+

540.02+
2,019.36+
949.50+
900.00+
4,410.87+
1,392.60+
14.24+
1,266.00+
3,540.22+
132.93+
685.63+
245.48+
132.93+
949.50+
1,721.18+

015

18,940.46+

18,940.46+
20,947.75+

002

39,888.21+

308.06+
949.50+
49.50+
900.00+
156.29+
63.81+
933.04+
1,460.27+
398.73+

009

5,219.20+

9704340106

CLINTON/GORE '92 COMMITTEE

See Page 1

der Name	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Reported	Error Amount
Reporting Period						
Systems, Inc.						
Year-End Continued			5219			
	21217000107	10/12/92	295	10714		
	21217000109	"	1392	"		
	21217000111	"	369	"		
	21217000210	"	3969	"		
	10825000197	8/25/92	9410	10809		
	21111000138	11/11/92	1392	"		
	21118000114	11/6/92	19	"		
	21103000119	11/3/92	1266	"		
	21103000121	"	3560	"		
	21624000117	10/6/92	1332	"		
	21013000177	10/13/92	675	"		
	21005000197	10/5/92	295	"		
	20928000138	9/28/92	1332	"		
	21021000103	10/1/92	999	12010		
	20908000167	9/8/92	1721	12011		
Total Year End Debt			25753		2871	22882
...tech Inc						
August	21563	8/13/92	990	6434	9896	—
September	21563	8/13/92	990	6434		
	21562	7/13/92	1715	7717		
Total September Debt			1706		2110	—
Post-General	1113052	11/1/92	2/ 8938	9866		
	1112992	11/12/92	2569	9877		
Total Post-General Debt			11503		—	11503
...ters Late						
September	3719	8/28/92	680	6192		
	3725	"	759	"		
	3717	"	1430	"		
	3718	"	1614	"		
	3716	"	1130	"		
Total September Debt			5614		—	5614
Total						40000

...ent of Bill Already Paid by primary - not a debt of general
...nd payment due on advertising services agreement

SOURCE } See Page 1
PURPOSE }

9704340107

0.0

0.0

5.219.20+
295.67+
1.392.82+
369.55+
3.964.94+
4.610.87+
1.392.60+
14.24+
1.266.00+
3.560.22+
132.93+
685.63+
245.48+
132.93+
949.50+
1.721.18+

016

25.753.36+

25.753.36+
2.871.71-

000

22.881.65+

990.49+
715.80+

002

1.706.29+

8.934.00+
2.569.76+

002

11.503.76+

680.12+
759.38+
1.430.40+
1.614.68+
1.130.35+

005

5.614.73+

5.614.73+
11.503.76+
22.881.65+

003

40.000.144

9704304108

CLINTON/GORE '92 COMMITTEE

See Page 1

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Reported	Error Amount
Hogan & Hartson						
Pre-General	100192	10/1/92	34953	10223	—	34953
Post-General	"	"	34953	"	—	34953
Year-End	"	"	34953	"	—	34953
Fraction Brothers						
July	32761	7/20/92	5022	1205		
	32765	"	4655	1274		
	32762	"	42	"		
	32763	"	4647	"		
	32763	"	5490	"		
	32760	"	5012	1208		
Total July Debt			23877		—	23877
Pre-General	33713	9/28/92	265	9255		
	33709	9/30/92	378	"		
	32860	7/09/92	4004	10272		
Total Pre-General Debt			4647		4328	319
Post-General	33862	10/7/92	665	10800		
	32860	7/09/92	4004	10272		
Total Post-General Debt			4669		—	4669
Year-End	32001	12/9/92	349	10272		
	32860	7/09/92	4004	"		
Total Year End Debt			4354		—	4354
Michael Sheehan Associates						
August	8/2029.92	8/13/92	1500 -	3031	—	1500 -
Pre-screen	2026.92	7/20/92	4882 -	9436	—	4882 -
Pressive Productions						
Post-General	5106	11/2/92	2382	10680	—	2382
Year-End	5106	"	2382	"	—	2382
Production Support Services						
August	80092	8/20/92	1048 -	10489	—	1048 -
September	80092	"	1048 -	"	—	1048 -
Post-General	80092	"	1048 -	"	—	1048 -
Year-End	80092	"	1048 -	"	—	1048 -
Page Total						152050

SOURCE: } See Page 1
PURPOSE:

9704384 0109

0.0

0.0

5,022.03+
4,653.56+
42.82+
4,247.89+
5,490.30+
3,018.70+
006
22,477.30+

265.66+
378.58+
4,004.70+
003
4,648.94+

4,648.94+
4,329.33-
000
319.61+

4,004.70+
669.86+
002
4,674.56+

349.68+
4,004.70+
002
4,354.38+

34,953.63+
34,953.63+
34,953.63+
22,477.30+
319.61+
4,674.56+
4,354.38+
1,500.00+
4,887.00+
2,392.33+
2,392.33+
1,048.00+
1,048.00+
1,048.00+
1,048.00+
015
152,050.40+

9704304011C

CLI N/GORE '92 CO TEE

See Page 1

Vendor Name / Reporting Period	Invoice #	Invoice Date	Invoice Amount	Check #	Amount Reported	Error Amount
Madison Hotel Atlanta						
Post-General	113097	10/27/92	1085	10648	—	1085
Sprint Texas						
August - (512) 322-2650	81592	8/18/92	61.269	2755		
	94009306 0	8/13/92	1.85	2872		
	94006240 0	7/29/92	1.36	3793		
Total August Debt			62.92		446	62.45
Pre-General - [illegible]	91092	9/10/92	11.41	7037		
	14717497 0	"	16.59	10149		
	92792	9/9/92	3.77	10148		
(512) 322-0555	92892	9/28/92		12037		
Total Pre-General Debt			20.39		11.41	20.27
Post-General	111092	11/8/92	9.41	9856		
	11-10-92	11/10/92	11.37	"		
	14717497 0	9/10/92	16.59	10149		
	92792	9/9/92	3.77	10148		
	92892	9/28/92		12037		
Total Post-General Debt			41.09		20.80	20.27
Squier, Eshman, Knapp, Dicks						
Post-General	452-614	10/8/92	58.98 -	9954		
	102-015	"	71.48 -	9955		
	82892B	"	58.98 -	9956		
	82892C	10/8/92	104.07	9957		
Total Post-General Debt			287.51		—	287.51
Page Total						955.38
Total All Pages						941.312
Add Total of Errors From Printout						266.418
Total of All Errors						1207.730

SOURCE: }
PURPOSE: } See Page 1

9704380111

0.0

0.0

61.289.94+
186.30+
3.036.87+

003

62.492.13+

62.492.13+
446.76-

000

62.045.37+

11.41+
1.654.54+
372.52+
0.78+

004

2.039.25+

2.039.25+
11.41-

000

2.027.84+

941.26+
1.138.89+
1.654.54+
372.52+
0.78+

005

4.187.99+

4.187.99+
2.086.15-

000

2.027.84+

5.898.00+
7.148.00+
5.298.00+
10.407.75+

004

28.751.75+

28.751.75+
2.027.84+
2.027.84+
62.045.37+
1.089.94+

005

95.938.74+

95.938.74+
23.057.21+
197.871.16+
285.627.99+
11.739.81+
39.888.21+
40.000.14+
152.050.40+
95.938.74+

009

941.312.40+

941.312.60+
266.418.08+

002

1.207.730.48+

9704384011 2

EXHIBIT 3

9704384011 3

F. DEBTS AND OBLIGATIONS

1. General

In addition to the recording and reporting of receipts and expenditures, the committee is required to record and report debts and obligations it owes and that are owed to it. Debts and obligations are reported on FEC Form 3P, page 1, Line 11 (Debts Owed to the Committee) and Line 12 (Debts Owed By the Committee) and itemized on Schedule C-P (Loans) or Schedule D-P (Debts and Obligations), as applicable. The committee must continue to report debts and obligations on each subsequent report and itemize them on Schedule C-P or D-P (as applicable) until they are extinguished or settled (in a manner permitted by 11 C.F.R. 116.7). For a discussion of loan disclosure, see Chapter IV, Section D.12.a. (Manually Prepared Expenditure Reports).

2. Debts and Obligations Owed To The Committee

The total amount of all debts and obligations owed to the committee are included on Line 11. Any of the following would constitute a debt owed to the committee and must be reported:

- Unpaid bills submitted to media representatives and secret service personnel for travel on committee chartered aircraft; and
- Credits or other amounts due the committee as a result of over payments or duplicate payments made.

Unpaid bills, credits or other amounts due the committee, other than loans, should be itemized on Schedule D-P. Each entry on Schedule D-P must contain the debtor's full name and address, nature of debt (purpose), outstanding balance beginning of the period, amounts incurred and payments received during the period, and outstanding balance at close of the reporting period. A reporting example for Schedule D-P is shown below:

SCHEDULE D-P
Federal Election Commission
Washington, D.C. 20463

DEBTS AND OBLIGATIONS EXCLUDING LOANS

PAGE 1 OF 1
LINE NUMBER: 11

NAME OF COMMITTEE (In Full) Smith For President	OUTSTANDING BALANCE BEGINNING THIS PERIOD	DATE AND AMOUNT INCURRED THIS PERIOD	PAYMENT THIS PERIOD	OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor ABC Printing Co. 200 Second Street Washington, D.C. 20002	$1,000	$-0-	$300	$700
Nature of Debt (Purpose): Overpayment of printing expense				

NOTE: The $300 refund received by the Committee would also be itemized on a Schedule A-P for the reporting period.

9704384011 4

Interest income received on debts owed to the committee must be reported on FEC Form 3P, page 2, Line 21 (Other Receipts). Interest income may also have income tax consequences (refer to Chapter VIII, Taxable Income).

Refundable deposits need not be disclosed on Schedule D-P for Line 11 since (1) often the amount changes as the activity increases or decreases throughout the campaign, and (2) frequently the refundable deposit(s) is applied in whole or in part to the final billing from the vendor. However, the candidate must keep an accurate and up-to-date record of refundable deposits since the amount outstanding has a direct relationship to expenditure limitations (Overall and State). For example, when a refundable deposit is made (for operating purposes - Line 23), it is charged to the Overall Spending and/or State Limitation(s) while the amount recovered, if any, is subtracted from the applicable limitation. In order to have an accurate picture of the committee's financial position at any point in time, the value of refundable deposits outstanding must be known. This information will be an important factor in the calculation of the Net Outstanding Campaign Obligations with respect to the repayment calculation.

For many campaigns the majority of the debts owed to the campaign relate to press and secret service travel on committee chartered aircraft. If a significant volume of such transactions are anticipated, the campaign may wish to consider an automated system that will produce the necessary billings and the necessary schedules for disclosure reports. These systems can also track balances owed by the various "customers" and provide reports that show the age of accounts receivable to facilitate prompt follow-up if payments are not timely received.

3. <u>Debts and Obligations Owed By The Committee</u>

The total amount of all debts and obligations owed by the committee is included on FEC Form 3P, Page 1 Line 12. Debts owed by the committee usually fall into two categories: accounts payable in the ordinary course of business and loans to the committee (or to the candidate if the candidate receives a loan which in turn is loaned to the committee). For a discussion of loans owed by the committee, see Chapter IV, Section D.12. (Manually Prepared Expenditure Reports).

Accounts payable consist of bills on hand which are unpaid at the end of the reporting period. Accounts payable in an amount in excess of $500 to the same payee must be reported on Line 12 and itemized on Schedule D-P. Amounts of $500 or less owed to the same payee need not be reported until outstanding for 60 days or more. Any obligation incurred for rent, salary, or other regularly recurring administrative expense shall not be reported as a debt before payment is due. Also, if the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the committee shall either amend the report(s) containing the estimate

or indicate the correct amount on the next report (11 C.F.R. §104.11). A reporting example for Schedule B-P supporting Line 12 is shown below.

SCHEDULE D-P
Federal Election Commission
Washington, D.C. 20463

DEBTS AND OBLIGATIONS EXCLUDING LOANS

Use separate schedule(s) for each category of the detailed summary page.

PAGE 1 OF (total pages) 1
LINE NUMBER 12

NAME OF COMMITTEE (In Full) Smith For President	OUTSTANDING BALANCE BEGINNING THIS PERIOD	DATE AND AMOUNT INCURRED THIS PERIOD	PAYMENT THIS PERIOD	OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
A. Full Name, Mailing Address and Zip Code of Debtor or Creditor Able Mailing Co. 500 Baker Street Washington, D.C. 20005	$700	1-0-	$400	$300
Nature of Debt (Purpose): Printing and mailing of farm brochures				

NOTE: The $400 payment made by the Committee would also be itemized on a Schedule B-P for the reporting period.

The reporting of Debts and Obligations owed by the Committee may be accomplished using the automated accounting system. Section D.3. above describes the recording of Accounts Payable. Those which must be reported on Schedule D may be taken from a temporary computer file which contains all payables which were outstanding at the close of the previous reporting period, plus all obligations incurred during the current period. It will be necessary to be able to print the name and address of the creditor, the purpose of the obligation, the balance at the beginning of the reporting period, additional amounts incurred for that vendor during the reporting period, payments during the period and the ending balance. A date incurred is needed to determine when a debt of $500 or less has been outstanding for more than 60 days (the request date from the Commitment/Expense form may be used). In addition, the committee will need the ability to select all debts with an ending balance in excess of $500 and all debts which appeared on the preceding Debt and Obligation schedule, regardless of the balance at the end of the current reporting period. The aggregation of multiple amounts owed to a single creditor and identifying payments which relate to a pre-existing payable are accomplished by using the creditor's Vendor Identifier and the Voucher Number. All of the data required for the accounts payable system is contained on the Commitment/Expense Authorization Request.

In order to simplify the software required to report Debts and Obligations owed by the committee, the committee may wish to report all debts owed by the committee regardless of amount or age. This eliminates the need to aggregate multiple amounts owed to the same creditor and the need to determine the age of the payables [illegible] or less. [illegible] payable which [illegible] period, but were paid [illegible]

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4. Debt Settlement Plan

Any authorized committee shall not settle any outstanding debt for less than the entire amount owed if any other authorized committee of the same candidate has permissible funds available to pay part or all of the amount outstanding. An authorized committee that qualifies as a terminating committee under 11 C.F.R. §116.1(a), that has no cash on hand or assets, may assign debts to another authorized committee of the same candidate to the extent permitted under applicable state law, and provided the committee assigning the debts was not organized to further the candidate's campaign in a future election. If a Presidential candidate elects to receive federal funds, the authorized committee of that candidate shall not assign or receive assigned debts until after all required repayments under 11 C.F.R. §9038 have been made, and the committee has paid all civil penalties under 2 U.S.C. §437g. An authorized committee that has assigned all of its outstanding debts may terminate if it otherwise qualifies for termination under 11 C.F.R. §102.3 and, the committee that receives the debts notifies the Commission in writing that it has assumed the debts and the accompanying reporting obligations (11 C.F.R. §116.2(c)).

An authorized committee shall not terminate under 11 C.F.R. §102.3 if it has any outstanding debts or obligations, or it has any funds or assets available to pay part or all of the outstanding debts or obligations.

Every terminating committee as defined in 11 C.F.R. §116.1(a) will file at least one debt settlement plan with the Commission prior to filing its termination report under 11 C.F.R. §102.3. The debt settlement plan will provide the following information on each debt covered by the plan:

- the terms of the initial extension of credit and a description of the terms under which the creditor extended credit to nonpolitical debtors of similar risk and size of obligation;
- a description of the efforts made by the candidate and committee to satisfy the debt;
- a description of the remedies pursued by the creditor in similar circumstances involving nonpolitical debtors; and
- the terms of the debt settlement and a comparison with the creditor's other debt settlements involving nonpolitical debtors in similar circumstances.

Each debt settlement plan filed shall include a signed statement from each creditor indicating agreement to the terms of the settlement with that creditor. The plan shall include a statement whether the committee has sufficient cash on hand to pay the total

amount indicated, and if not, what steps the committee will take to obtain funds needed to make the payments.

If the plan does not include settlements for all debts, the plan shall include a separate list of all remaining debts, including debts not subject to debt settlement under 11 C.F.R. §116.7(c). The plan will indicate:

- whether the committee will pay the entire amount still oved on each remaining debt, and if settlement is contemplated, the terms that were offered to the creditors; and

- whether sufficient cash is available to pay the remaining debts or to pay a lessor amount. If not, what steps the committee will take to obtain the funds needed to make the payments.

If the committee expects to have residual funds or assets after disposing of all outstanding debts, the plan shall include a statement on how the residual funds or assets will be used (11 C.F.R. § 116.7). Repayment obligations pursuant to 11 C.F.R. §§9038.2 and 9038.3 may not be settled for less than the entire amount oved. The Debt Settlement Plan may be filed on FEC Form 8.

The Commission will review each Debt Settlement Plan to determine if the debt settlement between the committee and the vendor meets the requirements of 11 C.F.R. §116.4(c) and (d). The committee will continue to report the debt in accordance with 11 C.F.R. §§104.3(d) and 104.11 until the Commission has completed a review of the debt settlement plan, or the Commission has reviewed the request to forgive a debt, or until the political committee pays the debt, whichever comes first (11 C.F.R. §116.4(f)).

Regardless of the amount for which a debt is settled in accordance with 11 C.F.R. §116.7, the committee must consider the original amount of the debt as allocable to the Overall Spending Limitation and, if applicable, to the respective State(s) Spending Limitation at 11 C.F.R. §9035.1(a)(1), unless the lower amount paid is in settlement of a disputed debt. See also 11 C.F.R. §116.10. For example: The Smith For President Committee owes the XYZ Corporation $100,000 for services rendered and has exhausted all reasonable efforts 21/ to satisfy the debt. Similarly, the XYZ Corporation has made a commercially reasonable effort, in accordance with 11 C.F.R. §116.4, to obtain full payment from the committee. Presently, the committee has $50,000 in cash on hand and no other outstanding debts. The committee and the XYZ Corporation have reached agreement on a 50 cents on the dollar settlement and all other conditions in accordance with 11 C.F.R. Part 116 have been satisfied. The committee pays the XYZ Corporation $50,000 in

21/ Reasonable efforts on the part of the candidate and/or committee may include, but are not limited to, fundraising, liquidation of committee assets, etc.

full settlement of the debt after the Commission has reviewed the Debt Settlement Plan filed by the committee. The committee must allocate $100,000 (original amount of the debt) to the Overall Spending Limitation and allocate $100,000 or the allocable portion to the State(s) Spending Limitation if appropriate (11 C.F.R. §9035.1 (a)).

For purposes of this section, a debt settlement shall not be construed to include circumstances in which:

- a creditor and a committee have reached an agreement over the amount of a disputed debt provided that the committee pays the amount agreed; and

- the amount originally reported as owed to a creditor is reduced if both the committee and creditor agree that the original amount reported was an estimate which was more than the actual cost of goods and/or services provided.

5. Creditor Forgiveness or Settlement of Debts

A unincorporated vendor may forgive or settle a debt incurred by a committee for less than the entire amount owed on the debt. The amount forgiven will not be a contribution, if;

- the amount forgiven is exempt from the definition of a contribution under 11 C.F.R. §100.7(b);

- the commercial vendor has treated the debt in a commercially reasonable manner, and the requirements of 11 C.F.R. §§116.7 or 116.8 are satisfied, or;

In the alternative, if the amount forgiven is within the vendor's contribution limitation, the vendor and the committee may agree to treat the forgiveness as a contribution in-kind.

An incorporated vendor may not forgive a debt, unless one of the first two conditions are met (11 C.F.R. §116.4).

6. Disputed Debts

A committee shall report a disputed debt in accordance with 11 C.F.R. §§104.3(d) and 104.11 if the creditor has provided something of value to the committee. Until the dispute is resolved, the committee shall disclose any amounts paid to the creditor, any amount it admits it owes, and the amount the creditor claims is owed. The committee may also note that the disclosure of the disputed debt does not constitute an admission of liability.

If a terminating committee and a creditor have been unable to resolve a disputed debt, and the terminating committee files a debt settlement plan covering other debts or other creditors, the terminating committee shall include in the debt settlement plan a brief description as to the nature of the dispute and the status of

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the terminating committee's efforts to resolve the dispute. It is not necessary for the plan to have a signed affidavit from the creditor involved in the dispute as required by 11 C.F.R. §116.7(e)(2) (11 C.F.R. § 116.10).

G. RECONCILIATION AT CLOSE OF REPORTING PERIOD

The automated accounting system will automatically post the Cash Receipts and Cash Disbursements Journals and the General Ledger. Any manual adjustments may then be posted to complete the committee's recording of its financial transactions. The checkbooks, automated check registers, and the bank statements should be reconciled at the end of every reporting period. The reconciled cash balance must equal the balance in the Cash Accounts in the General Ledger (4000 series) and the amount shown on FEC Form 3P, Line 10 (Cash On Hand At Close Of The Reporting Period).

The campaign's accounting system should be capable of producing the necessary summary totals, after adjustment for any manually recorded transactions, to determine the proper amount to be reported on each receipt and disbursement line of the FEC Form 3P Page 2. For the disbursement section of the form those figures are on the State and Overall Spending Limitation Worksheets discussed above. Total receipts and total disbursements should be reconcilable to the credits and debits on the campaign's bank statements. These reconciliations help to guarantee that the campaigns reported activity is correct and that their position with respect to the various spending limitations is correctly stated both on the disclosure reports and in their internal management reports. Any discrepancies should be researched immediately. Such differences are generally much easier to locate and correct when they relate to recent transactions.

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EXHIBIT 4

9 7 0 4 3 8 4 0 1 2 1

MUR 4173-Debts and Oblig

Vendor	Check #	Amount	Ck Date	Ck Req	Stamp
Copy System	8419	T18610.49			
Copy System	8419	$9,114.09	10/30/92	10/08/92	
Copy System	8419	$395.00		09/17/92	
Copy System	8419	$363.98		10/06/92	
City of Phil.	8502	$4,294.51	10/29/92	10/28/92	Fax 10/28
Copy Systems	8603	T40,465.78			
		$506.40	10/31/92	10/20/92	
AR Emp. Security	12001	$56,302.61	03/05/93	03/05/93	
Copy System	12011	$1,721.18	03/09/93	02/22/93	02/22/93
Copy System	12010	$949.50	03/09/93	03/02/93	03/02/93
Horton Brothers	1806	$3,018.70	08/19/92	08/14/92	
Horton Brothers	1305	$5,022.03	08/09/92	07/20/92	
Copy System	9758	T2790.38			
Copy System	9758	$2,019.36	11/25/92	11/05/92	
Copy System	9758	$560.02		11/05/92	
Copy System	10714	T9,034.72			
Copy System	10714	$398.73	02/19/93	12/17/92	
Copy System	10714	$156.29		12/17/92	
Copy System	10714	$1,460.27		12/17/92	
Copy System	10714	$63.81		12/17/92	
Copy System	10714	$933.04		12/17/92	
Copy System	10714	$1,392.82		12/17/92	
Copy System	10714	$295.67		12/17/92	
Copy System	10714	$369.55		12/17/92	
Copy System	10714	$3,964.54		12/17/92	
Horton Brothers	1474	T19,924.41			
Horton Bros	1474	$5,490.30	08/11/92	07/31/92	
Horton Bros	1474	$4,247.89		07/20/92	
Horton Bros	1474	$42.82		07/20/92	
Horton Bros	1474	$4,655.56		07/20/92	
Copy System	10804	T11,679.39			
Copy System	10804	$685.63	02/25/93	02/22/93	02/22/93
Copy System	10804	$245.48		02/22/93	02/22/93
Copy System	10804	$132.93		02/22/93	02/22/93
Copy System	10804	$1,392.60		02/22/93	02/22/93
Copy System	10804	$14.24		02/22/93	02/22/93
Copy System	10804	$1,266.00		02/22/93	02/22/93
Copy System	10804	$3,560.22		02/22/93	02/22/93
Copy System	10804	$132.93		02/22/93	02/22/93
Copy System	10804	$4,410.87		08/28/92	02/22/93
Copy System	10594	T2,871.71			
Copy System	10594	$308.06	02/18/93	12/03/92	
Copy System	10594	$949.50		11/23/92	11/23/92

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Copy System	10594	$49.50		12/03/92	
Copy System	10594	$900.00		12/03/92	
US West Com.	10962	T15,928.42			
US West Com	10962	$1,539.90	02/25/93	02/22/93	
US West Com	10962	$1,879.83		11/23/92	11/22/92
US West Com	10962	$1,459.58		02/22/93	
US West Com	10962	$9,898.71		12/03/92	
US West Com	10962	$694.00		12/02/92	12/01/92
US West Com	10962	$431.62			
US West Com	10963	T23,599.52			
US West Com	10963	$8,589.62	02/25/93	11/30/92	11/30/92
US West Com	10963	$8,238.46		11/30/92	11/30/92
US West Com	10963	$4,404.69		02/22/93	
US West Com	10957	T30,746.96			
US West Com	10957	$7,373.04	02/25/93	02/22/93	
US West Com	10957	$4,365.70		02/22/93	
US West Com	10957	$850.50		02/22/93	
US West Com	10957	$74.00		02/23/93	
US West Com	10957	$1.55		12/03/92	12/03/92
US West Com	10957	$4.68		01/04/93	
US West Com	10957	$0.67		11/30/92	11/30/92
US West Com	10957	$53.56		11/30/92	11/30/92
US West Com	10957	$0.67		12/14/92	
US West Com	10957	$1,834.52		12/02/92	12/01/92
US West Com	10957	$7,719.12		12/02/92	12/01/92
US West Com	10957	$2,706.31		12/02/92	12/01/92
US West Com	10957	$4,140.49		11/30/92	11/30/92
US West Com	10957	$2,674.58		12/21/92	
US West Com	10957	$5.60		01/11/93	01/11/93
US West Com	10965	T17,089.59			
US West Com	10965	$5,607.14	02/25/93	11/19/92	
US West Com	10965	$527.86		11/19/92	11/19/92
US West Com	10965	$5,374.64		11/19/92	11/19/92
US West Com	10965	$1,763.94		11/19/92	11/19/92
US West Com	10965	$1,819.72		11/19/92	
US West Com	10965	$5.95		12/16/92	12/16/92
US West Com	10965	$8.17		12/21/92	
Future Now Inc.	10758	T42,285.59			
Future Now	10758	$316.50	02/19/93	02/19/93	10/07/92
Future Now	10758	$63.30		02/19/93	
Future Now	10758	$276.94		02/19/93	
Future Now	10758	$263.75		02/19/93	09/23/92
Future Now	10758	$263.75		02/19/93	10/07/92
Future Now	10758	$263.75		02/19/93	
Future Now	10758	$316.50		02/19/93	10/08/92
Future Now	10758	$316.50		02/19/93	10/07/92
Future Now	10758	$369.25		02/19/93	10/23/92
Future Now	10758	$411.45		02/19/93	10/08/92
Future Now	10758	$1,951.75		02/19/93	
Future Now	10758	$1,266.00		02/19/93	10/07/92
Future Now	10758	$211.00		02/19/93	10/07/92

Future Now	10758	$211.00		02/19/93	10/08/92
Future Now	10758	$2,846.50		02/19/93	10/23/92
Future Now	10758	$316.50		02/19/93	10/08/92
Future Now	10758	$316.50		02/19/93	10/23/92
Future Now	10758	$625.62		02/19/93	10/23/92
Future Now	10758	$290.13		02/19/93	10/08/92
Future Now	10758	$369.25		02/19/93	
Future Now	10758	$316.50		02/19/93	09/23/92
Future Now	10758	$316.50		02/19/93	
Future Now	10758	$316.50		02/19/93	
Future Now	10758	$316.50		02/19/93	
Future Now	10758	$12,073.85		02/19/93	
Future Now	10758	$625.62		02/19/93	10/08/92
Future Now	10758	$625.62		02/19/93	
Future Now	10758	$290.13		02/19/93	
Future Now	10758	$1,371.50		02/19/93	
Future Now	10758	$290.13		02/19/93	10/07/92
Future Now	10758	$2,191.60		02/19/93	
Future Now	10758	$316.50		02/19/93	10/07/92
Future Now	10758	$1,371.60		02/19/93	10/07/92
Future Now	10758	$411.45		02/19/93	10/07/92
Future Now	10758	$316.50		02/19/93	10/07/92
Future Now	10758	$369.25		02/19/93	10/07/92
AT&T TX	10709	T3,627.56			
AT&T TX	10709	$408.12	02/19/93	12/17/92	
AT&T TX	10709	$2,840.46		12/17/92	
AT&T TX	10709	$20.60		11/17/92	11/17/92
AT&T TX	10709	$79.89		11/17/92	11/17/92
AT&T TX	10709	$278.43		11/17/92	11/17/92
Horton Bros	10089	T3,134.90			
Horton Bros	10089	$669.86	12/11/92	10/07/92	12/08/92
US West Com.	9900	T16,000.92			
US West Com	9900	$6,576.55	12/02/92	11/19/92	11/19/92
US West Com	9900	$1,787.77		11/19/92	
US West Com	9900	$949.51		11/19/92	11/19/92
US West Com	9900	$1,307.06		11/19/92	11/19/92
US West Com	9900	$5,380.03		11/19/92	11/19/92
US West Com	9899	$932.76	12/02/92	11/19/92	11/19/92
Future Now	9768	T340.24			
Future Now	9768	$276.94	11/25/92	11/16/92	11/16/92
Future Now	9768	$63.30		11/16/92	11/16/92
US West Com	9860	T1,307.79			
US West Com	9860	$168.36	11/30/92	10/28/92	10/28/92
US West Com	9860	$379.56		11/19/92	11/16/92
US West Com	9860	$759.67		10/28/92	10/28/92
US West Com	9858	T920.19			
US West Com	9858	$568.78	11/30/92	11/19/92	11/19/92
US West Com	9858	$351.41		11/19/92	11/19/92

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US West Com	9861	$224.88	11/30/92	11/20/92	11/19/92
SW Bell TX	9607	$197.89	11/25/92	11/20/92	11/19/92
SW Bell TX	10152	T9,166.73			
SW Bell TX	10152	$598.84	12/11/92	11/06/92	11/05/92
SW Bell TX	10152	$428.58		11/20/92	11/19/92
SW Bell TX	10152	$439.80		11/02/92	11/02/92
SW Bell TX	10152	$2.96		11/23/92	11/23/92
SW Bell TX	10152	$277.81		11/20/92	11/20/92
SW Bell TX	10152	$7,306.12		10/21/92	10/30/92
Alltel Mobile	10750	T1,571.42			
Alltel Mobile	10750	$160.31	02/19/93	10/09/92	10/08/92
Alltel Mobile	10750	$27.20			
Alltel Mobile	5062	T1,330.88			
Alltel Mobile	5062	$1,114.17	09/28/92		
Future Now	7292	T1,527.65			
Future Now	7292	$854.55	10/21/92	09/04/92	09/23/92
Future Now	7292	$419.89		09/18/92	
Future Now	7292	$131.88		09/23/92	
SW Bell Tel	7376	T1,991.65			
SW Bell Tel	7376	$353.87	10/21/92	09/13/92	
SW Bell Tel	7376	$505.70		09/21/92	
SW Bell Tel	7376	$453.37		10/09/92	
SW Bell Tel	7376	$595.81		09/25/92	
SW Bell Tel	7376	$82.90		09/21/92	10/01/92
Copy System	7277	T5,252.80			
Copy System	7277	$1,582.50	10/21/92	10/09/92	
Copy System	7277	$422.00			
Copy System	7277	$1,159.40		10/06/92	
Copy System	7277	$1,139.40		10/09/92	
Future Now	6607	T1,360.95			
Future Now	6607	$1,086.65	10/13/92	08/28/92	09/21/92
Future Now	6607	$274.30		07/30/92	
SW Bell TX	6468	$1,792.15	10/12/92	09/15/92	
SW Bell TX	6068	$119,379.43	10/07/92	09/07/92	09/17/92
SW Bell TX	7039	T1,363.66			
SW Bell TX	7039	$371.80	10/19/92	09/11/92	09/21/92
SW Bell TX	7039	$991.86		09/25/92	
US West Com	3448	T1,123.96			
US West Com	3448	$466.16	09/11/92	08/10/92	
US West Com	3448	$657.80		08/10/92	
SW Bell Tel	3996	T3,697.21			
SW Bell Tel	3996	$3,439.73	09/16/92	09/01/92	

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US West Com	3699	$538.98	09/14/92	08/17/92	
US West Com	2903	$348.36	09/04/92	08/12/92	
US West Com	4002	T9,75.89			
		$1,172.85	09/16/92	08/17/92	
US West Com	4003	T2,776.92			
US West Com	4003	$697.29	09/16/92	08/17/92	
US West Com	4003	$694.65		08/10/92	
SW Bell TX	10666	T44,261.71			
SW Bell TX	10666	$4,807.78	02/18/93	12/02/92	12/01/92
SW Bell TX	10666	$2,976.25		11/20/92	11/19/92
SW Bell TX	9155	T41,247.30			
SW Bell TX	9155	$564.64	11/13/92	10/15/92	10/15/92
SW Bell Tel	9851	T38,261.07			
SW Bell Tel	9851	$112.03	11/30/92	10/28/92	10/28/92
SW Bell Tel	9851	$343.89		11/02/92	11/02/92
SW BEll Tel	9851	$37,805.15		11/19/92	11/19/92
SW Bell TX	4886	**57,948	09/25/92	08/07/92	
Greenberg Lake	6482	T34,913.74			
Greenberg Lake	6482	$680.12	10/12/92	10/06/92	10/06/92
Greenberg Lake	6482	$759.38		10/06/92	10/06/92
Greenberg Lake	6482	$1,430.40		10/06/92	10/06/92
Greenberg Lake	6482	$1,614.48		10/06/92	10/06/92
Greenberg Lake	6482	$1,130.25		10/06/92	10/06/92
Deutsch	6434	$990.49	10/12/92	10/06/92	
Copy System	6430	T3,218.87			
Copy System	6430	$1,180.13	10/12/92	09/19/92	
Copy System	6430	$791.25		09/19/92	
Copy System	6430	$10.50		10/06/92	
Copy System	6430	$844.00		09/19/92	
Alltel Mobile	6414	T747.02			
Alltel Mobile	6414	$31.67	10/12/92	10/05/92	
Alltel Mobile	6414	$27.07		10/05/92	
Alltel Mobile	6414	$313.12		08/18/92	
Alltel Mobile	6414	$375.16		10/05/92	
Sprint TX	3993	$1,036.87	09/16/92	7/27/92*	
Sheehan Assocs.	3051	$1,500.00	09/06/92	08/03/92	08/06/92
Sprint TX	2897	$185.30	09/04/92	8/15/92*	
Copy System	6166	T2,305.64			
Copy System	6166	$1,672.64	10/06/92	09/19/92	
Copy System	6166	$633.00		09/19/92	

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Sprint TX	2755	T81,449.27			
Sprint TX	2755	$20,179.31	09/02/92	08/22/92	
Sprint TX	2755	$61,269.96			
AT&T TX	6154	$495.56	10/08/92	09/07/92	09/15/92
Alltel-miss	6152	$1,059.58		09/01/92	
AT&T TX	6056	$71.65	10/07/92	09/07/92	09/15/92
Copy System	5948	T2,154.74			
Copy System	5948	$868.10	10/06/92	09/19/92	
Copy System	5948	$301.85		09/19/92	
Copy System	5948	$422.00		09/19/92	
Copy SYstem	5948	$211.00		09/19/92	
Copy SYstem	5948	$351.79		09/19/92	
Copy System	5804	T27,960.39			
Copy System	5804	$633.00	10/03/92	09/19/92	
Copy System	5804	$1,266.00		09/19/92	
Copy System	5804	$817.63		09/19/92	
Copy System	5804	$7,104.63		09/19/92	
Copy System	5804	$7,778.01		09/19/92	
Copy System	5804	$10,361.10		09/19/92	
AT&T TX	5596	$74.75	10/01/92	09/07/92	09/15/92
Radisson Hotel	10648	$1,085.94	02/18/93	12/15/92	
AT&T MO	10551	T139,416.38			
AT&T MO	10551	$21.90	02/18/93	09/12/92	
AT&T MO	10551	$132,130.46		11/19/92	11/19/92
AT&T MO	10551	$181.59		12/14/92	
AT&T MO	10551	$7,082.43		12/18/92	
AT&T TX	10410	$13.41	02/14/93	12/6/92*	
AT&T MO	10408	T24.88			
AT&T MO	10408	$12.55	02/14/93	10/31/92	F10/15/92
AT&T MO	10408	$12.33		12/08/92	
Hogan & Hartson	10273	T36,700.81			
Hogan & Hartson	10273	$34,953.63	01/06/93	01/04/93	F1/4/93
Horton Bros.	10272	T4,354.38			
Horton Bros.	10272	$4,004.70	01/06/93	12/14/92	
Horton Bros.	10272	$349.68		12/14/92	
Sprint TX	10149	$1,654.54	12/11/92	09/10/92	10/21/92
Sprint TX	10148	$372.52	12/11/92	11/30/92	
AT&T TX	10032	T17,056.73			
AT&T TX	10032	$93.34	12/11/92	11/17/92	11/17/92
AT&T TX	10032	$16,963.39		11/17/92	11/17/92

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Squier, Eskew	9957	$10,407.75	12/08/92	12/07/92	F12/3/92
Squier, Eskew	9956	$5,298.00	12/08/92	12/07/92	F12/3/92
Squier, Eskew	9955	$7,148.00	12/08/92	12/07/92	F12/3/92
Squier, Eskew	9954	$5,898.00	12/08/92	12/07/92	F12/3/92
Deutsch	9877	$2,569.76	12/02/92	11/30/92	
AT&T MO	9129	T22,256.86			
AT&T MO	9129	$1,341.24	11/13/92	10/22/92	
Horton Bros.	9255	T162,434.17			
Horton Bros.	9255	$265.60	11/15/92	09/25/92	
Horton Bros.	9255	$378.59		10/01/92	10/01/92
AT&T TX	9288	$86.57	11/15/92	10/15/92	10/15/92
Michael Sheehan	9436	T34,144.90			
Michael Sheehan	9436	$4,887.00	11/15/92	09/30/92	
Alltel Mobile	9589	$8,204.22	11/19/92	10/06/92	
Alltel Mobile	9743	$10.00	11/25/92	11/13/92	11/92
AT&T TX	9747	T2,863.42			
AT&T TX	9747	$2,838.16	11/25/92	11/17/92	
AT&T TX	9747	$25.26		11/17/92	11/17/92
Alltel Mobile	9822	$1,687.95	11/30/92	10/30/92	10/29/92
AT&T MO	9825	T9,549.72			
AT&T MO	9825	$654.24	11/30/92	11/20/92	11/19/92
AT&T MO	9825	$1,781.93		11/16/92	11/16/92
AT&T MO	9825	$6,299.38		11/20/92	11/20/92
AT&T MO	9825	$814.17		11/16/92	11/16/92
AT&T TX	9827	T51,277.25			
AT&T TX	9827	$20.60	11/30/92	11/17/92	11/92
AT&T TX	9827	$51,256.65		11/17/92	11/92
Deutsch	9866	$8,934.00	12/01/92	11/30/92	
Alltel Mobile	9871	T52,362.15			
Alltel Mobile	9871	$50,019.90	12/02/92	11/13/92	11/13/92
Alltel Mobile	9871	$27.13		11/16/92	F11/10/92
Alltel Mobile	9871	$712.47		11/13/92	11/13/92
Alltel Mobile	9871	$1,602.65		11/16/92	11/16/92
AT&T MO	9873	$33,931.80	12/02/92	11/23/92	11/23/92
Sprint TX	12047	T646.70			
		$0.78	03/10/93	10/08/92	10/07/92

AT&T NJ	10702	$32,159.31	02/19/93	01/04/93	12/01/92
AT&T MO	10701	T4,334.43			
AT&T MO	10701	$996.22	02/19/93	12/03/92	12/03/92
AT&T MO	10701	$547.00		12/07/92	
AT&T MO	10701	$5.46		12/03/92	12/01/92
AT&T MO	10701	$325.23		12/03/92	12/03/92
AT&T MO	10701	$613.43		12/02/92	12/01/92
AT&T MO	10701	$190.37		12/21/92	
AT&T MO	10701	$76.69		12/16/92	
AT&T MO	10701	$38.16		12/07/92	12/07/92
AT&T MO	10701	$559.52		12/21/92	
AT&T MO	10701	$449.11		12/15/92	
AT&T MO	10701	$53.80		12/15/92	
AT&T MO	10701	$176.76		12/14/92	
AT&T MO	10701	$5.49		12/04/92	12/04/92
AT&T MO	10701	$21.25		12/17/92	
AT&T MO	10701	$5.70		12/15/92	
AT&T MO	10701	$5.15		01/07/93	
AT&T MO	10701	$7.66		01/04/93	
AT&T MO	10701	$5.45		12/28/92	
AT&T MO	10701	$5.46		12/31/92	
AT&T MO	10701	$5.46		12/30/92	
AT&T MO	10701	$182.83		01/04/93	
AT&T MO	10701	$5.70		01/07/93	
AT&T MO	10701	$26.46		01/14/93	01/14/93
AT&T MO	10701	$5.15		01/04/93	
Deutsch	7717	*2,820.85	10/23/92	10/22/92	
Alltel Mobile	7248	T693.42			
Alltel Mobile	7248	$624.49	10/21/92	08/18/92	
Alltel Mobile	7248	$68.93		10/15/92	
Sprint TX	7038	$11.41	10/19/92	09/10/92	09/16/92
Copy System	7011	T411.45			
Copy SYstem	7011	$147.70	10/19/92	08/26/92	
Copy System	7011	$263.75		09/19/92	
Alltel Mobile	7005	$782.89	10/19/92	08/18/92	
Alltel Mobile	6951	T248.34			
Alltel Mobile	6951	$27.57	10/17/92	08/18/92	
Alltel Mobile	6951	$220.77		10/06/92	
Alltel Mobile	6583	T1,382.37			
Alltel Mobile	6583	$38.55	10/13/92	08/18/92	
Alltel Mobile	6583	$164.94		09/18/92	
Alltel Mobile	6583	$769.13		08/18/92	
Alltel Mobile	6583	$409.75		10/06/92	10/02/92
Premiere Prod.	10680	$2,392.33	02/19/93	02/01/93	F1/8/93
Production Suppor	10480	$1,048.00	02/14/93	12/16/92	

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MUR 4173-Debts and Obligations

City of Phil.	10054	$49,362.65	12/11/92	12/04/92

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Drafts

Vendor		Draft Numbers		Amount
Alamo Rental Car		22483,26828,43257-43260		$2,138.48
TOTAL				$2,138.48

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CLINTON/GORE '92 COMMITTEE – MUR 4173

EXHIBIT 5

TOTAL AMOUNT PROPERLY REPORTED USING DATE OF RECEIPT
(does not include telephone or draft categories)

	Date of receipt
Arkansas Employment Security	0
Carville & Begala	4,121.42
City of Philadelphia	47,141.98
Copy Systems	45,279.47
Deutsch	11,503.76
Future Now	6,803.82
Greenberg-Lake	5,614.73
Hogan & Hartson	104,861.49
Horton Brothers	8,012.87
Michael Sheehan Assoc.	0
Premier Productions	4,784.66
Production Support Services	3,144.00
Raddison Hotel	0
Squier, Eskew	28,751.75
TOTAL AMOUNT PROPERLY REPORTED	**270,019.95**

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EXHIBIT 6

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MEMO TO FILE PRIMARY

FROM: Barbara Yates

DATE: May 3, 1993

SUBJECT: Amended debt schedules

I discussed with Joe Stoltz whether it is necessary in the amendment process to tie and reconcile the debt schedule (Sch D) with the expenditures schedule (Sch B). He says that since such a reconciliation is a near impossibility that they do not attempt to do such or expect us to.

We discussed the requirements for inclusion in Sch D. He agreed with our interpretation that operating expenditures and payroll paid current under their terms should not be included unless there was a beginning unpaid balance. In the event of an unpaid balance, it is then necessary to report all transactions for that vendor until the balance is again zero.

This information was passed on to Lyn, Keeley and Laura.

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CLINTON/GORE '92 COMMITTEE -- MUR 4173

EXHIBIT 7

TELEPHONE VENDORS

I. TOTAL AMOUNT OF DEBT PROPERLY REPORTED

Alltel Mobile		**71,552.85**
August	4,211.14	
Sept.	5,483.96	
Pre-Gen'l	9,085.15	
Post-Gen'l	52,772.60	
AT&T		**218,959.49**
Sept.	71.65	
Pre-Gen'l	2,381.79	
Post-Gen'l	184,346.74	
Year-End	32,159.31	
Sprint - Texas		**66,101.05**
August	62,045.37	
Pre-Gen'l	2,027.84	
Post-Gen'l	2,027.84	
Southwestern Bell (Dallas)		**41,060.84**
August	26,389.49	
Sept.	725.67	
Pre-Gen'l	2,935.27	
Post-Gen'l	11,010.41	
US West Communications		**105,991.12**
August	4,576.09	
Post-Gen'l	72,387.83	
Year-end	29,027.20	

Total Amount Properly Reported: $583,665.35

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EXHIBIT 7, page 2

II. DUPLICATES

Alltel Mobile	13,288.99
AT&T	134,763.58
Sprint - Texas	2,027.64
Southwestern Bell	353.87
US West Communications	33,787.33
Total Duplicates:	184,221.41

III. LETTERS OF CREDIT:

- AT&T -- $200,000 (8/8/92 - 10/25/92) and $100,000 (10/25/92 - 1/1/93)
- US West Communications -- $55,000 (8/4/92 - 3/31/93)
- Southwestern Belll -- $50,000 (8/4/92 - 9/4/92); $75,000 (9/4/92 - 10/6/92); $115,000 (10/6/92 - 1/1/93)

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CLINTON/GORE '92 COMMITTEE -- MUR 4173

EXHIBIT 8

TOTAL AMOUNT PROPERLY REPORTED -- DRAFTS

Alamo Rental Car	$4,276.96
TOTAL	4,276.96

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CLINTON/GORE '92 COMMITTEE -- MUR 4173

EXHIBIT 9

TOTAL AMOUNT OF DEBTS TIMELY PAID **(does not include telephone vendors or drafts categories)**

	Debts Timely Paid
Arkansas Employment Security	0
Carville & Begala	0
City of Philadelphia	0
Copy Systems	19,752.36
Deutsch	0
Future Now	3,020.96
Greenberg-Lake	0
Hogan & Hartson	0
Horton Brothers	19,458.60
Michael Sheehan Assoc.	1,500.00
Premier Productions	0
Production Support Services	0
Raddison Hotel	0
Squier, Eskew	0
TOTAL AMOUNT OF DEBTS TIMELY PAID	**$ 43,731.92**

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CLINTON/GORE '92 COMMITTEE -- MUR 4173

EXHIBIT 10

SCHEDULE OF DUPLICATES

I. DUPLICATE TOTAL -- ALL VENDORS

Alamo Rental Car	2,138.96
Alltel Mobile	13,288.99
Arkansas Employment Security	73,170.00
AT&T	134,763.58
Carville & Begala	0
City of Philadelphia	23,570.99
Copy Systems	34,625.93
Deutsch	0
Future Now	85,174.21
Greenberg-Lake	0
Hogan & Hartson	69,907.26
Horton Brothers	8,009.40
Michael Sheehan Assoc.	0
Premier Productions	2,392.33
Production Support Services	0

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Exhibit 10 -- page 2

Raddison Hotel	0
Squier, Eskew	0
Southwestern Bell	353.87
Sprint - Texas	2,027.84
U.S. West Communications	33,787.33
TOTAL DUPLICATES	**$ 483,210.69**

II. TELEPHONE VENDORS -- DUPLICATES

Alltel Mobile	13,288.99
AT&T	134,763.58
Sprint - Texas	2,027.64
Southwestern Bell	353.87
U.S.West Communications	33,787.33
TOTAL DUPLICATES:	**184,221.41**

III. DUPLICATE TOTAL (ALL VENDORS EXCEPT TELEPHONE VENDORS)

	Total Duplicates (All vendors)	483,210.69
Less	Total Duplicates (Telephone vendors)	184,221.41
	Total Duplicates (All vendors except telephone vendors)	$ 298,989.28

TOTAL DUPLICATES (excluding telephone) -- $298,989.28

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CLINTON/GORE '92 COMMITTEE -- MUR 4173

EXHIBIT 11

TOTAL DEBTS AND OBLIGATIONS PROPERLY REPORTED

TOTAL ERROR PER REASON-TO-BELIEVE FINDING	$ 1,207,730.48
TOTAL ERROR PER AUDITORS' WORKPAPERS	$ 1,111,791.74[1]
TOTAL ALLEGED TELEPHONE ERROR PROPERLY REPORTED	503,665.35
TOTAL PROPERLY REPORTED DEBTS BY DATE OF RECEIPT	270,019.95
TOTAL DRAFTS	4,276.96
TOTAL DUPLICATES (NOT INCLUDED UNDER DATE OF RECEIPT OR TELEPHONE CATEGORIES -- See Attachment)	169,644.76

	Total Error per auditor workpapers	$ 1,111,791.74
Less	Telephone amounts	(503,665.45)
Less	Date of Receipt	(270,019.95)
Less	Drafts	(4,276.96)
Less	Duplicates	(169,644.76)
	TOTAL ALLEGED UNREPORTED DEBT	$164,184.62

[1]Apparently, the auditors made an error in calculating the total alleged reporting errors. The auditors [illegible] from page 9 of their workpapers twice. *See* Exhibit 1. Accordingly, the amount allegedly in error [illegible] finding is overstated by $95,938.74 (the page total of page 9 of the auditors workpapers).

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ATTACHMENT TO EXHIBIT 11

DUPLICATES (NOT INCLUDED UNDER DATE OF RECEIPT, DRAFTS OR TELEPHONE CATEGORIES)

Arkansas Employment Security	73,171.64
Copy Systems	7,343.85
Horton Brothers	4,324.31
Future Now	84,804.96
TOTAL	**$ 169,644.76**

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OLDAKER, RYAN, PHILLIPS & UTRECHT
ATTORNEYS AT LAW
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WASHINGTON, D.C. 20006

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

March 12, 1996

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
MAR 15 3 08 PM '96

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

Re: MUR 4173 – Supplemental Response of the Clinton/Gore '92 General Election Compliance Fund and J.L. "Skip" Rutherford, as treasurer

9704384014 3

Dear Mr. Noble:

On the basis of the decision of the United States Court of Appeals for the District of Columbia Circuit in RNC v. FEC, No. 94-5248, slip op., (D.C. Cir. Feb. 20, 1996), the Clinton/Gore '92 General Election Compliance Fund (the "Committee") and J.L. "Skip" Rutherford, as treasurer, file this supplemental response in Matter Under Review ("MUR") 4173. The Committee requests that the Commission give consideration to the arguments contained herein, and further requests that the Office of the General Counsel incorporate this supplemental response into the Committee's initial response of October 12, 1995 and provide each Commissioner with a complete copy of this information.

In addition to describing the flaws in the Audit Division's analysis of the Committee's contributions, the Committee argued in its initial response that (1) the Office of General Counsel (the "OGC") applied the wrong "best efforts" standard in retroactively applying the 1994 best efforts regulations to the Committee and (2) the Committee did, in fact, exercise best efforts and therefore, complied with the reporting requirements of the Federal Election Campaign Act, (the "Act") 2 U.S.C. § 431 et seq. The decision of the Court of Appeals provides compelling weight for the Committee's arguments and, as a result, the Committee now requests that the Commission take no further action and close this matter.

I. The Commission may not retroactively impose the 1994 mandatory language on pre-1994 requests for contributor information.

As the Committee argued in its October 12th response, the Office of General Counsel is erroneously applying the 1994 standard to the Committee in the General Counsel's Factual and Legal Analysis:

> "A review of GELAC solicitations revealed that several solicitation devices failed to properly request the employer information. Devices failed to state that 'federal law' required the information and instead stated that the 'Federal Election

Commission' required the information.

General Counsel's Factual and Legal Analysis at 3.

The distinction drawn by OGC between "federal law" and "Federal Election Commission" and the reasoning behind it were firmly rejected by the Court which invalidated this precise part of the Commission's regulation pertaining to "best efforts." Specifically, the Court held that the regulation's mandatory statement of required language "is inaccurate and misleading" and "thus unreasonable and contrary to the statute." RNC at 9-10.

Not only did the Court throw out the mandatory language, but it also expressly recognized that alternative variations of the written request for contributor information could satisfy the statutory requirement that committees use their best efforts to gather and report information. Id. at 9. No one version is required, and, as such, no basis exists for asserting that the language "The Federal Election Commission requires" does not comply with the 1980 regulations.

Accordingly, even if OGC continues to arbitrarily and unfairly apply the 1994 regulations to 1992 election activity, there no longer exists any mandatory language for OGC to retroactively impose. The requests by the Committee clearly and concisely requested the required contributor information and conclusively satisfied the standards contained in the 1980 regulations.[1]

2. The Committee exercised best efforts.

The second important aspect of this MUR which is clarified by the Court's ruling is the precise nature of the violation. As the Court correctly points out, contributors may choose not to supply their personal information to a political committee, and there is really nothing that the committee can do to compel contributors to give it the information. Id. That is why the focus of review must not be whether a committee has supplied occupation or employer information, but whether a committee has exercised best efforts to obtain the information. Even if a significant number of contribution entries are missing occupation and employer information, the absence of the information is not a violation of the Act, since contributors are obliged to supply nothing.

> The statute does *not* require political committees to report the information for "each" donor. It only requires committees to use their *best efforts* to gather the information . . . The law only requires political committees to *ask* donors for the information; no federal law requires *donors* to report their name, address, occupation, and employer.

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[1]Contrary to OGC's assertion that several solicitations did not contain a request for employer and occupation information, nine of ten Committee solicitations contained a request which, prior to the 1994 regulations, complied with the Act. Additionally, nearly all of the recipients of the one deficient request received a follow-up best efforts mailing.

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Id.

As noted in the Committee's initial response, follow-up best efforts mailings were sent on September 3, 1992 and July 13, 1993, in order to obtain the contributor information and amend the Committee's reports. By the Committee's records, over 85% of the contributors for which information was missing were sent the July 13th mailing. Nothing in the regulations, at that time, required that best efforts mailings be accomplished by a date certain.

By the standards set forth in RNC, the Committee has exceeded the pre-1994 best efforts requirements of the Act. The Committee systematically and repeatedly requested information from the donors, and the Committee followed-up with amended reports. The Court willingly recognized what OGC will not -- that nothing in the law requires donors to supply the requested information.

In conclusion, then, close review of the Court's decision in RNC makes the Commission's position in this MUR untenable and unfair. Not only does the Court's ruling support the Committee's contention that its requests for contributor information contained sufficient language for pre-1994 requests, it also supports the conclusion that the Committee, in fact, exercised best efforts. That ruling, when considered along with the information provided in the Committee's initial response, particularly the flaws in the Audit Division's work, should provide compelling and ample reasons for the Commission to reconsider pursuing this enforcement matter. Accordingly, the Committee respectfully requests that the Commission take no further action and close this matter.

Sincerely,

Lyn Utrecht

Lyn Utrecht
Counsel to the Committee

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

SENSITIVE

Clinton for President Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer,	)	
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer,	)	
Clinton/Gore '92 General Election	)	MURs 4172 and 4173
Compliance Fund	)	
and J.L. "Skip" Rutherford,	)	
as treasurer,	)	
Manatt, Phelps & Phillips,	)	
O'Keefe Ashenden Lyons & Ward,	)	
Kevin M. O'Keefe	)	
American Federation of Teachers	)	
Mozark Productions, Inc.	)	

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GENERAL COUNSEL'S REPORT

I. GENERATION OF MATTER

On August 15, 1995, the Commission found reason to believe that the Clinton for President Primary Committee ("the Primary Committee") violated 2 U.S.C. § 441a(f) by receiving excessive contributions from individuals. The Commission also found reason to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by receiving excessive contributions from Manatt, Phelps & Phillips ("Manatt, Phelps") and O'Keefe Ashenden Lyons & Ward ("O'Keefe Ashenden"). In addition, the Commission found reason to believe that Manatt, Phelps and O'Keefe Ashenden violated 2 U.S.C. § 441a(a)(1)(A) by making prohibited contributions to the Primary Committee. Further, the Commission found reason to believe that the Primary Committee violated 2 U.S.C. § 441b by

receiving prohibited contributions from the American Federation of Teachers ("AFT") and Mozark Productions, Inc. ("Mozark"). The Commission also found reason to believe that AFT and Mozark violated 2 U.S.C. § 441b. by making the contributions to the Primary Committee.[1] In addition to these findings, the Commission authorized the Office of the General Counsel to send subpoenas for documents to the Manatt, Phelps, O'Keefe Ashenden and Mozark. On October 26, 1995, the Primary Committee submitted its response to the Commission's findings. *See* Attachment 1. Manatt, Phelps submitted its response on October 18, 1995; O'Keefe Ashenden submitted its response on November 24, 1995; AFT submitted its response on October 24, 1995; and Mozark submitted a response on November 27, 1995. *See* Attachments 2-6. These matters were all contained in MUR 4172.

On August 16, 1995, the Commission found reason to believe that the Clinton/Gore '92 General Election Compliance Fund ("the GELAC") violated 2 U.S.C. § 434(b)(3)(A). On the same date, the Commission also found reason to believe that the Clinton/Gore '92 Committee ("the General Committee") violated 2 U.S.C. § 434(b)(8).[2] The Commission voted to authorize the Office of the General Counsel to enter into pre-probable cause conciliation with the GELAC and the General Committee. On October 13, 1995, the GELAC and the General Committee submitted their responses to the Commission's findings. *See* Attachments 7 and 8. The General Committee submitted a supplemental response on November 30, 1995. Attachment 9. The GELAC submitted a

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[1] This matter was generated from information obtained during the audit of the Primary Committee. 11 C.F.R. § 9038.1(e)(2).

[2] This matter was generated from information obtained during the audit of the General Committee and the GELAC. 11 C.F.R. §§ 9008.11.

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supplemental response on March 13, 1996. Attachment 10. The matters related to the General Committee and the GELAC were contained in MUR 4173.

The transactions at issue in MUR 4172 and MUR 4173 are both contained in this report because the Primary Committee and General Committee were the political committees for the same candidate for the same election cycle. Additionally, both committees have the same treasurer, and are represented by the same counsel.

II. FACTUAL AND LEGAL ANALYSIS

A. EXCESSIVE CONTRIBUTIONS -- STAFF ADVANCES

1. Commission Findings

During the audit of the Primary Committee, it was discovered that Paul Carey, Harold Ickes, Kenneth Brody, Erskine Bowles and Shelia Davis Lawrence made excessive contributions to the Primary Committee of $5,358, $8,890, $17,962, $15,325, and $10,947, respectively. Therefore, the Commission found reason to believe that the Primary Committee and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting contributions totaling $58,482 in excess of the contribution limitations from these individuals.

2. Primary Committee Response

In response to the Commission's reason to believe finding, the Primary Committee requests that the Commission take no further action in this matter. The Primary Committee argues that the Commission has not previously pursued political

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committee for accepting contributions through staff advances, and specifically cites MUR 3789 (Agran for President) and MUR 3947 (Kerry for President) in support of this request. Attachment 1 at 13. The Primary Committee also makes several substantive arguments.

First, the Primary Committee argues that it did not violate 2 U.S.C. § 441a(f) by receiving excessive contributions from Ken Brody, Erskine Bowles and Shelia Davis Lawrence because these individuals were acting as unincorporated vendors to the Primary Committee pursuant to 11 C.F.R. § 116.3. Attachment 1 at 11. The Primary Committee states that these unincorporated vendors were volunteers who provided uncompensated services to the Primary Committee, and that these individuals billed the Primary Committee only for the costs incurred in connection with those services. *Id.* Thus, the Primary Committee argues that these individuals were unincorporated vendors who volunteered their personal services to the Primary Committee, that these individuals were permitted to seek reimbursement from the Primary Committee for the costs they incurred while providing such services to the Primary Committee, and that such volunteer activity is permitted and encouraged under the Federal Election Campaign Act. *Id.* at 11-13.

Additionally, the Primary Committee argues that the Commission's interpretation of 11 C.F.R. § 116.3(c) does not take into account the reality that no campaign volunteer can avoid incurring some costs when such a volunteer provides services to a committee. *Id.* at 13. Therefore, the Primary Committee asserts that the regulations must allow "some reasonable possibility for a volunteer to incur costs and be reimbursed for expenses." *Id.* Moreover, the Primary Committee states that treating expenses incurred

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by unpaid fundraising vendors as contributions is unfair because it penalizes individuals for engaging in volunteer activity. *Id.*

Second, the Primary Committee admits that although Mr. Carey and Mr. Ickes were reimbursed for their expenses after the 60-day time period stated within the regulations, and that such reimbursement "may, therefore, be a technical violation," both Mr. Carey, Mr. Ickes and the Primary Committee attempted to comply with the law as evidenced by Mr. Carey's and Mr. Ickes' regular submission of expense reimbursement requests and the Primary Committee's prompt payment of these requests. *Id.* at 10-11. The Primary Committee also argues that it paid for Mr. Carey's expenses in full prior to the audit review. *Id.* Finally, the Primary Committee argues that the regulations are confusing and unworkable. Attachment 1 at 13.

3. Analysis

The Office of General Counsel recommends that the Commission reject the Primary Committee's request for no further action in this matter. However, this Office believes that pre-probable cause conciliation with the Primary Committee regarding this matter is appropriate.

With respect to the excessive contributions of Mr. Brody, Mr. Bowles and Ms. Davis Lawrence, the Primary Committee, apparently, seeks to classify these individuals as commercial vendors who merely need to extend credit in the ordinary course of business under 11 C.F.R. § 116.3. The Primary Committee does not want the individuals classified as committee staff under 11 C.F.R. § 116.5 because the individuals' advances will result in contributions under that regulation's more precise definition. However, the

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Primary Committee has not demonstrated that the individuals are unincorporated commercial vendors pursuant to 11 C.F.R. §§ 116.1(c) who are extending credit to the Committee under 11 C.F.R. § 116.3(a). Indeed, the individuals appear to have vocations other than that of political campaign workers (for instance, Ken Brody was a partner at an investment banking firm). In addition to failing to demonstrate that the individuals are commercial vendors, the Primary Committee has also failed to demonstrate the individual's ordinary course of business with respect to credit extension. Thus, there is no standard against which the individuals' conduct could be measured.

When an individual is not acting as a commercial vendor, the individual's advances are governed by 11 C.F.R. § 116.5. 11 C.F.R. § 116.5(a). Therefore, this Office believes that the expenses incurred by these individuals are properly analyzed under 11 C.F.R. § 116.5. *See* 11 C.F.R. § 116.5(a). Because the expenses of Kenneth Brody, Erskine Bowles and Shelia Davis Lawrence were not for personal travel and subsistence, these individuals made excessive contributions to the Primary Committee. 11 C.F.R. § 116.5(b). Thus, the Office of General Counsel believes that the expenses incurred by Kenneth Brody, Erskine Bowles, and Shelia Davis Lawrence, $17,962, $10,947 and $15,325, respectively, were excessive contributions to the Primary Committee.

With respect to the expenditures of Paul Carey and Harold Ickes, the Primary Committee admits that it did not comply with the regulations. That Paul Carey and Harold Ickes may have promptly sought reimbursement for their person travel and subsistence expenses from the Primary Committee does not negate the fact that such reimbursements occurred after the 30 or 60 day time period stated at 11 C.F.R.

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§ 116.5(b). Additionally, with respect to the expenses of Paul Carey and Harold Ickes incurred for the subsistence of others, it is irrelevant whether they quickly submitted reimbursement requests to the Primary Committee or whether the Primary Committee quickly made reimbursement to these individuals; expenses for the subsistence of others become contributions at the time such expenses are incurred.[3] 11 C.F.R. § 116.5(b).

B. EXCESSIVE CONTRIBUTIONS –VENDORS

1. Commission findings

The Commission found reason to believe that the Primary Committee violated 2 U.S.C. § 441a(f) and that Manatt, Phelps & Phillips, a law firm partnership, violated 2 U.S.C. § 441a(a)(1)(A) through advances made to the Primary Committee by the law firm. Manatt, Phelps hosted and paid for events at the "Regency Club" on behalf of the Primary Committee. The Commission's audit identified two events which occurred in April 1992, which were billed to the Primary Committee in July 1992, and whose cost totaled $14,945.86.

The Commission found reason to believe that the Primary Committee violated 2 U.S.C. § 441a(f) and that O'Keefe Ashenden Lyons & Ward, a law firm partnership, violated 2 U.S.C. § 441a(a)(1)(A) through advances made to the Primary Committee. O'Keefe provided miscellaneous services to the Primary Committee such as partner travel and catering costs but had failed to bill the Primary Committee until several

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[3] The Primary Committee's reference to MUR 3789 (Agran for President) is misplaced. In MUR 3789, the Commission took no further action against a staff member who made advances because the advance occurred when the staff member's credit card was inadvertently billed for Committee expenses. Similarly, the Primary Committee misinterprets MUR 3947 (Kerry for President). In MUR 3947, the Commission took no further action against the Kerry Committee after it worked out a debt settlement for its two staff advances.

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months after the initial extension of credit. The Primary Committee paid O'Keefe Ashenden six months after the bill was issued to the Primary Committee.

2. Manatt, Phelps & Phillips

a. Responses

The Primary Committee and Manatt, Phelps submitted responses urging the Commission to determine that no violation occurred or to, alternatively, take no further action. As a threshold matter, both respondents argue that only one event took place at the Regency Club, rather than two events, and therefore the amount of the contribution in question should total $7,402.93 instead of $14,945.86. Attachment 2 at 2-3. Respondents explain that the Regency Club had issued two invoices for the same event, and both of the charges were initially placed on the Primary Committee's invoice by the Manatt, Phelps billing department. *Id.* Eventually, Manatt, Phelps determined that the second Regency Club invoice was a revision of the first invoice, and it credited the Primary Committee account for the overcharge with a miscellaneous credit. *Id.*

The respondents explained that the Regency Club payment was for an April 26, 1992 luncheon hosted by Manatt, Phelps partner Maria Hummer on behalf of Hillary Clinton, the spouse of the candidate. Attachment 2 at 2. Ms. Hummer, who was a member of the Regency Club, a private club, was billed by the club for the luncheon that took place on its premises. The luncheon was held for 239 individuals, and each meal cost $35. Attachment 2 at 13. After receiving the bill from the club, Ms. Hummer forwarded the bill to Manatt, Phelps which paid the Regency Club. Manatt, Phelps then charged the cost of the event against the Primary Committee's account. Respondents

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state that the firm has on numerous occasions hosted events on behalf of clients at area clubs and then later billed the clients for the expenses. Attachment 1 at 7; Attachment 2 at 3-4. In support of this statement, Manatt, Phelps provided the following examples: (a) $5,000 in charges for a "series of dinner meetings" for a Financial Services Department client; (b) numerous meals and golf outings of unspecified size and cost for an entertainment attorney's clients; and (c) a Washington D.C. partner's events at a club which occasionally have approached a cost of $1,000. Attachment 2 at 4. Thus, the respondents conclude that the hosting of events at area clubs is part of the law firm's usual business and it is therefore permitted to extend credit for this type of activity.

Respondents also state that the firm never intended to make a contribution to the Primary Committee and that it took "significant pains" to avoid a contribution. Attachment 1 at 7. Finally, Manatt, Phelps suggests that that even if the Commission views this activity as a technical violation of the law, the small amount of money involved dictates that the Commission take no further action. Attachment 2 at 5-6.

b. Analysis

This Office recommends that the Commission reject the Primary Committee's request for a finding that no violation occurred and that the Commission reject the request for no further action. However, this Office recommends that the Commission take no further action against Manatt, Phelps. After examining the respondents' subpoena responses it appears that only one event was hosted at the Regency Club. The Regency Club appears to have issued a second invoice that revised an initial invoice for the one event. However, both invoices were entered as amounts owed by the Primary Committee

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to Manatt, Phelps on the Primary Committee's account at the law firm. Nevertheless, Manatt, Phelps invoice to the Primary Committee also contains a credit on the Primary Committee account labeled "void" which, according to the respondents, was the credit for the inadvertent billing. Therefore, the amount in violation is $7,402.93.[4]

The payment of the cost associated with the luncheon is an advance of law firm partnership funds and results in a contribution in excess of the contribution limits. The payment of these costs was not an extension for credit in the ordinary course of business because the activity in question was not the usual and normal business of the partnership. *See* 11 C.F.R. § 116.1(c) (defining commercial vendors as any person who provides goods or services to a candidate whose "usual and normal business involves the ... provision of those goods or services."). Manatt, Phelps' usual and normal business is to provide legal services to clients. In providing these services there are ancillary costs that may be incurred by the partnership on behalf of the client for services such as photocopying or communications. *Cf.* Advisory Opinion 1979-22 (equating partnership payments for messenger service and taxi service as a use of facilities under 11 C.F.R. § 114.9 since these services are generally available to all employees).[5] However, the

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[4] This Office notes that a contribution made by a partnership is also attributable to the partners within that partnership. 11 C.F.R. § 100.1(e). Such a contribution is attributable in direct proportion to each partner's share of the profits or by agreement of the partners. 11 C.F.R. § 110.1(e)(1) and (2). The Primary Committee has the obligation to determine the amount of a contribution to be attributed to each partner. *Id.* Likewise, the partnership has the responsibility of informing the Primary Committee as to how a contribution is attributed. *Id.; see also* MUR 2557, MUR 3954 and Advisory Opinion 1980-67. Notwithstanding these regulatory provisions, both the Primary Committee and Manatt, Phelps failed to attribute the above-stated contribution to its partners. Thus, it cannot be determined whether the Manatt, Phelps partners made excessive contributions. *Compare* MUR 3954.

Therefore, the Office of General Counsel makes no recommendation with respect to the Manatt, Phelps partners.

[5] Indeed, in this case, the Commission already has decided that the law firm has not extended credit outside the ordinary course of business for certain legal services that it provided to the Primary Committee

apparent purpose of this event was to raise funds for a federal candidate and to influence a federal election. An advance of partnership funds to support the Primary Committee's basic electioneering goals is a contribution. 11 C.F.R. § 100.7(a)(1).

In the case of the Manatt, Phelps luncheon hosted at the Regency Club, the service provided was not the primary function of this vendor. Additionally, merely because on occasion a vendor engages in some sort of ancillary activity, does not render the activity in question, a usual and normal business of the vendor.

However, even if Manatt, Phelps usually and normally hosted events for clients at private clubs, the facts presented with this event at the Regency Club were beyond that in which this law firm appears to usually partake for nonpolitical clients. 11 C.F.R. § 116.3(b). The cost to the vendor in this case for just one event was over $7,000, and 239 people attended the event. The costs and the size of this event far surpasses any of the examples of similar events provided by Manatt, Phelps in their response, *e.g.*, a Washington D.C. partner's events at a club which occasionally have approximately $1,000.*

Therefore, the Commission should reject the Primary Committee's [illegible] no further action. This Office recommends that the Commission [illegible] with the Primary Committee prior to a finding of probable cause. However, [illegible]

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and for the ancillary office services such photocopying, postage, and Lexis research services.

* In MUR 3342, the Commission found no probable cause to believe that excessive contributions to the Gephardt for President Committee for [illegible] fundraisers because the Gephardt Committee reasonably [illegible] had provided similar services to other clients. However, in the [illegible] probable cause to believe that a different law firm made excessive contributions to the Committee by advancing the costs of a fundraiser because the law firm did not [illegible] made similar advances for any other clients.

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[illegible] in light of the Commission's staffing constraints and limited resources, the Office of General Counsel recommends that the Commission take no further enforcement action, Finding.[7]

a. O'Keefe Ashenden Lyons & Ward

b. Responses

O'Keefe Ashenden contends in its response that $6,417.48 of the $8,657.56 at issue was for expenses incurred by its partner, Kevin M. O'Keefe, and did not involve the firm's expenses. Attachment 3 at 2-4. O'Keefe Ashenden states that the Primary Committee inadvertently believed that Mr. O'Keefe's personal expense reimbursement request should be directed to the law firm. O'Keefe Ashenden states that when it received Mr. O'Keefe's personal expense reimbursement from the Primary Committee, it corrected the error by reimbursing Mr. O'Keefe, and it submitted a canceled check to substantiate this fact. Attachment 4. O'Keefe acknowledges that $2,240.08 of the [illegible] at issue was actually attributed to the partnership for services provided by it to the Primary Committee. Attachment 3 at 2-4. However, it asserts that these expenses [illegible] partnership expense account for [illegible] due to the small [illegible] Further, [illegible]

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[illegible] and O'Keefe Ashenden contend that the transactions at issue were extensions of credit in the firm's ordinary course of business, and thus, no [illegible] applied. The Primary Committee states that during the audit process it submitted "voluminous and detailed documentation containing specific examples" of O'Keefe Ashenden billings including 45 billing examples in 6 different law practice areas. Attachment 1 at 2. The respondents note that O'Keefe Ashenden routinely bills clients at the conclusion of a matter. Attachment 1 at 3; Attachment 3 at 6-7. O'Keefe Ashenden, in its response, states that the firm encourages clients to pay their legal bills [illegible] the conclusion of a matter. Attachment 3 at 6. Thus, the respondents argue that this transaction called for delayed billing since the vendor usually acts in this manner. The Primary Committee also notes that O'Keefe Ashenden did not intend to provide a contribution and that it did not reduce its charges to the Primary Committee or fail to bill for any services. Attachment 1 at 3.

b. Analysis

Based on the information provided in O'Keefe Ashenden's response, we [illegible] believe that Kevin M. O'Keefe has [illegible] [illegible] which questions were primarily [illegible] [illegible] law firm should only be held [illegible] the bills submitted by the Primary [illegible] [illegible] advanced fee basis or the

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Primary Committee personally. O'Keefe Ashenden has submitted a canceled check that was issued to Mr. O'Keefe to reimburse him the amount that was misdirected by the Primary Committee to the law firm. This canceled check corroborates O'Keefe Ashenden's argument that the advances were the personal advances of Mr. O'Keefe in his position as a Primary Committee volunteer. Therefore, this Office believes that $6,417.48 of the amount at issue are Mr. O'Keefe's advances to the Primary Committee made in excess of contribution limitations. 2 U.S.C. § 441a(a)(1)(A). Specifically, Mr. O'Keefe incurred personal travel and subsistence expenses that were not reimbursed within the 30 or 60 day time period set forth at 11 C.F.R. § 116.5(b).[8] Moreover, some of the expenses that he incurred were for the subsistence of others which are contributions to the Primary Committee at the time that they are made. 11 C.F.R. § 116.5(b).

Therefore, there is reason to believe that Kevin O'Keefe violated 2 U.S.C. § 441a(a)(1)(A). Further, there is reason to believe that Clinton for President, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Kevin M. O'Keefe. However, consistent with the Commission's treatment of other staff advances in the enforcement context, this Office recommends that only the Primary Committee be pursued for this violation and that no further action be taken with respect to Kevin M. O'Keefe. *See* MUR 3991. Additionally, consistent with other recommendations in this report, we recommend that the Commission enter into conciliation with the Primary Committee prior to a finding of probable cause with respect to its receipt of excessive contributions from Kevin M. O'Keefe.

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[8] The advances were made in late 1991, were billed in April 1992, and eventually paid in September 1992.

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This Office believes that no further action should be taken with respect to O'Keefe Ashenden's contributions totaling $2,240.08.[9] O'Keefe Ashenden demonstrated that its custom is to wait for the end of a project before billing a client. Thus, the billings made in this case are in the ordinary course of O'Keefe Ashenden's business. 11 C.F.R. § 116.3(a). Moreover, in light of the fact that only $2,240.08 was actually paid on behalf of the Primary Committee from O'Keefe Ashenden accounts, the Office of General Counsel recommends that the Commission take no further action against O'Keefe Ashenden. Furthermore, the Primary Committee derived minimal benefit from the advances put forth by O'Keefe Ashenden, and therefore, this Office recommends that no further action be taken with respect to the Committee and its transaction with O'Keefe Ashenden.

C. PROHIBITED CONTRIBUTIONS -- VENDORS

1. Commission findings

The Commission found reason to believe that the Primary Committee received, and American Federation of Teachers ("AFT") made, prohibited contributions. AFT made a contribution to the Primary Committee by advancing the costs of a newspaper advertisement in the *New York Times*. The Primary Committee did not pay AFT for ten months after the advance.

The Commission also found reason to believe that the Primary Committee received, and Mozark Productions, Inc. ("Mozark") made, prohibited contributions.

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[9] This Office recommends that no action be taken with respect to potential excessive contributions by O'Keefe Ashenden partners resulting from the attribution of the partnership's contribution to the individual partners. *See supra*, footnote 4.

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Mozark had advanced the costs of two fundraisers on behalf of the Primary Committee. Mozark was reimbursed within a month of these advances.

2. American Federation of Teachers

a. Responses

The Primary Committee and AFT submitted similar responses urging the Commission to take no further action. The respondents argue first that no contribution occurred because AFT invoiced the Primary Committee before AFT's own bill for the advertisement was due. Attachment 1 at 4; Attachment 5 at 2. Since AFT had passed along the obligation quickly, the respondents assert, no contribution could result. Respondents also state that no contribution occurred since AFT provided nothing of value to the Primary Committee insofar as AFT was merely a conduit to a transaction that the Primary Committee could have handled directly with the newspaper or the advertising agency. Attachment 1 at 5; Attachment 5 at 2.

The respondents also contend that the newspaper advertisement in question is a weekly column written by the union's president, Albert Shanker, that has been printed for over 25 years. As such, the respondents believe that the column should be viewed as a union facility, and that the use of that facility by the Primary Committee need only be reimbursed within a commercially reasonable time period as set forth in 11 C.F.R. § 114.9. Attachment 1 at 5; Attachment 5 at 2-3. The respondents further note that the reimbursement was made in a commercially reasonable time. Attachment 1 at 5; Attachment 5 at 3. Although the initial invoice was issued almost a year before the Primary Committee eventually paid the obligation, the respondents state that the original

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invoice was inadvertently misdirected and once the second invoice was properly issued, payment was remitted within three weeks. Attachment 1 at 5; Attachment 5 at 3.

Finally, the respondents state that the column was a union president's endorsement of a candidate that the Primary Committee did not need to pay for at all and therefore no contribution existed. Attachment 1 at 5-6; Attachment 5 at 3-4. Respondents point to the Commission's rulemaking on corporate and labor organization endorsements and note that Mr. Shanker's column is similar to a press conference or press release and therefore, permissible communication that need not be reimbursed by the candidate benefiting from the endorsement. Attachment 1 at 6; Attachment 5 at 3-4

b. Analysis

This Office recommends that the Commission reject the Primary Committee's and the AFT's requests that no further action be taken and recommend that the Commission enter into conciliation with the Primary Committee and the AFT prior to a finding of probable cause to believe.

A contribution was made when the AFT advanced the costs of this newspaper article on behalf of the Primary Committee. The Primary Committee failed to pay the invoice for a significant amount of time (10 months), and AFT made no effort [illegible] time to collect the funds. The Primary Committee received something of value from the AFT since it derived the benefit of the value of the newspaper article ($12,125.68) for a significant period of time. The fact that the Primary Committee could purchase its own newspaper advertisements does not diminish the benefit provided by AFT.

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This Office of General Counsel disagrees with the respondent's characterization of the column as a use of AFT's facilities. The Commission's regulations at 11 C.F.R. § 114.9 contemplate that facilities may ordinarily include items typically associated with an office such as "telephones or typewriters or ... office furniture." 11 C.F.R. § 114.9(d). To expand the definition of facility to include a newspaper column broadens the definition of "facility" to a point where any expenditure incurred by a vendor could be a facility. However, even if the column was a union facility, the payment for this use was not made in a commercially reasonable time. As noted, the bill was outstanding for ten months. During this time neither the vendor nor the Primary Committee investigated the lack of a payment or issued a new bill.

Finally, this Office does not find convincing the respondents' claims concerning confusion over the regulatory status of labor organization endorsements. Endorsements that are issued by press conference, press release or to an organization's restricted class through regular channels, and which are not coordinated with a political committee, would not result in a contribution. 11 C.F.R. § 114.4(c)(6). However, the endorsement at issue does not fall within the exceptions that the Commission has considered in revising its regulations concerning endorsements. Rather, the endorsement was published in a general circulation newspaper and was coordinated with the Primary Committee. Indeed,

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the advertisement itself stated that it was paid for by the Primary Committee. Therefore, this Office recommends that the Commission enter into conciliation with the Primary Committee and the AFT prior to a finding of probable cause.

3. Mozark Productions, Inc.

The Primary Committee and Mozark note that although Mozark initially paid the bills for the fundraisers in the amounts of $3,157.12 and $938.12, the two bills were forwarded to the Primary Committee and paid within 27 and 34 days, respectively. Attachment 1 at 8; Attachment 6 at 2. Respondents state that this is approximately the same payment time frame for these services as would be expected had the restaurants billed the Primary Committee directly. Attachment 1 at 8; Attachment 6 at 2. The Primary Committee also asserts that the short time frame in which the bill was paid by the Primary Committee demonstrates that no contribution was intended. Attachment 1 at 8. Mozark also noted that the Commission regulations permit Primary Committees to refund prohibited contributions within thirty days of receipt. Attachment 6 at 2.

We recommend that the Commission take no further action with respect to the issue related to the advances made by Mozark. Mozark, as a corporation, impermissibly advanced monies to pay for fundraisers on behalf of the Primary Committee. However, the Primary Committee made reimbursement to Mozark within a relatively short time period. This quick repayment time frame mitigated the violation. Therefore, we believe no further action is warranted.[10]

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[10] We note that in arguing that the refunds were timely, the Committee and Mozark appear to be relying on 11 C.F.R. § 103.3(b), which states that excessive or prohibited contributions must be refunded within thirty days of the discovery of their status. However, this regulation discusses direct contributions to political committees (for instance, requiring deposit of receipts into committee bank accounts). Therefore, this regulation is not generally applied to in-kind contributions, such as the contributions at

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C. DISCLOSURE OF CONTRIBUTOR INFORMATION

1. Commission findings

The Commission found reason to believe that the GELAC violated 2 U.S.C. § 434(b)(3)(A) after reviewing information derived from the audit of the GELAC's contributions following the 1992 election. Based upon a sample review, the audit found that employer information was not disclosed for 50% of the $3,757,865 in contributions received by the GELAC that required contributors' employer information. A review of the GELAC's solicitations revealed that several solicitation devices failed to state that "federal law" required the GELAC to report the information, by carrying no statement of law at all, or by merely requesting individuals' names and addresses, and no employer information. In some cases, the information was obtained by the GELAC, but not reported. Further, the GELAC did not have a system to permit the Audit Division to match the GELAC's received contributions to the solicitation devices, thereby making it impossible to determine how many contributions were tied to the defective solicitation devices. Therefore, the Commission found reason to believe that the GELAC violated 2 U.S.C. § 434(b)(3)(A). In addition, the Commission authorized the Office of General Counsel to enter into pre-probable cause conciliation with the GELAC

2. GELAC Response

In response to the Commission's reason-to-believe finding and offer of pre-probable cause conciliation, the GELAC initially made a counter-offer

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issue here, since in-kind contributions could not be deposited into bank accounts and subsequently refunded. *See* 11 C.F.R. § 103.3(b).

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However, following the ruling in *Republican National Committee v. FEC*, 76 F.3d 400, 406 (D.C. Cir. 1996), the GELAC submitted a request that the Commission take no further action against it based on the decision of the *RNC* court. The GELAC maintains that it achieved "best efforts" with its initial mailing and by making a follow-up mailing to obtain employer information in July 1993. Attachment 7 at 2. The GELAC argues that the Factual and Legal Analysis required the GELAC to use an employer information request that was not required during the 1992 election, and was only put in place with the revised regulations. The GELAC asserts that the requests used in its original solicitations satisfied legal requirements when they stated that the "Federal Election Commission requires the reporting of employer information," rather than stating that "federal law requires the GELAC to report the information." *Id.* at 3. Based on the *RNC* decision, the GELAC asserts that its original mailing satisfied the "best efforts" requirement because the solicitations contained a request and that even though the request did not use the Commission's suggested language, mandatory language did not need to be used. Attachment 10 at 2.

The GELAC also pointed to its follow-up mailing as satisfying best efforts requirement. The GELAC asserted that although the follow-up mailing would not be timely under the revised best efforts standards, no time requirement for a follow-up mailing existed for the 1992 election. *Id.* at 4. The GELAC also reiterated that its follow-up mailings met the "best efforts" requirements as interpreted by the *RNC* court, since the reporting statute "does not require political committees to report the [employer] information for 'each' donor," but that it "only requires committees to use their best

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efforts to gather the information." *Id.* at 2, quoting *RNC* at 406. Therefore, the GELAC argues that despite its low reporting percentage for the employer information, the Commission's focus must be on the efforts made to obtain the information.[11]

3. Analysis

The Office of General Counsel recommends that the Commission take no further action against the GELAC with respect to the reporting of employer information. The Commission found reason to believe that the GELAC violated 2 U.S.C. § 434(b)(3)(A) since the GELAC's disclosure reports contained a high error rate for the reporting of contributor information. This high error rate, in itself, demonstrated that the GELAC's compliance system was poorly crafted. Additionally, the employer information requests contained in the GELAC's solicitation devices did not comply with the law.[12]

Nevertheless, in light of the recent revisions to the "best efforts" regulation, 11 C.F.R. § 104.7, and legal interpretations of that regulation, this Office recommends the Commission take no further action on this matter. The previous regulation, the applicable

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[11] The GELAC also raised several arguments with respect to the sample that supplied the basis for the amount of contributions that did not include the contributor information. The GELAC argued that 39% of the errors discovered in the sample were derived from unsolicited contributions. *Id.* at 7. The GELAC states that the "best efforts" rules in effect at the time of these violation were silent on how to handle unsolicited contributions, therefore these contributions should not be viewed as a violation of the law. *Id.* at 8. The GELAC also argues that the sample was not representative since a high proportion of the errors came from one defective solicitation which made up only 1% of the General Committee's solicitations. *Id.* at 9. The GELAC also alleges that three sample errors were double-counted, and that three sample errors were not in fact errors because they contained proper requests in the original solicitation. *Id.* at 11. Finally, the GELAC questions the method of calculating the overall error rate since it is based on the amount of violations, rather than the number of violations. *Id.* at 10-11.

[12] A review of the only ten solicitations sent out by the GELAC and provided in response to the reason-to-believe notification, demonstrates that four of the ten solicitation failed to request employer information. The GELAC has asserted in its responses that only one of its ten solicitations failed to make an employer request. However, three other solicitations contained incomplete requests. For instance, Job 3187 requested contributors' occupations but not the names of their employers.

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regulation in this matter, did not specify particular language that a committee must use in its solicitation to demonstrate that it used its best efforts to obtain contributor employer information. In revising this regulation, the Commission recognized that the language of committees' solicitation requests was one reason for low compliance rates in the disclosure of occupation and name of employer information. Therefore, the revised regulations included specific language for contributor information requests. *See* 58 *Fed. Reg.* 57,725, 57,726 (Oct. 27, 1993); 11 C.F.R. § 104.7(b)(1) (1995). Although the Committee was notified of an appropriate request in the Commission's July 1, 1992 letter to the candidate, this Office recognizes that the regulatory requirements extant during the 1992 election cycle lacked some of the particularity called for in the revised regulations.

We also note that the specific request language required by the revised regulation was subsequently invalidated by the Court of Appeals for the D.C. Circuit. *RNC*, 76 F.3d at 406. The *RNC* court ruled that the specific language called for by the revised regulation was inaccurate since, according to its interpretation, the law only required that committees make "best efforts to gather [employer] information," and that the regulatory language misled contributors into believing that they have a legal obligation "to report the information for 'each' donor." *Id.* The court indicated that committees could use a different statement of the law in their requests, including the actual text of the reporting statute. *Id.*[13] While the court's decision should not be understood to mean that any

[13] The Commission also revised the regulations to require a stand alone follow-up request. This provision was upheld in *RNC*, 76 F.3d at 406. However, the Committee's failure to make a timely follow-up request is not dispositive of the issue of whether a violation occurred since the violations in the present matter fall under the previous "best efforts" regulations.

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employer information request will be satisfactory, this Office does not believe that additional examination of the GELAC's requests is necessary.

Additionally, certain mitigating factors exist which justify taking no further action. The GELAC did engage in follow-up efforts to retrieve contributor information. For instance, the GELAC sent out a letter dated July 19, 1993 to many contributors missing employer information. This letter was mailed to 87% of those persons who initially did not provide employer information. Subsequently, on November 3, 1994, the GELAC filed amended disclosure reports providing information retrieved through the July 1993 letter. The new amendments provided employer information for 64% of those individuals that were missing information originally. Thus, as of November 1994, 82% of the GELAC contributors had provided employer information, and 93% had either reported the information, or at least received a request for the information.[14] Therefore, the Office of General Counsel recommends that the Commission take no further action with respect to the GELAC.

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[14] This Office disagrees with the GELAC's criticism of the sampling technique employed during the Commission's audit. The sampled errors derived from unsolicited contributions were valid since the reporting statute states that employer information must be provided for *all* contributors who make contributions in excess of $200, and does not differentiate between contributions derived through solicited and unsolicited contributors. 2 U.S.C. § 434(b)(3)(A). Additionally, the GELAC accurately asserts that in three instances contributions were counted twice in the Commission's sample of errors. However, in order to increase the size, and therefore randomness of the sample, the Commission's sampling technique calls for the focus to be on dollars within contributions rather than the contributions themselves. Under this technique, individual contributions might have randomly been selected twice, but this does not invalidate the entire sample.

D. DEBTS AND OBLIGATIONS

1. Commission findings

During the audit, the Audit Division discovered that the General Committee failed to report $1,207,730 in accordance with 11 C.F.R. § 104.11(b). The General Committee had failed to report debts over $500 on the date that such debts were incurred. Therefore, the Commission found reason to believe that the General Committee violated 2 U.S.C. § 434(b)(8). The Commission authorized the Office of General Counsel to enter into pre-probable cause conciliation.

2. General Committee Response

In response to the Commission's reason to believe finding and offer of pre-probable cause conciliation, the General Committee requests that the Commission take no further action in this matter. The General Committee made several arguments in support of its request. The General Committee asserted that its reporting of debts complied with the regulatory requirement of 11 C.F.R. § 104.11(b) because such debts "were properly reported as incurred, i.e., a payable was incurred on the date that the General Committee received the vendor invoice." *Id.* at 4. The General Committee argued that it complied with the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing* (1992) ("the Compliance Manual") since it states that "accounts payable consist of bills on hand which are unpaid at the end of the reporting period." *Id.* Based on this language, the General Committee stated "the invoice does not become a payable until it is received, and, therefore, is not incurred until the date of

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receipt." *Id.*; Attachment 8 at 2. Therefore, the General Committee asserted that it "is only obligated to report bills which are 'on hand' at the end of the reporting period," and "clearly 'on hand' means when the General Committee receives the invoice." Attachment 8 at 4; Attachment 9 at 2.

The General Committee also argued the Factual and Legal Analysis's interpretation of 11 C.F.R. § 104.11(b) is "completely unworkable from a practical perspective" because "such an interpretation makes the timely reporting of debts either impossible (because an entity cannot know the amount of a debt until it receives an invoice) or unreasonably burdensome (requiring a General Committee to amend its debt schedule every reporting period during an election cycle to reflect invoices dated prior to the close of the previous period but not received until thereafter)."[15] *Id.* at 5. The General Committee further asserted that should the Commission adopt "this new date of invoice rule, General Committees would be forced to report estimated debts or to amend every debt schedule the following month" further confusing the public record.[16] *Id.*

The General Committee also disputed the notion that sufficient time exists to comply with 11 C.F.R. § 104.11(b) because Presidential campaigns have 20 days after the last day of each month in which to file their report. *Id.* at 6. It stated that the bulk of the reporting violations involve debts and payments on the Pre-General and Post-General

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[15] The General Committee also stated that the interpretation of 11 C.F.R. § 104.11(b) in the Factual and Legal Analysis "directly contradicts the advice given to the General Committee by the Audit Division." Attachment 8 at 4.

[16] The General Committee's supplemental response focused on information provided to it stating that debts contained in the Factual and Legal Analysis do not include those debts invoiced in the period within 10 days of the end of a reporting period. The General Committee's supplemental response criticizes this approach as creating a new standard for debt reporting that adds to the confusion on this issue. The General Committee concludes, then, that the best standard for the Commission to rely on is its "date invoice is on hand" standard for debt reporting.

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Reports, which allow "much fewer than 20 days after the cut-off date for receipt of invoices." *Id* at 6. The General Committee also asserted that the problems were "further compounded by the fact that these reports were due at the height of the campaign." *Id.* at 6.

The General Committee further stated that the Audit Division's analysis improperly included as debts telephone expenses that occurred on a regular basis which therefore constitute reoccurring administrative expenses that do not need to be reported under 11 C.F.R. § 104.11 Additionally, the General Committee claimed that the analysis included several errors. For example, it stated that one payment made to *Future Now* was erroneously treated as an unreported debt rather than as a duplicate billing. *Id.* at 10. It also stated that bank drafts totaling $4,276.96 were erroneously included as unreported debts payments when such drafts were used for the immediate payment of expenses such as car rental, hotel rooms, etc. *Id* at 10-11. Furthermore, the General Committee stated that many invoices were paid within 15 days of receipt, and that a significant amount were paid within 30 days of receipt of the invoice. *Id.* at 11.

The General Committee also asserted that "even if the Commission adopts a new debt reporting rule . . . the Audit Division's method of calculating the amount of the violation must be rejected because it unfairly exaggerates the amount of under-reported debt." *Id* at 12. To support this assertion, it stated that an invoice from *Hogan & Hartson* for $34,954 was triple counted as a violation because it was "purportedly not reported on three reports." *Id.*

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Finally, the General Committee stated that the Commission violated "fundamental principles of equity" by scrutinizing its debts more closely than it has any other campaigns and that it has applied a "new debt reporting rule" against it. *Id.* at 12. The General Committee also stated that it had a well-established system for reporting debts and disbursements in a timely manner, but that in some instances, it never received invoices. *See* Attachment 8 at 2. Therefore, the General Committee requested that the Commission take no further action with respect to its reporting of debts and obligations.

3. Analysis

The Office of General Counsel recommends that the Commission reject the General Committee's request for no further action in this matter. It is clear that the reporting requirements of 11 C.F.R. § 104.11(b) have consistently required General Committees to report debts that exceed $500 at the time they incur such debts. Furthermore, the regulatory history of this provision eliminates any ambiguity claimed by the General Committee. Prior to 1990, 11 C.F.R. § 104.11(b) required General Committees to report debts "as of the time of the transaction." 11 C.F.R. § 104.11(b) (1989). In 1990, the Commission changed this language to require that General Committees report debts "as of the date on which the obligation was incurred." 11 C.F.R. § 104.11(b) (1995). The new language was intended to clarify the existing regulation. The Commission clearly viewed "as of the time of the transaction" and "as of the date on which the obligation was incurred" as interchangeable terms. *See* Advisory Opinion ("AO") 1980-38. Furthermore, the Commission has rejected past arguments that debts

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over $500 must be reported from a date other than "the date on which the debt was incurred."[17]

In support of its argument that it can report debts once the invoice is received, the General Committee relies on a sentence in the Compliance Manual stating that a debt is an account payable in the ordinary course of business. The Compliance Manual then further defines accounts payable as bills on hand which are unpaid at the end of a reporting period. The General Committee's position is contravened by reading the Compliance Manual section on debt reporting is read in context. The same paragraph that the General Committee cites as providing evidence that only bills on hand must be reported notes that, if bills are not on hand, then committees must estimate their debts. Further, the Compliance Manual's section on building a system for compliance explains that committees need to note the date of their invoices for reporting purposes, thus focusing on the invoice date as the relevant date for debt reporting.

Finally, the General Committee's entire approach assumes that "on-hand" means that the invoice must be in the possession of its director of accounting at the campaign headquarters in Little Rock, Arkansas. In many cases, it appears that invoices were delivered to General Committee offices and personnel, but these invoices were not forwarded to the director of accounting. Under the General Committee's "on-hand"

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[17] In MUR 2304, the Cranston for President General Committee ("the Cranston General Committee") failed to properly report $225,733 in debts that it had incurred. The Cranston General Committee argued that it was not required to report debts without first receiving an invoice for such obligations. The Commission rejected this argument and concluded that debts over $500 were required to be reported at the time such debts were incurred or "at the time of the transaction." *See also* MUR 2706 (General Committee was required to report debt of telephone survey from date of the survey, not from date of payment for such survey) (First General Counsel's Report dated February 7, 1989); and MUR 3494 (General Committee was required to report debt stemming from computer rental from date of rental agreement, not from any other date) (First General Counsel's Report dated December 4, 1992).

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approach, such debts were not reportable. However, since the General Committee has an obligation under 2 U.S.C. § 434(b)(8) to report its debts, it follows that it is its responsibility to ensure that its employees forward invoices to its director of accounting.

Further, the General Committee overstates the reporting burdens placed on it by 11 C.F.R. § 104.11(b). Committees lacking debt information are not required to amend their reports every reporting period. If a committee does not know the exact amount of a debt, it should report an estimated amount and then either amend the report *or* include the correct figure in a subsequent report when the exact amount has been determined. *See Explanation and Justification for 11 C.F.R. § 104.11(b)*, 55 Fed. Reg. 26385 (June 27, 1989); *see also* AO 1980-38. Additionally, a committee can take affirmative steps, such as contacting a vendor prior to the receipt of an invoice, to determine the amount of reportable debt. Moreover, as alluded to by the General Committee in its supplemental response, the Audit Division schedule of debt reporting errors did not include debts incurred near the end of a reporting period. Attachment 9 at 2. Thus, the reporting burdens complained of were not as severe as asserted by the General Committee.

Additionally, the debt reporting requirements do not "confuse" the public record. Rather, the reporting of such estimates provides a more accurate "snapshot" of a committee's financial position during a given reporting period than if no such estimates were reported. Under the General Committee's argument, committees would have an incentive to delay the reporting of debts, thus defeating the purpose of meaningful disclosure. Further, the General Committee assertion that its system insured compliance

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with debt reporting provisions is repudiated by the significant amount of unreported debt. Thus, by definition, the General Committee's system was not as successful as it asserts.[18]

The Office of General Counsel, however, agrees with the General Committee that telephone expenses qualify as "regularly reoccurring administrative expenses" which do not need to be reported as a debt until the payment due date. *See* 11 C.F.R. § 104.11(b). Nevertheless, administrative expenses must be reported as debts if payment is not made on the date that such payment is due.[19] *Id.; see also Explanation and Justification for 11 C.F.R. § 104.11(b)*, 55 Fed. Reg. 26385 (June 27, 1989). Thus, contrary to the General Committee's arguments, it is required to report telephone expenses over $500 when payment for such expenses are due, not when payment is made.[20] In light of these arguments, this Office recommends that the Commission reject the General Committee's request for no further action.

Nevertheless, mitigating factors exist This Office agrees with the General Committee that debts from entities such as *Hogan & Hartson* and *Future Now* which have been counted more than once should be counted

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[18] Further, the General Committee describes its system as its [illegible] cases, the debt reporting information needed to be collected at other levels of the [illegible] chain where invoices may have been lost, misdirected, or simply not forwarded to the right people.

[19] The Audit Division was unable to determine the payment due date for all telephone expenses. Therefore, the Audit Division concluded that such expenses become due if they were not paid before the end of the next billing period.

[20] The General Committee also argues that letters of credit and deposits to various telephone companies throughout the United States that were made or paid prior to obtaining telephone service "means that the General Committee paid in advance for service it anticipated using, and [illegible] incurred." Attachment 8 at 9. Contrary to these assertions, letters of credit and [illegible] payments in advance for telephone service. Rather, the [illegible] payments were made so that telephone service could be [illegible] are not payments in advance for telephone service. *See generally*, Black's Law Dictionary at [illegible] (Abridged 5th Ed. 1983) (definitions of "deposit" and "letter of credit").

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only once for purposes of determining the amount of unreported debts.[21] Debts that were counted more than once for reporting purposes total $472,631.64. Additionally, this Office believes that telephone expenses that were paid by the General Committee before the end of the next billing period need not be reported. 11 C.F.R. § 104.11(b). Such non-reportable telephone expenses total $263,528.86. Therefore, the General Committee failed to report $471,569.98 ($1,207,730.48 - $472,631.64 -$263,528.86) in debts in accordance with 11 C.F.R. § 104.11(b).[22]

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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[21] This approach is consistent with Commission practice in other matters. *See, e.g.*, Final Audit Report for Bush-Quayle General Election Committee.

[22] Bank drafts totaling $4,276.96 should be included as reportable debts. Such drafts were not used, as the General Committee claimed, for the "immediate payment of expenses such as car rental, hotel rooms, etc. which must be paid at the time the invoice is presented." Attachment 8 at 31. For example, the contract date (the date that such debt was incurred) for Alamo Rent-A-Car was September 4, 1992 but the bank draft used for payment of this expense was dated November 18, 1992.

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RECOMMENDATIONS

1. Reject the Clinton for President Committee's request to take no further action with respect to contribution received from Harold Ickes, Paul Carey, Kenneth Brody, Erskine Bowles, Shelia Davis Lawrence, Manatt, Phelps & Phillips, American Federation of Teachers.

2. Take no further action against the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, with respect to transactions with O'Keefe Ashenden Lyons & Ward and Mozark Productions, Inc.

3. Take no further action against Manatt, Phelps & Phillips.

4. Take no further action against O'Keefe Ashenden Lyons & Ward.

5. Find reason to believe that Kevin O'Keefe violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

6. Find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f), by accepting contributions from Kevin M. O'Keefe.

7. Reject the American Federation of Teacher's request for no further action.

8. Take no further action against Mozark Productions, Inc.

9. Take no further action against the Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer.

10. Reject the Clinton/Gore '92 Committee's request for no further action.

11. Enter into conciliation with Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and the American Federation of Teachers prior to a finding of probable cause to believe.

12. Approve the attached conciliation agreements for the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, and for the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and the American Federation of Teachers.

13. Approve the attached Factual and Legal Analysis for Kevin M. O'Keefe.

14. Approve the attached Factual and Legal Analysis for the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer.

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15. Close the file as it pertains to Manatt, Phelps & Phillips; O'Keefe Ashenden Lyons & Ward; Kevin M. O'Keefe; Mozark Productions, Inc.; and Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer.

16. Approve the appropriate letters.

8/16/96
Date

Lawrence M. Noble by KBC
Lawrence M. Noble
General Counsel

Attachments

1. Response of the Clinton for President Committee, October 26, 1995.
2. Response of Manatt, Phelps & Phillips, October 18, 1995.
3. Response of O'Keefe Ashenden Lyons & Ward, November 20, 1995.
4. Canceled check issued by O'Keefe Ashenden Lyons & Ward.
5. Response of American Federation of Teachers, October 24, 1995.
6. Response of Mozark Productions, Inc., November 22, 1995.
7. Response of Clinton/Gore '92 General Election Compliance Fund, October 12, 1995.
8. Response of Clinton/Gore '92 Committee, October 12, 1995.
9. Response of Clinton/Gore '92 Committee, November 30, 1995.
10. Response of Clinton/Gore '92 General Election Compliance Fund, March 13, 1996.
11. Proposed Conciliation Agreement with the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer.
12. Proposed Conciliation Agreement with American Federation of Teachers.
13. Factual and Legal Analysis for Kevin O'Keefe.
14. Factual and Legal Analysis for Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer.

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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: AUGUST 23, 1996

SUBJECT: MURs 4172 & 4173 - GENERAL COUNSEL'S REPORT DATED AUGUST 16, 1996.

The above-captioned document was circulated to the Commission on: Monday, August 19, 1996 at 11:00

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

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

This matter will be placed on the meeting agenda for: Tuesday, September 10, 1996.

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 4172
Clinton for President Committee	)	AND 4173
and J.L. "Skip" Rutherford, as	)	
treasurer;	)	
Clinton/Gore '92 Committee and	)	
J.L. "Skip" Rutherford, as treasurer;	)	
Clinton/Gore '92 General Election	)	
Compliance Fund and	)	
J.L. "Skip" Rutherford, as treasurer;	)	
Manatt, Phelps & Phillips;	)	
O'Keefe Ashenden Lyons & Ward;	)	
Kevin M. O'Keefe;	)	
American Federation of Teachers;	)	
Mozark Productions, Inc.	)	

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CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 10, 1996, do hereby certify that the Commission decided by a vote of 4-0 to take the following actions in MURs 4172 and 4173:

1. Reject the Clinton for President Committee's request to take no further action with respect to contributions received from Harold Ickes, Paul Carey, Kenneth Brody, Erskine Bowles, Shelia Davis Lawrence, Manatt, Phelps & Phillips, American Federation of Teachers.

(continued)

2. Take no further action against the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, with respect to transactions with O'Keefe Ashenden Lyons & Ward and Mozark Productions, Inc.

3. Take no further action against Manatt, Phelps & Phillips.

4. Take no further action against O'Keefe Ashenden Lyons & Ward.

5. Find reason to believe that Kevin O'Keefe violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

6. Find reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f), by accepting contributions from Kevin M. O'Keefe.

7. Reject the American Federal of Teacher's request for no further action.

8. Take no further action against Mozark Productions, Inc.

9. Take no further action against the Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer.

(continued)

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10. Reject the Clinton/Gore '92 Committee's request for no further action.

11. Enter into conciliation with Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, and the American Federation of Teachers prior to a finding or probable cause to believe.

12. Approve the conciliation agreements for the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, and for the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, as attached to the General Counsel's August 16, 1996 report

13. Approve the conciliation agreement for the American Federation of Teachers as attached to the General Counsel's August 16, 1996 report.

14. Approve the Factual and Legal Analysis for Kevin M. O'Keefe, as recommended in the General Counsel's August 16, 1996 report.

15. Approve the Factual and Legal Analysis for the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, as recommended in the General Counsel's August 16, 1996 report.

(continued)

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16. Close the file as it pertains to Manatt, Phelps & Phillips; O'Keefe Ashenden Lyons & Ward; Kevin M. O'Keefe; Mozark Productions, Inc.; and Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer.

17. Approve appropriate letters.

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

Attest:

9-13-96
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 17, 1996

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Washington, D.C. 20007

RE: MURs 4172 and 4173
Clinton for President Committee;
Clinton/Gore '92 Committee;
Clinton/Gore '92 General Election Compliance Fund

Dear Ms. Utrecht:

On August 28, 1995, the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, were notified that the Federal Election Commission found reason to believe that they violated 2 U.S.C. § 434(b)(8). The Clinton/Gore '92 Committee responded to this finding on October 13, 1995, and supplemented its response on November 30, 1995. On August 28, 1995, the Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford, as treasurer, were notified that the Federal Election Commission found reason to believe that they violated 2 U.S.C. § 434(b)(3)(A). The Clinton/Gore '92 General Election Compliance Fund responded to this finding on October 13, 1995, and supplemented its response on March 12, 1996. On September 12, 1995, the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, were notified that the Federal Election Commission found reason to believe that they violated 2 U.S.C. 441a(f) and 441b. The Clinton for President Committee responded to these findings on October 26, 1995.

After considering the circumstances of the matter, the Commission determined on September 10, 1996, to take no further action against the Clinton/Gore '92 General Election Compliance Fund, and J.L. "Skip" Rutherford as treasurer, and closed the file as it pertains to these respondents. The file will be made public within 30 days after this matter has been closed with respect to all other respondents involved.

On September 10, 1996, the Commission decided to take no further action against the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, with respect to violations relating to transactions with Mozark Productions, Inc. and O'Keefe Ashenden Lyons & Ward. However, since some of the contributions from O'Keefe Ashenden Lyons & Ward were attributable to Kevin O'Keefe in his capacity as a staff member of the Clinton for President Committee, the Commission found reason to believe that the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f), by receiving excessive

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contributions from Kevin O'Keefe. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

On September 10, 1996, the Commission rejected a request by the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, to take no further action with respect to transactions involving staff members Harold Ickes, Paul Carey, Kenneth Brody, Erskine Bowles, Shelia Davis Lawrence. On this same date, the Commission rejected a request by the Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer, to take no further action with respect to transactions involving Manatt, Phelps & Phillips and American Federation of Teachers.

On September 10, 1996, the Commission rejected a request by the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, to take no further action.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. The agreement addresses activities of the Clinton for President Committee and the Clinton/Gore '92 Committee, and supersedes previous proposed agreements set forth by the Commission to the Clinton/Gore '92 Committee.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation 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, please contact Peter G. Blumberg, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analysis
Conciliation Agreement

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OLDAKER, RYAN, PHILLIPS & UTRECHT
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(202) 728-1010
FACSIMILE (202) 728-4044

October 10, 1996

Lawrence M. Noble, Esquire
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
OCT 10 4 45 PM '96

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Re: MURs 4172 and 4173
Clinton for President Committee;
Clinton/Gore '92 Committee;
J.L. "Skip" Rutherford, as Treasurer

Dear Mr. Noble:

This is in response to the Commission's offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of the above-captioned matters prior to a finding of probable cause to believe. Although this offer was approved by the Commission on September 10, 1996, it was not received by the Committees until some two weeks later.

Upon review of the Commission's correspondence, and for the reasons stated below, the Committees request additional time to consider the Commission's offer.

First, the Committees initially responded to the reason to believe determinations one year ago, on October 13, 1995. Although the Commission allowed one year to pass before making its offer or a response of any kind, the Commission is expecting to "expedite" resolution of this matter within thirty days. This expectation is unreasonably and unacceptably burdensome to respondents.

As the Commission is aware, counsel to these Committees is also counsel to the 1996 presidential committees. The Commission, inexplicably, has waited until the peak of the 1996 general election period to seek action from respondents. Due to the extreme day-to-day requirements of providing legal advice to the 1996 committees, counsel is not able to respond to your request at this time. Once the general election period has ended, then counsel will be prepared to consider these matters.

In addition, even if counsel had sufficient time to proceed, the Commission has failed to provide sufficient information to respondents in order to make a determination as to how to proceed. Although a General Counsel's Factual and Legal Analysis is enclosed, it pertains only to the Clinton for President Committee. Nothing is enclosed pertaining to the Clinton/Gore '92 Committee or for MUR 4173. It appears that there is no Factual and Legal Analysis for the Clinton/Gore '92 Committee.

Without that Factual and Legal Analysis, the Commission is depriving respondent of the opportunity and ability to adequately respond to the Commission's letter. More information is needed than the cover letter and the conciliation agreement. The absence of a Factual and Legal Analysis makes the conciliation agreement meaningless. While a change in the Commission's position has clearly occurred, the Clinton/Gore '92 Committee is left to discern that change for itself and is expected to respond to and negotiate over that change, without knowing what the Commission's position is today.

In particular, the Commission is asking respondent to agree to certain facts, primarily an amount in violation, without giving respondent the ability to determine how this amount was arrived at or otherwise any of the Commission's underlying reasoning. Obviously, if any sort of agreement is to be reached, the Clinton/Gore '92 Committee should be entitled to the same written explanation that other committees receive and with the same amount of time to analyze and consider it. That opportunity has been denied to respondent thus far. Certainly, if the Factual and Legal Analysis can be provided to the Clinton for President Committee, then one can be provided to the Clinton/Gore '92 Committee, as well.

Accordingly, while the Committees are not rejecting the Commission's offer, they are simply unable to respond, at this time. At the conclusion of the general election, if the Commission has provided sufficient information or explanation, the Committees would then be willing to consider the Commission's offer. The Committees request that the pre-probable cause conciliation period be held in abeyance until such time.

Your consideration of this request is appreciated, and should you wish to discuss these matters, please do not hesitate to contact me at (202) 728-1010.

Sincerely,

Lyn Utrecht

Lyn Utrecht
Counsel for the Clinton for President Committee and the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as Treasurer

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 17, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Washington, D.C. 20007

RE: MURs 4172 and 4173
Clinton for President Committee;
Clinton/Gore '92 Committee;
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht:

The Office of General Counsel has agreed to grant an extension to the Clinton for President Committee ("the Primary Committee") and Clinton/Gore '92 Committee ("the General Committee") in the pre-probable cause conciliation negotiations in light of the reasons set forth in your October 10, 1996 correspondence to this Office. Accordingly, a response to this Office's conciliation offer is due by November 13, 1996. The period for conciliation negotiations will expire on November 20, 1996.

You stated in your letter that in order to respond to the conciliation offer, the General Committee needed a factual and legal analysis of the Commission's findings. For the record, the General Committee received a factual and legal analysis when the Commission initially found reason to believe that the General Committee violated the Federal Election Campaign Act, as amended. The additional factual and legal analysis sent to the Primary Committee, which you reference in your letter, addressed a new finding that the Commission made against the Primary Committee on September 10, 1996.

However, in the interest of facilitating conciliation, we will provide you with additional information concerning the debt reporting issues. The proposed conciliation agreement calculates that the General Committee failed to report $471,569.98 in debts. This debt total was revised from the original proposed conciliation agreement which calculated the amount of unreported debts at $1,207,730.48. The revised offer lowers the overall debt amount by $472,631.64 to account for debts that had been counted multiple times, insofar as the General Committee failed to report these debts on multiple reports. The revised calculation counts these debts only once. Additionally, the

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revised debt calculation does not include certain telephone expenses totaling $263,528.86 that were paid by the General Committee since these debts appear to satisfy the "reoccurring administrative expense" conditions of 11 C.F.R. § 104.11(b). Workpapers supporting these calculations can be made available to you.

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

Sincerely,

Peter G. Blumberg
Attorney

97043840191

OLDA[illegible]R, RYAN, PHILLIPS & [illegible]TRECHT
ATTORNEYS AT LAW
818 CONNECTICUT AVENUE, N.W.
SUITE 1100
WASHINGTON, D.C. 20006

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

November 13, 1996

Nov 13 4 27 PM '96
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Lawrence M. Noble, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MURs 4172 and 4173
Clinton for President Committee
Clinton/Gore '92 Committee
J.L. "Skip" Rutherford, as treasurer

Dear Mr. Noble:

This letter is in response to the Office of General Counsel's ("OGC") letter of October 17, 1996 and in response to the Commission's previous offer to conciliate the above-captioned MURs. Your letter of October 17th specifically included a proposed conciliation agreement which I have reviewed with my client and respond to herewith. As more fully explained below, each of the respondent committees requests separate treatment of its respective issues.

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A worksheet is attached hereto to demonstrate how the committee arrived at the amount in violation for the remaining debt issues. Based on the adjustments made by the Office of the General Counsel and the Audit Division in the amount of the committee's alleged underreporting, as explained in your most recent letter, the committee has reviewed and recalculated the remaining debts at issue. The committee's conclusion is that, *at the most*, the debts remaining at issue total $111,757.95. The attached self-explanatory schedule adjusts for mistakes and other oversights made in the Commission's calculation.

The committee strongly believes that, in light of the total spending by the committee, the $111,757.95 remaining at issue is de minimis and requires no further action by the Commission, particularly where the committee closely followed the Commission's own instructions as contained in the Compliance Manual then in effect. Accordingly, respondent requests that the Commission take no further action.

If you have any questions, or would like further clarification of this matter, please do not hesitate to contact me.

Respectfully submitted,

Lyn Utrecht

Lyn Utrecht

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SCHEDULE (MUR 4173)

FEC Audit Division balance remaining	$471,569.78
Less: Duplication error in beginning balance	(95,938.74)
Less: Duplication error on auditor tape (left off)	(1,849.50)[1]
Less: Debts duplicated (included more than once)	(21,663.30)
Less: Amount of reoccurring administrative expenses within 30 days of receipt	(129,462.47)
Less: Bank drafts	(2,952.46)
Less: Timely payment of non-administrative expenses	(19,458.60)
Less: Properly reported debts (using date of receipt)	(88,486.76)
Debts Remaining At Issue	(111,757.95)

[1]Upon additional review by the Committee's accountant, this figure was found on the auditors' tape, and the debts remaining at issue has been adjusted accordingly.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

December 4, 1996

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

By: Kim Bright-Coleman KBC
Associate General Counsel

Lorenzo Holloway L.H.
Assistant General Counsel

Peter G. Blumberg PGB
Attorney

SUBJECT: Review of Debt Reporting for Clinton/Gore '92 Committee (MUR 4173)

On November 13, 1996, the Office of General Counsel received a response from the Clinton/Gore '92 Committee ("the Committee") in MUR 4173 regarding the Commission's finding that there is reason to believe that the Committee violated 2 U.S.C. § 434(b)(8) by failing to report certain debts. The Audit Division had calculated the debts at issue at $471,569.98. In its November 13, 1996 response, the Committee contends that the amount of questioned debt is overstated and that the Committee has inaccurately reported only $111,757.95 in debt.

We request that you review the Committee's latest submission to comment on its merit and, if necessary, to revise the debt calculation. The Committee has at this point submitted unsupported schedules to make its claims. We are requesting supporting documentation from the Committee which will be forwarded to you at the earliest possible date.

Attachment
Committee response, dated November 13, 1996.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 10, 1996

VIA FACSIMILE

Lyn Utrecht
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Ave., N.W.
Washington, D.C. 20007

RE: MUR 4173
Clinton/Gore '92 Committee;
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht:

As we discussed during our telephone conversation today, you have agreed to submit documentation supporting your proposed schedule of debts at issue in MUR 4173. You had originally submitted the schedule of debts to this Office on November 13, 1996. As we agreed, you will submit the additional information during the week of December 16, 1996.

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

Sincerely,

Peter G. Blumberg
Attorney

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

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

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
DEC 20 2 55 PM '96

December 20, 1996

Peter Blumberg, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

Re: MUR 4173

Dear Mr. Blumberg:

On November 13th, the Committee submitted certain information for the Commission's review of certain debt-related issues from this matter. As you requested, enclosed please find a copy of the Committee's work papers and back-up for the information previously submitted.

After you have had an opportunity to review this information, the Committee's representatives would be happy to answer any questions you may have or to provide additional explanation. If you will need such information, please feel free to contact me.

I look forward to hearing from you.

Sincerely,

Lyn Utrecht

Lyn Utrecht

Attachment

9704340197

SCHEDULE (MUR 4173)

FEC Audit Division balance remaining	$471,569.78
Less: Duplication error in beginning balance	(95,938.74)
Less: Duplication error on auditor tape (left off)	(1,849.50)[1]
Less: Debts duplicated (included more than once)	(21,663.30)
Less: Amount of reoccurring administrative expenses within 30 days of receipt	(129,462.47)
Less: Bank drafts	(2,952.46)
Less: Timely payment of non-administrative expenses	(19,458.60)
Less: Properly reported debts (using date of receipt)	(88,486.76)
Debts Remaining At Issue	(111,757.95)

[1]Upon additional review by the Committee's accountant, this figure was found on the auditors' tape, and the debts remaining at issue has been adjusted accordingly.

ATTACHMENT 1
Page 2 of 6

9704384019 8

Clinton/Gore '92 Committee--MUR 4173

Supplemental Debt Analysis

Amounts Properly Reported Using Date of Receipt (Exhibit 5 of Response)

Payee	Check #	Amount	Invoice date	Received date	Check date
City of Philadelphia	8502	4,294.51	8/2/92	Fax 10/28/92	10/29/92
		19,276.48	Amount duplicated by auditors		
Deutsch	9877	2,569.76	11/12/92	11/30/92	12/2/92
	9866	8,934.00	11/11/92	11/30/92	12/1/92
Horton Brothers	1808	3,018.70	7/20/92	8/14/92	8/19/92
	10272	349.68	12/9/92	12/14/92	1/6/92
Hogan & Hartson	10223	34,953.63	10/1/92	Fax 1/4/93	1/6/93
Greenberg Lake	6482	5,614.73	8/28/92	10/6/92	10/12/92
Squier, Eskew	9957	10,407.75	10/8/92	Fax 12/3/92	12/8/92
	9956	5,298.00	10/8/92	Fax 12/3/92	12/8/92
	9955	7,148.00	10/8/92	Fax 12/3/92	12/8/92
	9954	5,898.00	10/8/92	Fax 12/3/92	12/8/92
Total		107,763.24			

Reoccuring administrative expenses paid within thirty (30) days of receipt

Telephone Vendors (Exhibit 7 (I) of Response):

Payee	Check #	Amount	Invoice date	Received date	Check date
Alltel Mobil	9871	50,019.90	10/28/92	11/13/92	12/2/92
		27.13	10/18/92	11/10/92	12/2/92
		712.47	10/28/92	11/13/92	12/2/92
	7248	68.93	9/18/92	10/15/92	10/21/92
AT&T	6154	495.56	9/7/92	9/15/92	10/8/92
	10032	93.34	11/7/92	11/17/92	12/11/92

ATTACHMENT 1

Page 3 of 6

9704384019 9

		16,963.39	11/7/92	11/17/92	12/11/92
	9288	86.57	10/7/92	10/15/92	11/15/92
	9825	654.24	10/25/92	11/19/92	11/30/92
Total		69,121.53			

Checks Duplicated (Exhibit 7 (II) of response)

Payee	Check #	Amount
Alltel Mobil	6951	27.57
		220.77
Alamo Rental Car	Drafts	2,138.48
A T & T	Drafts	193.36
	Drafts	610.66
	Drafts	9.96
Total		3,200.80

Bank Drafts (paid when bills were incurred) (Exhibit 8 of Response)

	Amount
Alamo Rental Car	2,138.48
Total	2,138.48

Debts Timely Paid (Exhibit 9 of Response)

Copy Systems	8419	9,114.09	9/24/92	10/8/92	10/30/92
		363.98	9/19/92	10/6/92	10/30/92
	8603	506.40	9/16/92	10/20/92	10/31/92
	12011	1,721.18	9/8/92	2/22/93	3/9/93

ATTACHMENT 1
Page 4 of 6

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		949.50	10/21/92		3/9/93
	9758	2,019.36	11/3/92	11/5/92	11/25/92
		560.02	11/3/92	11/5/92	11/25/92
	10804	1,392.69	11/11/92	2/22/93	2/25/93
		14.24	11/6/92	2/22/93	2/25/93
		1,266.00	11/3/92	2/22/93	2/25/93
		3,560.22	11/3/92	2/22/93	2/25/93
		685.63	10/13/92	2/22/93	2/25/93
		245.48	10/15/92	2/22/93	2/25/93
		132.93	9/28/92	2/22/93	2/25/93
	7277	1,159.40	9/27/92	10/6/92	10/21/92
		1,139.40	10/1/92	10/9/92	10/21/92
	6430	1,180.13	9/19/92	9/19/92	10/12/92
		791.25	9/19/92	9/19/92	10/12/92
		10.50	9/19/92	10/6/92	10/12/92
		844.00	9/19/92	9/19/92	10/12/92
	6166	1,672.64	9/19/92	9/19/92	10/8/92
		633.00	9/19/92	9/19/92	10/8/92
	5948	2,154.74	9/19/92	9/19/92	10/8/92
	5804	27,960.39	9/19/92	9/19/92	10/3/92
	7011	263.75	9/19/92	9/19/92	10/19/92
Horton Brothers	1305	5,022.03	7/20/92	7/20/92	8/9/92
	1474	5,490.30	7/20/92	7/20/92	8/11/92
		4,247.89	7/20/92	7/20/92	8/11/92
		42.82	7/20/92	7/20/92	8/11/92
		4,655.56	7/20/92	7/20/92	8/11/92
Total		**79,799.52**			
GRAND TOTAL		**262,023.57**			
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ATTACHMENT 1

Page 5 of 6

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185.38+
1,036.87+

003

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446.76-

000

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000

2,027.84+

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1,654.54+
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5,898.00+
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28,751.75+
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003

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Duplicated

23,057.21+
197,071.16+
285,627.99+
11,739.81+
39,888.21+
40,000.14+
152,050.40+
[redacted]

009

941,312.40+

941,312.40+
266,418.08+

002

1,207,730.48+

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ATTACHMENT 1

Page 6 of 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 2, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

By: Lorenzo Holloway
Assistant General Counsel

Peter G. Blumberg PGB
Attorney

SUBJECT: Review of Debt Reporting for Clinton/Gore '92 Committee (MUR 4173)

On December 4, 1996, the Office of General Counsel forwarded a response from the Clinton/Gore '92 Committee ("the Committee") in MUR 4173 regarding the Commission's finding that there is reason to believe that the Committee violated 2 U.S.C. § 434(b)(8) by failing to report certain debts. As we indicated at that time, the Committee was asked to submit workpapers supporting its debt calculations. The workpapers were received by this Office on December 20, 1996, and are attached herein.

We request that you review the Committee's latest submission to comment on its merit and, if necessary, to revise the debt calculation.

Attachment
Committee workpapers.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 15, 1997

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: ANALYSIS OF THE RESPONSE BY THE CLINTON/GORE '92 COMMITTEE (the Committee) TO THE DEBT REPORTING ISSUE CONTAINED IN MUR 4173

In response to your memorandum, dated January 2, 1997, the Audit staff has reviewed the material submitted by the Committee relative to MUR 4173 regarding the Committee's failure to report certain debts.

The Committee contends that the Audit Division's calculation of the amount of debt not reported, $471,569.78, is overstated. The Committee provided a workpaper showing adjustments made to derive its total for debts not reported of $111,757.95. The Audit staff's review of these adjustments is discussed below.

The Committee's initial adjustment, in the amount of $95,938.74, is for a duplication error on one of the Audit staff's calculator tapes used to determine the dollar amount of debts not reported. The Audit staff's review of the original workpapers confirms that this amount had been entered twice and, as such, the amount of debt not reported should be reduced by $95,938.74.

The second adjustment raised by the Committee, is described as Duplication error on auditor tape (left off)". The amount of the adjustm footnoted. According to the footnote, the Committee's accountant fo the auditor's tape "and the debts remaining at issue has been adjusted Audit staff cannot determine why the Committee feels this adjustmer review of the auditor's tape indicates a reduction of $1,849.50 was p further adjustment necessary.

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Next, the Committee reduces the amount of debt not reported by $21,663.30 for "Debts duplicated (included more than once)". The Audit staff's review of the information provided, as well as our workpapers, indicates an adjustment of $21,414.96 is in order.

The Audit staff finds the Committee's four remaining adjustments without merit (and without documentation). The Committee has provided receipt dates on its schedules for some of the debts in question in an attempt to show payment was effected timely and disclosure not required. However, no documentation has been provided to support the listed date of receipt. In addition, for those debts paid by drafts, the Committee argues that the debts were incurred when paid by the drafts. This argument neglects to note that payments were made by drafts issued from 32 to 75 days after the date of the invoice.

Based on these adjustments, the Audit staff has revised its total for debts not properly disclosed to $354,216.08 ($471,569.78 - $95,938.74 - $21,414.96).

Should you have any questions, call Alex Boniewicz or Joe Stoltz at 219-3720.

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

FEB 26 11 35 AM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 4172 and 4173
Clinton for President Committee	)	
and J.L. "Skip" Rutherford, as treasurer	)	
Clinton/Gore '92 Committee	)	**SENSITIVE**
and J.L. "Skip" Rutherford, as treasurer	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 15, 1995, the Commission found reason to believe in MUR 4172 that the Clinton for President Committee ("the Primary Committee"), and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contributions from various individuals and entities. On August 16, 1995, the Commission found reason to believe in MUR 4173 that the Clinton/Gore '92 Committee ("the General Committee"), and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8).

For the reasons stated herein, the Office of General Counsel

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recommends that the Commission accept the conciliation agreement submitted by the Primary Committee, and close the file in MUR 4172. The Office of General Counsel also recommends that the Commission reject the General Committee's request for no further action. The Office of General Counsel will prepare for the probable cause stage.

II. DISCUSSION

A. MUR 4172 (Clinton for President Committee)

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Therefore, the Office of General Counsel recommends that the Commission accept this conciliation agreement and close the file with respect to MUR 4172.

B. MUR 4173 (Clinton/Gore '92 Committee)

The General Committee claims that some of the debts were counted more than once, or paid on time, and therefore not reportable as debts. In addition, the General Committee reiterated its earlier arguments that its debt reporting approach was consistent with the requirements set forth in the Commission's *Financial Control and Compliance Manual for Presidential Primary Candidates*

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Receiving Public Financing (1992) ("the *Compliance Manual*") which assertedly only requires the reporting of debts when invoices related to the debts are "on hand."

The Audit Division, on request of the Office of General Counsel, reviewed the arguments, and revised the debt total to $354,216.08. Attachment 5. Following the Audit Division's review, the Office of General Counsel informed the General Committee of the recalculation

the General Committee requested that the Commission take no further action and close the file.

The Office of General Counsel recommends that the Commission reject the General Committee's present request for no further action.

The reporting requirements of 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) require committees to report debts that exceed $500 at the time they incur such debts. Debts are *incurred* "as of the time of the transaction" establishing the obligation. *See* Advisory Opinion ("AO") 1980-38. Furthermore, the Commission has rejected past arguments that debts over $500 must be reported from a date other than "the date on which the debt was incurred." *See* MUR 2304; MUR 2706; MUR 3494. In pursuing its argument that debt reporting requirements are triggered only after a committee receives an invoice, the General Committee has read the *Compliance Manual* out of context. The same paragraph cited by the General Committee as providing evidence that only bills on hand must be reported states that, if bills are not on hand,

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then committees must estimate their debts. Further, the *Compliance Manual*'s section on building a system for compliance explains that the "invoice date determines when the committee recognizes the obligation and will be needed for the reporting of debts and obligations." Compliance Manual at 105-06. The General Committee's debt reporting omissions and errors are substantial, and have not been corrected insofar as the General Committee never filed amendments to its disclosure reports as recommended by the Commission's audit reports. Moreover, the General Committee has not presented any new arguments that merit a change in the Commission's position on September 10, 1996, when it voted to reject the General Committee's initial request for no further action. Accordingly, this Office will proceed to the next stage of the enforcement process.[4]

III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Clinton for President Committee, and J.L. "Skip" Rutherford, as treasurer;

2. Close the file with respect to MUR 4172;

3. Approve the appropriate letter; and

4. Reject the request by the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, to take no further action.

2/25/97
Date

Lawrence M. Noble
General Counsel

[4] In light of *FEC v. Williams*, No. 95-55320 (9th Cir., Dec. 26, 1996) and *FEC v. National Republican Senatorial Committee*, 877 F. Supp. 15 (D.D.C. 1995), the Office of General Counsel notes that he first debts went unreported in July 1992 and most of the unreported debts were incurred in September and October 1992. However, the Committee has not filed any amendments to the reports.

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Attachments

1. Letter from Clinton for President Committee and Clinton/Gore '92 Committee (November 12, 1996) (attachments omitted).
2. Letter from Clinton for President Committee and Clinton/Gore '92 Committee (January 28, 1997) (attachments omitted).
3. Proposed conciliation agreement
4. Copy of civil penalty check.
5. Audit Division analysis of Clinton/Gore '92 Committee Response (January 15, 1997).

Staff assigned: Peter G. Blumberg

97043840211

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: MARCH 3, 1997

SUBJECT: MURs 4172 & 4173 - General Counsel's Report

The above-captioned document was circulated to the Commission on **Wednesday, February 26, 1997**.

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, March 11, 1997**.

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

97043840212

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 4172 and 4173
Clinton for President	)	
Committee and J.L. "Skip"	)	
Rutherford as treasurer;	)	
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 11, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to MURs 4172 and 4173:

1. Accept the conciliation agreement with respondent Clinton for President Committee and J.L. "Skip" Rutherford, as treasurer, as recommended in the General Counsel's February 25, 1997 report;

2. Close the file with respect to MUR 4172;

3. Approve the appropriate letter as recommended in the General Counsel's February 25, 1997 report; and

(continued)

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4. Reject the request by the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, to take no further action.

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

Attest:

3-12-97
Date

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

9704384021 4

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1997

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4173
Clinton/Gore '92 Committee and
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("Commission") found reason to believe that your clients violated 2 U.S.C. § 434(b)(8) and instituted an investigation in this matter. On March 11, 1997, the Commission rejected your request to take no further action against your clients.

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 Peter Blumberg, 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	)	
	)	MUR 4173
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer	)	
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On August 16, 1995, the Commission found reason to believe that the Clinton/Gore '92 Committee ("the Committee"), and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8) by failing to report debts and obligations. The Committee responded to the reason-to-believe finding on September 13, 1995 and November 30, 1995 and requested that the Commission take no further action. The Commission rejected this request on September 10, 1996. Subsequently, the Committee restated its request that the Commission take no further action by letter on November 13, 1996 and January 28, 1997. The Commission rejected the request on March 11, 1997.

II. FACTUAL AND LEGAL ANALYSIS

Political committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). Outstanding debts must be continuously reported until extinguished. 11 C.F.R. § 104.11(a). A debt or obligation includes a loan, written contract, written promise, or written agreement to make an expenditure. 11 C.F.R.

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§ 104.11(b). A debt or obligation under $500 must be reported as of the time the payment is made, or no later than 60 days after it is incurred, whichever comes first. *Id.* Any debt or obligation over $500 must be reported as of the date on which the obligation is incurred, except that any obligation incurred for rent, salary, or other regularly recurring administrative expense must not be reported as a debt before the payment due date. *Id.* If the exact amount of a debt or obligation is not known, the reporting committee shall report an estimated amount and state that the amount reported is an estimate. *Id.* When the exact amount is determined, the committee must either amend the report containing the estimate or indicate the correct amount for the reporting period in which the correct amount is determined. *Id.*

On August 16, 1995, the Commission found reason to believe that the Committee violated 2 U.S.C. § 434(b)(8). The Final Audit Report found that the Committee failed to report $1,207,730 in debts. Debts totaling $853,514 identified by the Final Audit Report were subsequently found to have been properly reported because they constituted administrative expenses reported within the billing cycle ($263,529), were reported more than once for different reporting periods ($494,046), or because of adjustments to the auditor's calculations ($95,939). The Committee failed to report debts and obligations totaling $354,216 [$1,207,730 - ($263,529 + $494,046 + $95,939)] for campaign expenses. These debts were incurred between July 20, 1992 and December 16, 1992. The Committee never filed amended reports to disclose these debts and obligations.

In response to the Commission's reason to believe finding, the Committee asserted that its reporting of debts complied with the regulatory requirement of 11 C.F.R.

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§ 104.11(b) because such debts "were properly reported as incurred, i.e., a payable was incurred on the date that the Committee received the vendor invoice." The Committee argued that it complied with the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing* (1992) ("the Compliance Manual") since it states that "accounts payable consist of bills on hand which are unpaid at the end of the reporting period." Based on this language, the Committee stated "the invoice does not become a payable until it is received, and, therefore, is not incurred until the date of receipt." Therefore, the Committee asserted that it "is only obligated to report bills which are 'on hand' at the end of the reporting period," and "clearly 'on hand' means when the Committee receives the invoice."

The Committee also argued that to report a debt as of the date it is incurred is "completely unworkable from a practical perspective" because this requirement "makes the timely reporting of debts either impossible (because an entity cannot know the amount of a debt until it receives an invoice) or unreasonably burdensome (requiring a committee to amend its debt schedule every reporting period during an election cycle to reflect invoices dated prior to the close of the previous period but not received until thereafter)."

The Commission's regulations require committees to report debts that exceed $500 *at the time they incur such debts*. 11 C.F.R. § 104.11(b). The language of the regulation is clear and the Commission has consistently interpreted this requirement to report debts at the time they are incurred. Prior to 1990, 11 C.F.R. § 104.11(b) required committees to report debts "as of the time of the transaction." *Explanation and*

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Justification for 11 C.F.R. § 104.11(b), 55 Fed. Reg. 26385 (June 27, 1989). In 1990, the Commission changed this language to require that committees report debts "as of the date on which the obligation was incurred." 11 C.F.R. § 104.11(b). Although such language was intended to clarify the existing regulation, the Commission clearly viewed "as of the time of the transaction" and "as of the date on which the obligation was incurred" as interchangeable terms.[1] *See* AO 1980-38.

In support of its argument that it can report debts once the invoice is received, the Committee relies on a sentence in the Commission's *Compliance Manual* stating that a debt is an account payable in the ordinary course of business. *Compliance Manual* at 146. The *Compliance Manual* then further defines accounts payable as bills on hand which are unpaid at the end of a reporting period. *Id.* The Committee's position is contravened by the *Compliance Manual* section on debt reporting when it is read in context. The same paragraph cited by the Committee as providing evidence that only bills on hand must be reported states that, "if bills are not on hand, then committees must estimate their debts." *Id.* at 146-47.

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[1] The Commission has provided adequate guidance to committees concerning the reporting of debts over $500. The Explanation and Justification for 11 C.F.R. § 104.11(b) explain how debts must be reported to comply with the regulation. The *Compliance Manual* and the *General Election Supplement to the Financial Control and Compliance Manual* (1992) offer similar guidance. Moreover, Commission precedent in the enforcement area supports this reporting requirement. In MUR 2304, the Commission found reason to believe that the Cranston for Senate Committee ("the Cranston Committee") violated 2 U.S.C. § 434(b) based on a General Counsel's Report that interpreted "at the time of the transaction" to mean "at the time the debts were incurred." *See also* MUR 2706 (Commission finds reason to believe that a committee violated 2 U.S.C. § 434(b) when it reported a debt for a telephone survey [illegible] the payment for the survey, rather that the date of the survey); MUR 3418 (Commission finds reason to believe that a committee violated 2 U.S.C. § 434(b) when it failed to continuously report debt stemming from interest payments on bank loans from date of loan origination until the date that such loans were fully paid); and MUR 3494 (Commission finds reason to believe that a committee violated 2 U.S.C. § 434(b) when it failed to report debt stemming from computer rental from date of rental agreement).

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Moreover, [illegible]

the invoice should have been in the [illegible]

campaign headquarters in [illegible]

cases, it appears that invoices were [illegible]

these invoices were not forwarded to the [illegible]

Committee's internal accounting procedures, the Committee has [illegible]

to report debts and obligations when they are incurred [illegible]

The Committee claims that the reporting [illegible]

burdensome because it may not have [illegible]

invoice. However, it is possible for a committee to [illegible]

having received an invoice for such debt. For example, [illegible]

the total amount due for the leased item over the [illegible]

needed is determine the amount due. Additionally, [illegible]

steps, such as contacting a vendor [illegible]

amount of reportable debt. [illegible]

[illegible]

sample from Institute of [illegible]

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[illegible] amended the report *or* included the correct figure in a subsequent report when the exact amount was determined. *See Explanation and Justification for 11 C.F.R. § 104.17(b)*, 55 Fed. Reg. 26385 (June 27, 1989); *see also* AO 1980-38.[3]

The reporting of estimates provides a more accurate snapshot of a committee's financial position during a given reporting period than if no such estimates were reported. Such reporting furthers, not hinders, public disclosure. Furthermore, publicly-financed campaigns that must adhere to expenditure limitations, should be aware of the amount of their debts and obligations when they are incurred. 2 U.S.C. § 441a(b)(1)(B). Campaign officials must keep track of obligations simply to know how much money is available for future expenditures. The Committee's expenditures are subject to an expenditure limitation that is equal to the amount of the candidate's entitlement to public funds. 11 C.F.R. § 9003.2(a)(1). Therefore, it is important that publicly-financed campaigns fully and accurately disclose the amounts of their debts and obligations to the public as of the date of incurrence so that the public may evaluate how the campaign is using public funds and whether the campaign is adhering to the expenditure limitations.[4] *See Reagan-Bush [illegible] v. FEC*, 525 F.Supp. 1320, 1340 (D.D.C. 1981) (discussing "[illegible]

[illegible] Office of General Counsel is prepared [illegible]

[illegible] the Commission find probable cause to believe that the Clinton/Gore '92 Committee [illegible]

[illegible] AO 1980-38.

[illegible] would have [illegible]

and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8) by failing to report debts and obligations.

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8).

3/26/97
Date

Lawrence M. Noble
General Counsel

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BILL Clinton
FOR PRESIDENT COMMITTEE

April 1, 1997

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
APR 3 2 52 PM '97

Lawrence M. Noble, Esquire
Office of General Counsel
Federal Election Commission
999 E St., N.W.
6th Floor
Washington, D.C. 20463

RE: MUR 4173
Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer

Dear Mr. Noble:

This letter requests an extension of time on behalf of the Clinton/Gore '92 Committee, (the "Committee") and J.L. Rutherford, Treasurer to respond to the General Counsel's brief.

Due to our need to adequately review all of our records and prepare a complete response, we hereby request an extension of time of twenty days. The Committee's C.P.A. will be unavailable for much of the response period, and her assistance is required in filing a full response. Accordingly, we propose to file our response on May 6, 1997.

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

Sincerely,

Lyn Utrecht

Lyn Utrecht
General Counsel

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

APR 9 4 18 PM '97

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 9, 1997

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman KBC
Associate General Counsel

SUBJECT: Request for Extension of Time in MUR 4173

I. BACKGROUND

On April 1, 1997, the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer ("Respondents") were provided with a General Counsel's Brief in MUR 4173. The response was due within 15 days, or by, April 16, 1997. On April 3, 1997, this Office received the Respondents' request of an extension of 20 days to submit their response. Attachment 1. The request submitted by the Respondents states that the extension request is based on a "need to adequately review all of our records and prepare a complete response" and because the Respondents' "C.P.A. will be unavailable for much of the response period, and her assistance is required in filing a full response." *Id.*

As noted in our General Counsel's Report in this matter, dated February 25, 1997, it will soon be 5 years since a significant portion of the activities occurred (July-September 1997). In light of the limited time left before these activities may be barred by the statute of limitation at 28 U.S.C. § 2462, this Office recommends that the Commission approve the Respondents' request only on the condition that they agree to waive for the period of their requested extension any defense based on 28 U.S.C. § 2462. The waiver is set forth as an attachment to the proposed letter. Attachment 2. While the reasons set forth in the Respondents' request may ordinarily present an adequate basis to grant an extension without requiring a waiver, the timing issues here

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are considerable and require the waiver. *See* General Counsel's Report in MUR 3974 (Rangel for Congress Committee), dated March 21, 1997.

II. RECOMMENDATIONS

1. Grant the request of the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, for 20 additional days or until May 6, 1997, to submit a response to the General Counsel's Brief on the condition that they agree to waive for such period any defense based on 28 U.S.C. § 2462 or any other statute of limitation or repose; and

2. Approve the attached letter.

Attachments
1. Extension Request.
2. Letter with waiver attachment.

Staff assigned: Peter G. Blumberg

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: APRIL 10, 1997

SUBJECT: MUR 4173 - Memorandum to the Commission

The above-captioned document was circulated to the Commission on **Thursday, April 10, 1997**.

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 Thomas	_

This matter will be placed on the meeting agenda for **Tuesday, April 15, 1997**.

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

97044340227

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4173
Clinton/Gore '92 Committee and	)	
J.L. "Skip" Rutherford, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on April 15, 1997, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 4173:

1. Grant the request of the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, for 20 additional days or until May 6, 1997, to submit a response to the General Counsel's Brief on the condition that they agree to waive for such period any defense based on 28 U.S.C. § 2462 or any other statute of limitation or repose; and

2. Approve the letter attached to the General Counsel's April 9, 1997 memorandum to the Commission.

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

Attest:

4-16-97
Date

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

97044502220

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FACSIMILE

April 15, 1997

Lyn Utrecht, Esq.
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4173
Clinton/Gore '92 Committee and
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht:

This is in response to your letter dated April 1, 1997, requesting an additional 20 days to submit your clients' response to the General Counsel's Brief, now due on April 16, 1997. In light of the potential application of the five-year statute of limitations at 28 U.S.C. § 2462, on April 15, 1997, the Commission granted the request for 20 additional days or until May 6, 1997 to respond on the condition that your clients agree to waive for such period any defense based on 28 U.S.C. § 2462 or any other statute of limitations or repose. If your clients agree to this condition, please sign the attached waiver, and return it within three days or by April 16, 1997, whichever is sooner. If the waiver is not returned here by that time, the Commission denied the requested extension. If you have any questions, please call me at (202) 219-3690.

Sincerely,

Peter G. Blumberg
Attorney

Attachment
Waiver

9704340229

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 Committee and	)	MUR 4173
J.L. "Skip" Rutherford, as treasurer	)	
	)	

CONSENT TO EXTEND THE TIME
TO INSTITUTE A CIVIL LAW ENFORCEMENT SUIT

Respondents Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, hereby consent to extend the time to institute a civil law enforcement suit for a period of twenty calendar days from the expiration date of the five year statute of limitation found at 28 U.S.C. § 2462, or any other statute of limitation or repose that may be applicable, should the Commission institute a civil law enforcement action against the Respondents in MUR 4173 pursuant to 2 U.S.C. § 437g(a)(6). There shall be no additional consent to extend the time to institute a civil law enforcement suit without the written consent of the Respondents.

_____ _____

Lyn Utrecht, Esquire Date
For the Respondents

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 Committee and	)	MUR 4173
J.L. "Skip" Rutherford, as treasurer	)	
	)	

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Apr 17 3 56 PM '97

CONSENT TO EXTEND THE TIME TO INSTITUTE A CIVIL LAW ENFORCEMENT SUIT

Respondents Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, hereby consent to extend the time to institute a civil law enforcement suit for a period of twenty calendar days from the expiration date of the five year statute of limitation found at 28 U.S.C. § 2462, or any other statute of limitation or repose that may be applicable, should the Commission institute a civil law enforcement action against the Respondents in MUR 4173 pursuant to 2 U.S.C. § 437g(a)(6). There shall be no additional consent to extend the time to institute a civil law enforcement suit without the written consent of the Respondents.

Lyn Utrecht
Lyn Utrecht, Esquire
For the Respondents

4/17/97
Date

97043840231

BILL CLINTON • AL GORE

May 6, 1997

Peter Blumberg, Esquire
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 6 3 20 PM '97

Re: MUR 4173, Clinton/Gore '92 Committee
J.L. "Skip" Rutherford, as treasurer

Dear Mr. Blumberg:

Enclosed please find three copies of the Brief of the Clinton/Gore '92 Committee (the "Committee") prepared in response to the Office of General Counsel Brief in the above-captioned matter.

If you have any questions or desire any further information, please do not hesitate to contact me.

Sincerely,

Lyn Utrecht

Lyn Utrecht
Counsel for Respondent

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Enclosure

P.O. BOX 2741 • LITTLE ROCK, ARKANSAS 72203 • 501-375-1290 • FAX 501-376-8596
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OFFICE OF GENERAL
COUNSEL

MAY 6 3 21 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 Committee	)	**MUR 4173**
and J.L. "Skip" Rutherford,	)	
as treasurer	)	
	)	

BRIEF OF THE CLINTON/GORE '92 COMMITTEE

I. STATEMENT OF THE CASE

This is the brief of respondent, the Clinton/Gore '92 Committee (the "Committee") and J.L. "Skip" Rutherford, as treasurer, filed in response to the Office of General Counsel's ("OGC") Brief in the above-captioned Matter Under Review ("MUR"). The OGC's Brief, dated March 26, 1997, contains numerous errors and misrepresentations with respect to the nature of this matter, the specific facts at issue, the applicable law and Commission guidance, and, most importantly, respondent's previous assertions and statements in this matter.

This matter was initiated as a result of the Audit Division's review of Committee activities arising out of the 1992 general election period, some nearly five years ago. The sole remaining issue from that audit is whether the Committee accurately reported all of its debts and obligations for campaign expenses. Because of errors and inconsistencies in the Audit Division's calculations, which have been previously recognized by OGC but in no way referenced in its brief, the Committee has either been requested or required to provide supplemental information to OGC correcting the auditors' mistakes on two occasions, in addition to its regular responses in this matter.

The Committee contends that the undisputed facts clearly demonstrate that out of total campaign expenses of some $55 million, the Commission is quibbling over less than $115,000, or .2% of the Committee's expenditures. Yet, in its efforts to proceed with this matter based on an incorrect factual record, the OGC has chosen to ignore the information supplied by the Committee and provide the Commission with an incomplete record. The discussion contained below further develops this information.

For the reasons stated herein, the Committee respectfully requests that the Commission find no probable cause to believe that a violation of the Federal

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Election Campaign Act of 1971, as amended, (the "Act") or Commission regulations has occurred and close the file in this matter.

II. FACTUAL AND LEGAL ANALYSIS

A. The Office Of General Counsel's Brief Misstates The Committee's Previous Statements, As Well As The Law And Previous Guidance OGC Gave To The Committee.

1. The OGC has given the Committee an ever-changing and sharply contradictory interpretation of the law – simply to maximize its potential penalty against the Committee.

The OGC Brief is primarily a criticism of the Committee's previous assertions and misleadingly claims that the key point of the Committee's position is that the requirement "to report a debt as of the date it is incurred is 'completely unworkable from a practical perspective'". The OGC Brief then goes on to purportedly explain that the Commission's regulations require reporting from the date a debt is incurred, as if the Committee is somehow arguing against the plain language of the Commission's regulations. That is wrong – the Committee's argument has never been either that the regulations do not state "incurred" or that the date a debt is incurred is impossible to comply with. To the contrary, it is the meaning of the term "incurred" and the evolving interpretation placed on that word by the Audit Division and the OGC with which the Committee takes issue.

During the lengthy course of this MUR, the Audit Division and the OGC have not been able to come close to agreeing as to the meaning of "incurred" and how that word is to be applied, given the widely contradictory advice and explanations that the Committee has received in this matter. To date, at least three different meanings have been used (by the Commission – not by respondents) in this matter alone for the term "incurred" – ((1) the invoice date, (2) sometime prior to the invoice date, and (3) the invoice date plus ten days.[1] Given the sharp internal differences within the Commission, it is patently unfair for the Commission to make a probable cause finding based on an arbitrary standard subject to chameleon-like changes simply when OGC wishes the Commission to penalize a respondent.

The OGC Brief itself never explains or defines what is meant by the term incurred. However, by implication, the Brief indicates that a debt is incurred even before an invoice is issued by a vendor.[2] See Brief at p. 5. This is a marked

[1] In fact, for some vendors in dispute, the auditors used a fourth date, the "close of billing cycle" date, which is also earlier than the invoice date, though the Committee was left to discover this by reviewing the auditors' workpapers. Using this date is absurd – no committee could anticipate when vendors close their bills.

[2] The OGC brief actually suggests that, in the absence of an invoice, estimates of debts should be made, as with, for example, the amounts due under a written lease agreement. This example

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change from OGC's position at the reason to believe stage of this matter. At that time, the date a debt was incurred was the date of the invoice, even if the political committee had not yet received an invoice.

The Audit Division, on the other hand, has indicated that incurred means the "invoice date plus ten days."[3] This information was supplied to the Committee after the Commission made its reason to believe finding, i.e., after the OGC had indicated that the Committee should use the invoice date as the incurred date. Therefore, at the same time the OGC thought incurred meant invoice date, the auditors thought it meant invoice date plus ten days. Clearly, OGC was aware that this was the auditors' standard, since it was OGC itself which gave the Committee this information in a previous effort to explain exactly what the standard was.

Most importantly, however, the Act and Commission's regulations do not state that incurred means invoice date or invoice date plus ten, and no advisory opinion so states. Nor does the concept of invoice plus ten appear in the Commission's Compliance Manual. Now, the OGC Brief too fails to address or even mention the previously expressed standard. It is patently unfair to the Committee -- and misleading to the Commission -- for OGC to indicate that the standard is the invoice date plus ten days on the telephone, but, subsequently and without explanation, to contradict that in writing. Surely, such a contradiction cannot form the basis for the finding of probable cause.

2. The Commission's Compliance Manual states the correct standard: a committee shall report debts it has on hand, i.e., invoices it has received.

OGC cannot so easily dismiss or distort the literal language of the Manual. Despite OGC's contortions, the Manual does indeed state that a debt is incurred when an invoice is received. See Manual at p. 146.[4] If debts are to be considered "accounts payable in the ordinary course of business", and "accounts payable" are explicitly defined to be "bills on hand which are unpaid at the end of the reporting period", then there can be no ambiguity as to what the Manual means, even in light of OGC's attempt to rewrite it at this date.[5]

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alone conclusively demonstrates the confusion which must exist within OGC. Both the Audit Division and OGC have historically accepted that regularly recurring administrative expenses, e.g., those due under a lease, need not be included on the debt schedule. This is clearly stated in the Compliance Manual -- is OGC now attempting to alter those provisions of the Manual, as well?

[3] The Audit Division, too, has changed its position -- from the date of the invoice to this new standard " date plus ten."

[4] Page numbers refer to the 1992 version of the Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing (1992) ("Compliance Manual" or "Manual").

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"On hand" means that the Committee has received the invoice. Nothing in the Manual, or the Regulations, for that matter, limits "on hand" to a time certain, i.e., invoice date or invoice plus ten. OGC's Brief, unlike the Manual, simply refuses to recognize the practical necessity for committees to have invoices on hand in order to satisfy reporting obligations.

The suggestion in OGC's Brief that the Committee should have reported estimates of its debts fundamentally misunderstands what is at issue in this matter and misreads the plain language of the Manual. The Manual clearly explains at page 146 that the reporting of estimates should be used when the *amount* of the debt is unknown – not where the debt or vendor itself is unknown. The facts here are and have always been that the Committee reported the debts to vendors of which it was aware, because it had invoices on hand, but could not report debts of which it was unaware, because it had no invoices. This matter is not about incorrect amounts or estimates. The Manual, as the only guidance available to presidential committees, does not contemplate the reporting, even through estimation, of debts about which a committee is unaware.

To demonstrate its good faith attempt to comply with the Manual's guidelines, the Committee has provided sworn evidence in the form of three affidavits that it had a well-established system in place for receiving, processing and reporting debts in a timely manner. The process, which called for the comprehensive receipt, review, approval, and payment of invoices, was disseminated among Committee staff and followed for the vast majority of all invoices received by the Committee. This process included the establishment of a separate post office box for accounts payable, from which mailed was retrieved on a daily basis.

Also on a daily basis, mail was opened, stamped with the date and forwarded to the accounts payable manager to begin the payment process. Invoices were then reviewed by accounts payable staff to ensure accuracy and avoid duplicate payments. Once reviewed, a Committee check request form was attached to the invoice, and payment was processed.

On occasion, the Committee was unaware of an invoice until a vendor contacted the Committee staff advising that it had not received payment. After thoroughly reviewing Committee records and failing to find the invoice, the Committee so advised the vendor. Under these circumstances, the vendor was

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[5] In fact, the Deputy Assistant Staff Director of the Audit Division, Joe Stoltz confirmed the Committee's position with the Committee's Certified Public Accounting consultant in a discussion regarding whether it was necessary for the Primary Committee to amend its debt schedules. Mr. Stoltz informed the Committee's Accounting consultant that a Committee could not report debts of which it was unaware. At the time, Mr. Stoltz was presumably following the FEC's written guidance in the Manual. Some time subsequent to that conversation, he apparently adopted a different position.

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permitted to fax copies of the invoice to the Committee for payment. Upon receipt of the fax, the invoice was verified and processed for payment. These Committee procedures resulted in the accurate and timely payment of invoices.

Inexplicably, the OGC brief is silent as to this sworn evidence and discounts the specific actions taken by the Committee to comply with the Act, regulations and Compliance Manual.[6] Given the clear efforts by the Committee to comply with all applicable requirements, there is simply no evidentiary support for a Commission finding of probable cause in this matter.

B. The Office Of General Counsel's Brief Misstates The Facts Of This Matter.

Throughout this matter, the Committee has had to repeatedly correct the factual record, and the misstatements contained in the OGC Brief are no different from the erroneous factual statements made in the past. Starting with the Audit Division's initial review and continuing every step of the way through the OGC process, the calculations that have been made have contained errors and mistakes.

The OGC Brief reports, without explanation as to how the figures are being derived, that "[t]he Final Audit Report found that the Committee failed to report $1,207,730 in debts. . . . The Committee failed to report debts and obligations totaling $354,216 . . . for campaign expenses." Brief at p. 2. Nowhere does OGC state that the grossly inflated Audit Division figure has been repeatedly discredited due to the numerous errors it contains, even though such admission is implicit in the new OGC figure of $354,216.[7] But, even the OGC figure is wrong, and the Committee has previously submitted clear calculations from its outside Certified Public Accountant ("CPA") demonstrating such.

While the Committee can only surmise at this point, it appears that the OGC figures are inflated by the following:

- To the best that the Committee can calculate, OGC has included $94,161.13 in campaign expenses that were paid within the same reporting period that the invoices for these expenses were received by the Committee. Because they were paid within that reporting period, these expenses need only be shown on schedule B not D of the appropriate report, and they were.

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[6] OGC does refer to certain invoices that were not received by the Committee's accounting department, as if the Committee's system was flawed – but supplies no evidence at all that those are even the invoices at issue.

[7] For example, the Audit Division made a mathematical error in excess of $95,000 and double or triple-counted numerous other debts totaling nearly $500,000.

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- To the best that the Committee can calculate, OGC has included $69,121.53 of regularly recurring campaign expenses as unreported debts, when the Compliance Manual states that these need not be reported as debts. This category includes telephone expenses which have clearly been considered recurring administrative expenses, as they are incurred and paid on a monthly basis.[8]

- To the best that the Committee can calculate, OGC has included $2,138.48 of campaign expenses which were paid by campaign drafts at the time the service was rendered and never constituted a debt. Drafts were never used to pay previous obligations, but, rather, were used when immediate payment was required, and were, in fact, exchanged for the invoice at the time of service.

- To the best that the Committee can calculate, OGC has included $19,166.65 of campaign expenses that were, in fact, reported as debts when the Committee received invoices from these vendors.

- To the best that the Committee can calculate, OGC has included $54,958.50 of campaign expenses that were timely paid by the Committee, i.e., that were paid within thirty days of receipt of the invoice.

Accordingly, to the best that the Committee can calculate at this time, the OGC figure is inflated by $239,546.29

Contrary to the Audit Division and OGC calculations, the Committee's numbers are supported by the facts. However, even if OGC does not wish to accept the Committee's calculations, it is wholly disingenuous for the OGC Brief to contain a brand new dollar figure of unreported debts, without supplying the respondents, either prior to or at least contemporaneously with the Brief, an explanation as to what debts that number comprises. The Committee is left to respond to the OGC brief with guesswork and speculation, because OGC has never fully explained its position, and because the OGC Brief arrives at the $354,000 figure through the process of elimination without the detail as to what is contained in that figure.[9]

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[8] Moreover, these telephone expenses were covered by fully disclosed letters of credit pledged by the Committee in advance of obtaining telephone service, meaning that no debt was incurred, because the letters of credit covered these expenses.

[9] In fact, at OGC's request, the Committee supplied its work papers to OGC and offered to answer questions or discuss the contents therein, but OGC apparently preferred to present its arbitrary number to the Commission. The Committee would have certainly asked for, and indeed expected, further discussion, if it had known that OGC was going to take this action.

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If the OGC is not going to accept the facts as supplied by the Committee but at the same time is going to disregard the facts as it previously explained to the Committee, then its Brief should, at minimum, contain a thorough demonstration as to the factual record it is choosing to accept. That is missing from the OGC Brief, and in its absence, the Commission should accept the facts as described by the Committee. As the OGC position continues to change with time, the Committee is left with no alternative then to continually restate its position. Fairness dictates that the Commission not make a finding of probable cause on an incomplete and erroneous factual record.

C. The Committee Has Materially Complied With The Applicable Law And Should Not Be Subject To A New And Arbitrary Interpretation Of That Law By OGC.

The Committee has previously demonstrated for OGC that the Committee complied materially with the disclosure of debt requirements of 2 U.S.C. 434(b)(8). Specifically, of the $1,207,730 reporting error amount set forth in the reason to believe finding, the Committee has demonstrated that the alleged reporting error amount is, at a maximum, only $114,669.71.

An alleged reporting error of $114,669.71, out of a general election expenditure limitation of some $ 55 million, is a nominal amount which should be taken into consideration by the Commission. Clearly, the Committee treasurer had procedures in place, so that nearly all of the Committee's expenditures were correctly reported. The procedures, along with the nominal amount of the actual reporting error, demonstrate that the Committee's treasurer exercised best efforts to comply with the recordkeeping and reporting requirements of the Act.

Where, as here, a Treasurer exercises such best efforts, the reporting requirements of the Act are satisfied, and a committee need not take corrective action, nor is a civil penalty required. In the legislative history accompanying the 1979 amendments to the Act, Congress specifically clarified the effect of the exercise of best efforts –

> "The best efforts test is specifically made applicable to record keeping and reporting requirements in both Title 2 and Title 26. The test of whether a committee has complied with the statutory requirements is whether its treasurer has exercised his or her best efforts to obtain, maintain and submit the information required under the Act. If the Treasurer has exercised his or her best efforts, the committee is in compliance. Accordingly the application of the best efforts test is central to the enforcement and record keeping reporting provisions of the Act. It is the opinion of the Committee that the Commission has not

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adequately incorporated the best efforts test into its administrative procedures..." (emphasis added)[10]

By unfairly exaggerating the amount in violation, the OGC and the auditors would mislead the Commission into believing that the Committee kept artificially large amounts of spending off the public record. This is simply not the case. The Committee exercised best efforts to ensure full and accurate disclosure.

Furthermore, it is our belief that the Audit Division has never previously scrutinized the debts of any other campaigns in the same manner it has in this instance. The proposed treatment of these alleged reporting errors in the 1991-92 cycle as violations would result in disparate treatment of the Committee vis a vis prior presidential campaigns subject to identical regulations. This arbitrary and capricious application of a new debt reporting rule in this context violates not only the clear and explicit intent of the law, it also violates fundamental principles of equity.

III. CONCLUSION

For the reasons stated herein, the Committee respectfully requests that the Commission find no probable cause to believe that the Committee has violated the Act or Commission regulations.

Respectfully submitted

Lyn Utrecht

Lyn Utrecht

Eric F Kleinfeld

Eric Kleinfeld

Counsel for Respondent

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[10] P.L. 96-187

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BEFORE THE FEDERAL ELECTION COMMISSION

Jun 13 9 17 AM '97

In the Matter of	)	
	)	MUR 4173
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 26, 1997, the Commission provided the Clinton/Gore '92 Committee ("the Committee"), and J.L. "Skip" Rutherford, as treasurer, with a General Counsel's Brief. The General Counsel's Brief which is incorporated herein by reference, sets forth findings discovered during the course of the audit of the Committee following the 1992 presidential general election. The General Counsel's Brief concludes that the Committee failed to report debts and obligations of $354,216 in violation of 2 U.S.C. [illegible] Therefore, the General Counsel's Brief recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 434(b)[illegible] The Committee submitted a Reply Brief requesting that [illegible] to believe that a violation occurred and close the file in this matter.

II. DISCUSSION OF REPLY BRIEF

As discussed in the General Counsel's Brief, the Committee [illegible] and obligations totaling $354,216 for [illegible] between July 20, 1992 and December 16, 1992. The Committee [illegible] reports to disclose these debts and obligations.

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In its reply brief, the Committee argues that it has complied with the requirements by reporting its debt as of the time the debts were incurred. According to the Committee, "a debt is incurred when an invoice is received." Attachment 1 at 3. In support of this standard, the Committee relies on the Commission's *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing* (1992) ("the *Compliance Manual*"). According to the Committee a debt is an accounts payable, and the *Compliance Manual* defines accounts payable as "bills on hand which are unpaid at the end of the reporting period." *Id.* (citing to *Compliance Manual* at 146.) From that point, the Committee reasons that "on hand" means the committee is in possession of the invoice. *Id.* at 4. This standard "recognize[s] the practical necessity for committees to have invoices on hand in other to satisfy reporting obligations." *Id.*

As outlined in the General Counsel's Brief and as is clear from the plain language of the applicable law, a debt that exceeds $500 must be reported by a committee at the time it incurs the debt. 11 C.F.R. § 104.11(b). A debt is incurred "as of the time of the transaction" that creates the debt. *Explanation and Justification for 11 C.F.R. § 104.11(b)*, 55 Fed. Reg. 26385 (June 27, 1989). The Commission has interpreted these regulations consistently, and as discussed in detail in the brief, has enforced the law consistently in other matters. *See* General Counsel's Brief at 4, fn. 1 (citing to MUR 2304, MUR 2706 , MUR 3418, and MUR 3494). Finally, also as noted in the General Counsel's Brief, the Committee's standard that a debt is only reportable upon receipt of an invoice is contrary to the Commission's regulatory requirement that committees report estimated debts. Under the Committee's reasoning, no political committee would ever

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have to estimate a debt if its reporting requirement was triggered only upon receipt of the invoice requesting payment.[1]

The one new argument presented by the Committee is that, with respect to estimation, the Commission regulations only require estimates of *amounts* of debts on an invoice. In its case, the Committee claims that it never knew of the debts in the first place because it did not have an invoice. Therefore, it could not estimate the amount of the debt. Thus, according to the Committee's logic, the only instance when estimate would be required is when an invoice was received that did not indicate the amount owed.

Generally, an invoice includes the amount that is owed. *Mandel Bros., Inc. v. FTC*, 254 F.2d 18 (7th Cir. 1958) ("The word 'invoice' has an accepted meaning in the commercial world. It is a written account or itemized statement of merchandise shipped ... with the quantity, value or prices and charges set forth."); *reversed on other grounds*, 359 U.S. 385 (1959). Therefore, the Committee's argument is not plausible. Even if it is true that on rare occasions invoices are received that do not contain an amount to be paid, the Commission did not create a separate estimation regulation for this rare situation. The Committee's argument also fails when considered in the context of publicly-financed committees. As noted in the General Counsel's Brief, publicly-financed campaigns that must adhere to expenditure limitations should be particularly aware of their debts so as to

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[1] The Committee argues that the exact point at which a debt is incurred is a factual matter that has been interpreted in three different ways by staff with respect to the Committee's violation. *See* Attachment 1 at 2. The Committee has confused the legal standard for what constitutes a debt and informal thresholds for inclusion in the debt violation calculation. The Committee was required to report debts once they were incurred. For administrative reasons, when calculating the debt violation, the Audit Division used a threshold for determining which debts to include in the calculation. In fact, this threshold benefited the Committee. Moreover, the application of the threshold in calculating the violation during the audit fieldwork does not relate to the Committee's actions at the time of their reporting obligations several months prior to the audit.

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avoid exceeding those limitations. General Counsel's Brief at 6. Moreover, estimation is possible since a committee can determine the amount of a debt without having received an invoice for such debt. *See* General Counsel's Brief at 5-6.

The Committee also reiterates its earlier argument that it has made a "a good faith attempt to comply" with the *Compliance Manual's* guidelines, and had a "well-established system in place for receiving, processing and reporting debts in a timely manner." Attachment 1 at 4. The process included the establishment of a "separate post office box for accounts payable" from which mail was retrieved daily. *Id.* The Committee asserts that on occasion it was contacted by vendors and informed that certain invoices were unpaid. *Id.* The Committee would search for the invoice and ask the vendor to resubmit the invoice if it could not be located, and the new invoice was processed for payment. *Id.* at 4-5. Therefore, the Committee concludes that these "procedures resulted in the accurate and timely payment of invoices." *Id.* at 5. The Committee's brief concludes that this system, and its resulting debt reporting record, constitutes "best efforts." *Id.* at 7.

These arguments also were presented in the past, and the General C[illegible] discussed the Committee's internal accounting procedures. General C[illegible] at 4-5. Regardless of the Committee's internal procedures and their effe[illegible] Committee has a regulatory obligation to report debts and obligations when they are incurred and it failed to do so in a significant amount of cases. 11 C.F.R. § [illegible] the Committee did not know the exact amount of a debt, it could have [illegible] estimated amount and then either amended the report *or* included the correct [illegible]

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Application for [illegible]

[illegible]. The [illegible]

[illegible]

that the Commission did not [illegible]

§ 104.7(a).

Additionally, the Commission [illegible]

General Counsel's Brief. [illegible]

the [illegible]

The $354,216 in unsupported [illegible]

calculated and presented to the [illegible]

4172-4173 dated February 25, [illegible]

its flawed interpretation of the [illegible]

involved the [illegible]

Conclusion, the [illegible]

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This Office disagrees with the Committee's argument that it has materially complied with the applicable law. This argument is made in reliance on the Committee's own calculation of the violation, which it characterizes as a "nominal amount." Insofar as we believe the actual debt amount to be three times that calculated by the Committee, we do not share their characterization that this is a nominal amount.[4] Also, we disagree with the allegation that this is an arbitrary and capricious enforcement of the debt reporting requirements. By creating internal procedures and thresholds, the Commission has created guidelines for enforcement that are consistently applied to committees. For example, the Audit staff applied consistent procedures and thresholds to each 1992 presidential election campaign, and the Commission is concurrently pursuing similar enforcement matters

Based on the foregoing, the Office of General Counsel recommends that the Commission find probable cause to believe that the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8) by failing to report debts and obligations.

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determined to constitute regularly reoccurring administrative expenses reported within the billing cycle and thus not reportable. 11 C.F.R. § 104.11(b). Further, based on mathematical adjustment to the auditors' calculations, another $95,939 in debts originally believed to be misreported, are no longer presented.

[4] Moreover, the Committee is disingenuous in complaining that it was never properly notified of the violations. Following the Commission's approval of the recommendations contained in the February 25, 1997 General Counsel's Report, the Office of General Counsel and Committee's Counsel had several conversations over the debt matter. The General Counsel's Brief also set forth the unreported debt calculation and explained which Committee arguments were accepted by the Office of General Counsel. The General Counsel's Brief at 2.

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III. DISCUSSION OF PROBABLE CAUSE CONCILIATION

IV. GENERAL COUNSEL'S RECOMMENDATION

1. Find probable cause to believe that the Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8).

2. Approve the attached conciliation agreement.

3. Approve the appropriate letter.

6/12/97
Date

Lawrence M. Noble
General Counsel

Attachments

1. Reply brief.
2. Conciliation agreement.

Staff assigned: Peter G. Blumberg

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE ROSS
COMMISSION SECRETARY

DATE: JUNE 18, 1997

SUBJECT: MUR 4173 - GENERAL COUNSEL'S REPORT

The above-captioned document was circulated to the Commission on Friday, June 13, 1997.

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

Commissioner Aikens	XXX
Commissioner Elliott	_
Commissioner McDonald	_
Commissioner McGarry	_
Commissioner Thomas	_

This matter will be placed on the meeting agenda for Tuesday, June 24, 1997.

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 4173
Clinton/Gore '92 Committee and	)	
J.L. "Skip" Rutherford, as	)	
treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 24, 1997, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in MUR 4173:

1. Find probable cause to believe that the Clinton/Gore '92 Committee, and J.L. "Skip Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8).

2. Approve the conciliation agreement recommended in the General Counsel's June 12, 1997 report.

3. Approve the appropriate letter as recommended in the General Counsel's June 12, 1997 report.

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

Attest:

6-25-97
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 27, 1997

Via Facsimile and First Class Mail

Lyn Utrecht
Eric Kleinfeld
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4173
Clinton/Gore '92 Committee and
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht and Mr. Kleinfeld:

On June 24, 1997, the Federal Election Commission found that there is probable cause to believe that your clients, Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8), a provision 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 at least 30 days and no more than 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 after 30 days, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

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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 Peter Blumberg, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
Aug 13 3 52 PM '97

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4173
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford, as treasurer	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On June 24, 1997, the Commission found probable cause to believe that the Clinton/Gore '92 Committee ("the Committee"), and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8). On this date, the Commission sent a conciliation agreement to the Committee

For the reasons stated herein, the Office of General Counsel recommends that the Commission accept the conciliation agreement submitted by the Committee, and close the file in MUR 4173.

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III. RECOMMENDATIONS

1. Accept the attached conciliation agreement with respondent Clinton/Gore '92 Committee, and J.L. "Skip" Rutherford, as treasurer;

2. Close the file with respect to MUR 4173; and

3. Approve the appropriate letter;

8/18/97
Date

Lawrence M. Noble
General Counsel

Attachments:

1. Proposed conciliation agreement.
2. Copy of civil penalty check.

Staff assigned: Peter G. Blumberg

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Clinton/Gore '92 Committee and	)	MUR 4173
J.L. "Skip" Rutherford, as treasurer.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 22, 1997, the Commission decided by a vote of 5-0 to take the following actions in MUR 4173:

1. Accept the conciliation agreement with respondent Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, as recommended in the General Counsel's Report dated August 18, 1997.

2. Close the file with respect to MUR 4173.

3. Approve the appropriate letter, as recommended in the General Counsel's Report dated August 18, 1997.

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

Attest:

8-22-97
Date

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

Received in the Secretariat: Tues., August 19, 1997 9:52 a.m.
Circulated to the Commission: Tues., August 19, 1997 11:00 a.m.
Deadline for vote: Fri., August 22, 1997 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1997

VIA FACSIMILE and FIRST CLASS MAIL

Lyn Utrecht
Eric Kleinfeld
Oldaker, Ryan, Phillips & Utrecht
818 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20006

RE: MUR 4173
Clinton/Gore '92 Committee and
J.L. "Skip" Rutherford, as treasurer

Dear Ms. Utrecht and Mr. Kleinfeld:

On August 22, 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. § 434(b)(8), a provision of the Federal Election Campaign Act of 1971, as amended. 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.

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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,

Peter G. Blumberg
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 4173
	)	
Clinton/Gore '92 Committee	)	
and J.L. "Skip" Rutherford,	)	
as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its responsibilities. The Commission found probable cause to believe that the Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8).

NOW, THEREFORE, the Commission and the Clinton/Gore '92 Committee, 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 Clinton/Gore '92 Committee and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The Clinton/Gore '92 Committee has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The Clinton/Gore '92 Committee enters voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter with respect to the Clinton/Gore '92 Committee are as follows:

1. The Clinton/Gore'92 Committee was the principal campaign committee for the presidential general election campaign of William J. Clinton and Albert Gore, Jr.

2. The Clinton/Gore '92 Committee is a political committee within the meaning of 2 U.S.C. § 431(4).

3. Pursuant to 2 U.S.C. § 434 (b)(8), political committees must disclose the amount and nature of all the debts and obligations owed by or to the committees.

4. Pursuant to 11 C.F.R. § 104.11, a debt, obligation, or written promise to make an expenditure under $500 shall be reported as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. Any obligation over $500 shall be reported as of the date that the obligation was incurred.

5. The Clinton/Gore '92 Committee incorrectly reported or omitted $354,216 in debts on its Schedule D to Commission reports. In most cases, the Clinton/Gore '92 Committee failed to report debts of over $500 as of the date that the obligations were incurred. The Clinton/Gore '92 Committee contends that the amount of incorrectly reported debts as calculated by the Commission should be $114,670. The Clinton/Gore '92 Committee contends that it reported the debts as of the date that the Clinton/Gore '92 Committee believed it incurred the debts.

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6. The Clinton/Gore '92 Committee filed corrective amendments to its debt schedules. The Clinton/Gore '92 Committee contends that it followed the Commission's reporting guidance as set forth in the *Financial Control and Compliance Manual* in filing both its original and amended reports.

V. The Clinton/Gore '92 Committee and J.L. "Skip" Rutherford, as treasurer, violated 2 U.S.C. § 434(b)(8) when it incorrectly reported or omitted $354,216 in debts on its Schedule D to Commission reports.

VI. The Clinton/Gore '92 Committee will pay a civil penalty to the Federal Election Commission in the amount of $25,000 (Twenty five thousand dollars), pursuant to 2 U.S.C. § 437g(a)(5)(A).

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

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

IX. The Clinton/Gore '92 Committee 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.

9704384026C

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 by KRC — 8/26/97

Lawrence M. Noble — Date

General Counsel

FOR THE RESPONDENTS:

Lyn Utrecht — 8/13/97

Lyn Utrecht — Date

General Counsel

9704384026 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4179

DATE FILMED 5-29-97 CAMERA NO. 04

CAMERAMAN JMU

9704 384 0812

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

Date: 5/4/78

✓ Microfilm

Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4173

9004300291

BILL CLINTON • AL GORE

September 3, 1997

Peter Blumberg, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, NW
6th Floor
Washington, DC 20463

Re: MUR 4173, Clinton/Gore '92 Committee
J.L. "Skip" Rutherford, as treasurer

Dear Mr. Blumberg:

Enclosed please find a check in the amount of the civil penalty agreed to by the Committee and the Commission in the above-captioned MUR.

Should you have any questions, please do not hesitate to contact me at (202) 496-5051.

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.

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CLINTON CAMPAIGN GENERAL ELECTION
LEGAL & ACCOUNTING COMPLIANCE FUND
P.O. BOX 2741
LITTLE ROCK, AR 72203

DATE September 2, 1997 31-7/820

PAY TO THE ORDER OF U.S. Treasury $ 25,000.00

Twenty-five thousand dollars and zero cents********** DOLLARS

SUNTRUST NATIONAL BANK
OF ARKANSAS
LITTLE ROCK, ARKANSAS 72203

FOR Audit 4073

Sharon Palmer

John R. Tisdale

⑈001700⑈ ⑆082000073⑆ 008607⑈535⑈0⑈

file

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1997

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 **1700**, dated **September 2, 1997**, for the amount of **$25,000.00.** 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 $25,000, the MUR/Case number is 4773 and in the name of Clinton Camp. General. Place this deposit in the account indicated below:

___ Budget Clearing Account (OGC), 96F3875.16

✓ Civil Penalties Account, 95-1099.160

___ Other: _____

Signature

9-9-97
Date

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED