FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 1393

Date Filmed 6/23/83 Camera No. --- 2

Cameraman DC

FEDERAL ELECTION COMMISSION

conciliation correspondence and materials; statements of internal rules; inter office routing documents; attorney work-product

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

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

Signed Nancy B Harvan

Date 4-29-83

FEC 9-21-77

8304011000

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1983

Carl A. Wattenberg, Jr., Esquire
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

Dear Mr. Wattenberg:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days.

Should you have any questions, contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304041004

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carl A. Wattenberg, Jr., Esquire
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

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This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days.

Should you have any questions, contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

NBN 3/31/83

8304041003

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1983

Richard S. Simmons, Esquire
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days.

Should you have any questions, contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304011006

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard S. Simmons, Esquire
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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3/31/83

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1983

Roy Niedermayer, Esquire
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Re: MUR 1393

Dear Mr. Neidermayer:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days.

Should you have any questions, contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304011005

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Roy Niedermayer, Esquire
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Re: MUR 1393

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304011005

3/21/83

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1983

Robert S. Evans, Esquire
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Re: MUR 1393

Dear Mr. Evans:

This is to advise you that the entire file in this matter has now been closed and will become part of the public record within 30 days.

Should you have any questions, contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert S. Evans, Esquire
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Re: MUR 1393

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

3/31/83

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1983

William C. Oldaker, Esq.
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1393

Dear Mr. Oldaker:

On March 31, 1983, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. §§ 434(b)(2) and (3) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation agreement

8304010012

204248

RECEIVED BY THE FEC
GCC#9647
83 MAR 10 P12: 42

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

83 MAR 10 P1:2

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission") pursuant to information ascertained in the normal course of its supervisory responsibilities. The Commission has found probable cause to believe that respondent violated 2 U.S.C. § 434(b)(2) and (3), by its failure to itemize and report to the Commission two receipts, and 2 U.S.C. § 441a(f), by its acceptance of contributions that exceeded individual contributors' statutory limits.

NOW, THEREFORE, the Commission and respondent, having 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 respondent and the subject matter of this proceeding.

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

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

1. Respondent registered with the Federal Election Commission on October 29, 1979, as the principal campaign committee of the Honorable Edward M. Kennedy, a candidate for

3304100

the nomination of the Democratic Party to the office of President of the United States. The Committee maintained its headquarters in Washington, D.C.

2. Respondent received a contribution in the amount of $400 from the political action committee of the Communication Workers of America, and a loan in the amount of $1,500 from a bank in Arizona. Respondent did not include those amounts in reports submitted to the Commission before the audit was concluded.

3. Respondent received contributions totaling $75,092 from 192 individuals which exceeded the individual contributors' statutory limits and which the Committee did not refund or reattribute until after completion of the audit process. The Committee ultimately reattributed $46,772 to other persons. Such reattributions took an average of eleven months. The Committee ultimately refunded $26,416. Such refunds took an average of fourteen months.

V. 1. Sections 434(b)(2) and (3) of Title 2, United States Code, require that reports filed with the Commission disclose the amount of all receipts, and the identity of the contributor of all contributions that exceed $200.

3304110

2. Section 44la(f) of Title 2, United States Code, prohibits the acceptance of contributions that exceed contributors' statutory limits.

VI. 1. By its failure to fully report in a timely manner two contributions that each exceeded $200, the Committee violated 2 U.S.C. §§ 434(b)(2) and (3).

2. By its acceptance of, and failure to timely reattribute or refund, contributions that exceeded contributors' statutory limits, the Committee violated 2 U.S.C. § 44la(f).

VII. Respondent agrees that, in the future, it will comply with the requirements of 2 U.S.C. §§ 434(b)(2) and (3) and 44la(f).

VIII. Respondent agrees to pay a civil penalty in the amount of Four Thousand Dollars ($4,000) to the United States Treasury, pursuant to 2 U.S.C. § 437g(a)(5)(A).

XI. 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 initiative, 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.

X. It is mutually agreed that this Agreement shall become effective as of the date both parties have executed

8304041005

it and the Commission has approved the entire Agreement.

XI. It is agreed that respondent shall have no more than thirty days from the date this Agreement becomes effective to comply with and implement its requirements and to so notify the Commission.

Charles N. Steele
General Counsel

3/31/83
Date

By: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

3/8/83
Date

(name)
(title or position)

8304041001 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esq.
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1393

Dear Mr. Oldaker:

On , 1983, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. §§ 434(b)(2) and (3) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

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

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation agreement

3304041017

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 31, 1983, the Commission decided by a vote of 6-0 to take the following actions in MUR 1393:

1. Approve the signed conciliation agreement as submitted with the General Counsel's March 28, 1983 Memorandum to the Commission.

2. Close the file.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter.

Attest:

3/31/83
Date

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

Received in Office of Commission Secretary: 3-28-83, 2:09
Circulated on 48 hour tally basis: 3-29-83, 11:00

8304010018

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: March 28, 1983

SUBJECT: MUR 1393 - Memo to COMM

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

Open Session _____

Closed Session _____

CIRCULATIONS		DISTRIBUTION	
48 Hour Tally Vote	[✓]	Compliance	[✓]
Sensitive	[✓]		
Non-Sensitive	[ ]	Audit Matters	[ ]
24 Hour No Objection	[ ]	Litigation	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Closed MUR Letters	[ ]
Information	[ ]	Status Sheets	[ ]
Sensitive	[ ]		
Non-Sensitive	[ ]	Advisory Opinions	[ ]
Other	[ ]	Other (see distribution below)	[ ]

3304011001

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

83 MAR 28 P2:09

March 28, 1983

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304041002 0

The other outstanding respondent in the matter, Eve Mandelberg, is an individual contributor found to have violated 2 U.S.C. § 441a, but who never has responded to any Commission notification. On February 24, 1983, this Office engaged a process serving firm to deliver a letter to Ms. Mandelberg urging her to respond. That firm reports that the Post Office states that Ms. Mandelberg has moved and left no forwarding address. The Kennedy Committee never was able to reach her to make a refund of her excessive contribution. This Office recommends that the Commission take no further action and close the file with respect to Ms. Mandelberg.

204248

RECEIVED BY THE FEC
GCC#9647

BEFORE THE FEDERAL ELECTION COMMISSION 83 MAR 10 P12:42

In the Matter of)
) MUR 1393
Kennedy for President Committee)

83 MAR 10 P1:2

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("the Commission") pursuant to information ascertained in the normal course of its supervisory responsibilities. The Commission has found probable cause to believe that respondent violated 2 U.S.C. § 434(b)(2) and (3), by its failure to itemize and report to the Commission two receipts, and 2 U.S.C. § 44la(f), by its acceptance of contributions that exceeded individual contributors' statutory limits.

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II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this Agreement with the Commission.

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

1. Respondent registered with the Federal Election Commission on October 29, 1979, as the principal campaign committee of the Honorable Edward M. Kennedy, a candidate for

8304100211

Attachment 1- 1 of 5

the nomination of the Democratic Party to the office of President of the United States. The Committee maintained its headquarters in Washington, D.C.

2. Respondent received a contribution in the amount of $400 from the political action committee of the Communication Workers of America, and a loan in the amount of $1,500 from a bank in Arizona. Respondent did not include those amounts in reports submitted to the Commission before the audit was concluded.

3. Respondent received contributions totaling $75,092 from 192 individuals which exceeded the individual contributors' statutory limits and which the Committee did not refund or reattribute until after completion of the audit process. The Committee ultimately reattributed $46,772 to other persons. Such reattributions took an average of eleven months. The Committee ultimately refunded $26,416. Such refunds took an average of fourteen months.

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8304100

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2. By its acceptance of, and failure to timely reattribute or refund, contributions that exceeded contributors' statutory limits, the Committee violated 2 U.S.C. § 44la(f).

VII. Respondent agrees that, in the future, it will comply with the requirements of 2 U.S.C. §§ 434(b)(2) and (3) and 44la(f).

VIII. Respondent agrees to pay a civil penalty in the amount of Four Thousand Dollars ($4,000) to the United States Treasury, pursuant to 2 U.S.C. § 437g(a)(5)(A).

XI. 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 initiative, 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.

X. It is mutually agreed that this Agreement shall become effective as of the date both parties have executed

8304100

Attachment 1 - 3 of 9

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XI. It is agreed that respondent shall have no more than thirty days from the date this Agreement becomes effective to comply with and implement its requirements and to so notify the Commission.

Charles N. Steele
General Counsel

_____
Date

By: _____
Kenneth A. Gross
Associate General Counsel

3/8/83
Date

(name)
(title or position)

8304041009 24

Attachment 1 - 5 of 5

15-153/540

March 8 19 83

PAY TO THE ORDER OF Federal Election Commission $ 4,000.00

Four Thousand Dollars ----------00/100 DOLLARS

Century
NATIONAL BANK
WASHINGTON, D.C. 20006

FOR MUR 1393 (Civil Penalty)

⑈054001534⑆ 001 000235 ⑈

8304011007

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William C. Oldaker, Esq.
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1393

Dear Mr. Oldaker:

On , 1983, the Commission accepted the conciliation agreement signed by you and a civil penalty in settlement of violations of 2 U.S.C. §§ 434(b)(2) and (3) and 44la(f), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter, and it will become a part of the public record within 30 days. However, 2 U.S.C. § 437g(a)(4)(B) prohibits any information derived in connection with any conciliation attempt from becoming public without the written consent of the respondent and the Commission. Should you wish any such information to become part of the public record, please advise us in writing.

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Conciliation agreement

8304110026

Attachment 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard S. Simmons, Esquire
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons:

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304011027

Attachment 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carl A. Wattenberg, Jr., Esquire
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

3304041028

Attachment 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert S. Evans, Esquire
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Re: MUR 1393

Dear Mr. Evans:

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Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304011002?

Attachment 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Roy Niedermayer, Esquire
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Re: MUR 1393

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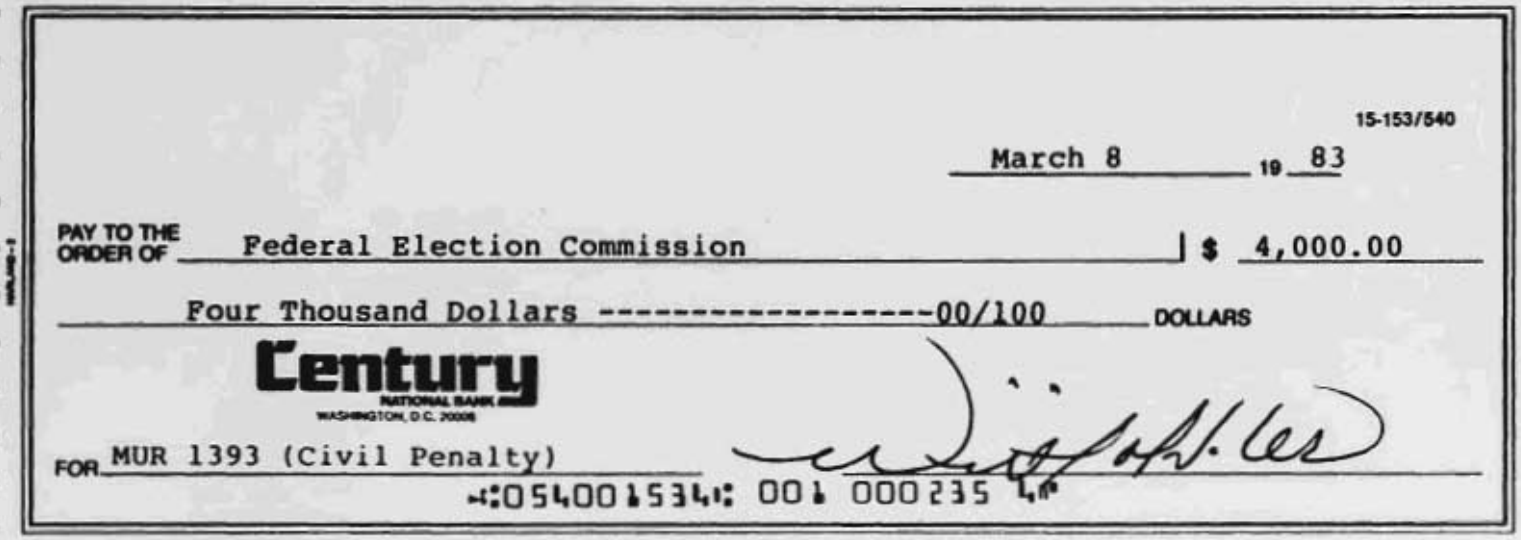
Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304410050

Attachment 10



15-153/540

March 8 19 83

PAY TO THE ORDER OF Federal Election Commission $ 4,000.00

Four Thousand Dollars ----------00/100 DOLLARS

Century
NATIONAL BANK
WASHINGTON, D.C. 20006

FOR MUR 1393 (Civil Penalty)

:054001534: 001 000235

8304041001

8304041003 2

EPSTEIN BECKER BORSODY & GREEN, P. C.
ATTORNEYS AT LAW
1140 19TH STREET, N. W.
WASHINGTON, D. C. 20036

Ms. Nancy Nathan
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

ACCURATE LEGAL SERVICES COMPANY, INC.
300 H. STREET N.E. • WASHINGTON, D.C. 20002

80041-8

Federal Election Commission
1325 K. Street, N.W.
Washington, D.C. 20463

ATTN: Nancy B. Nathan
Attorney

ACCURATE LEGAL SERVICES COMPANY, INC.

P.O. Box 1833
Washington, D.C. 20013
306 H Street, N.E.
Washington, D.C. 20002 (202) 547-5710

INVOICE NO. 965

Firm: Federal Election Commission
1325 K. Street, N.W.
Washington, D.C. 20463

Attention: Nancy B. Nathan
Attorney

Date: March 16, 1983

CASE NO.		FILE NO.	CHARGES
	Letter and attachments for:		
	EVE MANDELBERG NO SERVICE		
	Moved one year ago...		$25.00
	(Unable to locate a forwarding address)		
	TOTAL...		$25.00

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 24, 1983

Accurate Legal Services
Attention: Linda Judy
306 H Street, N.E.
Washington, D.C. 20002

Re: MUR 1393

Dear Ms. Judy:

Enclosed are the letter and attachment to be personally served on the addressee at her home address, 60 East Seventeenth Street, Brooklyn, New York.

Thank you for your assistance.

Sincerely,

Nancy B. Nathan

Nancy B. Nathan
Attorney

3304110033

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/JODY C. RANSOM

DATE: JANUARY 24, 1983

SUBJECT: OBJECTION - MUR 1393 Memorandum to the Commission dated January 21, 1983

The above-named document was circulated to the Commission on Friday, January 21, 1983 at 4:00.

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

Commissioner Aikens	_____
Commissioner Elliott	_____
Commissioner Harris	_____
Commissioner McDonald	_____
Commissioner McGarry	_____
Commissioner Reiche	X (comments attached)

This matter will be placed on the Executive Session agenda for Tuesday, February 1, 1983.

8304011003

January 21, 1983

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1393

Please have the attached Memo to the Commission distributed to the Commission on a 48 hour tally basis as a sensitive matter. Thank you.

Attachment

cc: Nathan

3 3 0 4 0 4 1 0 0 1 7

8304041 00036

EPSTEIN BECKER BORSODY & GREEN
ATTORNEYS AT LAW
1140 19TH STREET, N. W.
WASHINGTON, D. C. 20036

Charles N. Steele, Esquire
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

207215 RECEIVED BY THE FEC
6444 8820
82 NOV 1 AM : 51

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

RALPH L. McAFEE
HENRY W. deKOSMIAN
ALLEN F. MAULSBY
STEWARD R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID O. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL
CHRISTINE BESHAR
ROBERT S. RIFKIND

DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. BENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN
WILLIAM P. DICKEY
STUART W. GOLD
JOHN W. WHITE
JOHN E. BEERBOWER
EVAN R. CHESLER
PATRICIA GEOGHEGAN
D. COLLIER KIRKHAM
MICHAEL L. SCHLER

COUNSEL
MAURICE T. MOORE
FRANCIS F. RANDOLPH, JR.

TELEPHONE
212 428-5000

TELEX
RCA 233063
WUD 125547
WUI 620976

CABLE ADDRESSES
CRAVATH N Y
CRAVATH, LONDON E. C. 2

2 HONEY LANE, CHEAPSIDE
LONDON EC2V 8BT, ENGLAND
TELEPHONE 1-606-1421
TELEX 884801
RAPIFAX/INFOTEC
1-606-1425

October 26, 1982

Re: MUR 1393

Dear Mr. Steele:

Thank you for your letter of October 21, 1982. This is to confirm that I do not wish to submit any additional factual or legal materials.

Sincerely yours,

Richard S. Simmons

Richard S. Simmons

Charles N. Steele, Esq.,
General Counsel,
Federal Election Commission,
Washington, D. C. 20463.

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R.S. Simmons
CRAVATH, SWAINE & MOORE
ONE CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

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Charles N. Steele, Esq.,
General Counsel,
Federal Election Commission,
Washington, D. C. 20463.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1982

Roy Niedermayer
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Niedermayer:

This is to advise you that, following an investigation, the Commission concluded on October 19, 1982, that there is no probable cause to believe that D.C. National Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1982

Richard S. Simmons
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons:

This is to advise you that, following an investigation, the Commission concluded on October 19, 1982, that there is no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1982

Carl A. Wattenberg, Jr.
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

Dear Mr. Wattenberg:

This is to advise you that, following an investigation, the Commission concluded on October 19, 1982, that there is no probable cause to believe that Mark Twain Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 21, 1982

Robert S. Evans
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Dear Mr. Evans:

On March 11, 1982, the Commission found reason to believe that you had violated 2 U.S.C. § 441a by making contributions to the 1980 Kennedy for President Committee in excess of the limitations imposed by that statute. Following an investigation, the Commission decided on October 19, 1982, to take no further action in the matter.

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert S. Evans
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Dear Mr. Evans:

On March 11, 1982, the Commission found reason to believe that you had violated 2 U.S.C. § 441a by making contributions to the 1980 Kennedy for President Committee in excess of the limitations imposed by that statute. Following an investigation, the Commission decided on October 19, 1982, to take no further action in the matter.

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carl A. Wattenberg, Jr.
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

Dear Mr. Wattenberg:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that Mark Twain Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

ABV
10/4/82

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard S. Simmons
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

NBN
10/7/82

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Roy Niedermayer
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Niedermayer:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that D.C. National Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Kennedy for President Committee, Chemical Bank, Mark Twain Bank, D.C. National Bank, Eve Mandelberg, Robert S. Evans	)	MUR 1393

CERTIFICATION

I, Marjorie W. Emmons, Recording Secretary for the Federal Election Commission Executive Session on October 19, 1982, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions in the above-captioned matter:

1. Find probable cause to believe the Kennedy for President Committee violated 2 U.S.C. §§434(b)(2) and (3) and 441a(f).

2. Find no probable cause to believe the Kennedy for President Committee violated 2 U.S.C. §§434(b)(1), 432(c)(1), and 441b(a).

3. Find no probable cause to believe Chemical Bank violated 2 U.S.C. §441b(a).

4. Find no probable cause to believe Mark Twain Bank violated 2 U.S.C. §441b(a).

5. Find no probable cause to believe D.C. National Bank violated 2 U.S.C. §441b(a).

6. Find probable cause to believe Eve Mandelberg violated 2 U.S.C. §441a(a)(1)(A).

7. Take no further action against Robert S. Evans.

Certification for MUR 1393
October 19, 1982

8. Approve and send the conciliation agreements and letters attached to the General Counsel's October 8, 1982 report.

Commissioners Aikens, Elliott, Harris, McGarry, and Reiche voted affirmatively for the decision. Commissioner McDonald was not present at the time of the vote.

Attest:

10-19-82
Date

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

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COMMISSION SECRETARY

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of	)	
	)	
Kennedy for President Committee, Chemical Bank, Mark Twain Bank, D.C. National Bank, Eve Mandelberg, Robert S. Evans	)	MUR 1393

SENSITIVE

GENERAL COUNSEL'S REPORT

EXECUTIVE SESSION
OCT 19 1982

I. **BACKGROUND**

This matter was referred to the Office of General Counsel by the Audit Division based upon information obtained during an audit of the Kennedy for President Committee ("the Committee"). On March 11, 1982, the Commission found reason to believe that the Committee had violated 2 U.S.C. §§ 434(b)(1) and (2), 432(c)(1), 441b(a) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Additionally, on the same date the Commission found reason to believe that Chemical Bank, Mark Twain Bank, and D.C. National Bank had violated 2 U.S.C. § 441b(a), and that Robert S. Evans and Eve Mandelberg had violated 2 U.S.C. § 441a(a)(1)(A).

Following an investigation, on July 9, 1982, the General Counsel issued briefs containing recommendations that the Commission find probable cause to believe that the Committee had violated 2 U.S.C. §§ 434(b)(1) and (3), and 441a(f), and that Eve Mandelberg had violated 2 U.S.C. § 441a(a)(1)(A). The General Counsel recommended finding no probable cause to believe that

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the Committee, Chemical Bank, Mark Twain Bank, or D.C. National Bank had violated 2 U.S.C. § 441b(a).

On August 3, 1982, the Committee submitted a response to the General Counsel's brief recommending the probable cause findings. No response was submitted by Eve Mandelberg.

II. **LEGAL ANALYSIS**

A. Receipts unreported and unitemized by the Kennedy for President Committee.

The Committee contends that the Commission should not find probable cause to believe that the Act's reporting requirements were violated by its failure to itemize and report two contributions or receipts. */ The Committee urges application of the provisions of the Act and Regulations (11 C.F.R. §§ 1.1 et. seq.) that recognize that a demonstration of "best efforts" may result in a finding that the reporting requirements have been met. 2 U.S.C. § 432(i); 11 C.F.R. § 104.7(a).

The regulatory section on "best efforts" in reporting provides that, where such efforts have been "used to obtain, maintain and submit the information required" (emphasis added), the report will be considered to be in compliance with the law. 11 C.F.R. § 104.7(a). The two unreported and unitemized

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*/ The two unreported and unitemized contributions or receipts were from the political action committee of the Communication Workers of America ($400), and a loan obtained from an Arizona bank ($1,500). These receipts were not even included in amended reports filed by the Committee after the Commission's reason to believe finding. It was only after the General Counsel's brief was sent that the Committee filed amendments listing these amounts.

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contributions which form the basis for the recommendation as to violation of 2 U.S.C. § 434 were known to the Committee for many months before they finally were reported on August 2, 1982. While the Committee argues that it should be deemed to have substantially complied with reporting requirements, its contention is based on the percentage of its total receipts that the amounts in question represent. The regulatory provision on "best efforts" is concerned not with such numerical percentages, but with satisfaction of the requirement by affirmative efforts directed toward compliance. In this matter, the Committee practiced forbearance as to the two unreported amounts. Such refraining from reporting does not amount to use of best efforts to submit the information required to be reported by 2 U.S.C. §§ 434(b)(2) and (3).

Additionally, the Committee contends that the Commission has a burden to establish that the two receipts in question were, in fact, unreported and unitemized. Repeated checks by Commission auditors have substantiated the allegation that neither receipt was reported before August 2, 1982, when the Committee's most recent amendment was filed. Despite the Committee's suggestion that its Arizona state committee's reports might have included the bank loan in question, the loan amount would have to have been itemized in order to comply with the law. Commission records reveal that no such itemization was made.

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As to the bulk of the amounts unreported by the Committee, the General Counsel reaffirms its recommendation that the Commission find no probable cause to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1) and 432(c)(1).

B. Acceptance of Excessive Contributions by Kennedy for President Committee

The Committee contends that the Commission should not find probable cause to believe that its failure to timely refund or reattribute $75,092 in contributions that exceeded individuals' contribution limits violated 2 U.S.C. § 441a(f). Acceptance of $46,772 of those contributions, the Committee contends, does not amount to a violation of the statute, since they eventually were reattributed. As to the remaining $26,446 of excessive contributions that were not reattributed, the Committee argues that the percentage of total reciepts that those excessive amounts represent is so small as to merit a finding that the Committee has substantially complied with the Act.

The Committee argues that the General Counsel incorrectly relies upon Federal Election Commission v. California Medical Association, 502 F.Supp. 196 (N.D. Cal. 1980) ("CMA"), for the proposition that 2 U.S.C. § 441a(f)'s requirement of knowing acceptance of excessive contributions is met when a committee accepts impermissible contributions, whether or not it is aware of their impermissibility at time of acceptance. The Committee's position is that it had to have been aware that the contributions were excessive when they were accepted, under the ruling in CMA.

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In fact, in that case the violator (CALPAC) merely knew that CMA was paying its operating expenses, which CALPAC intentionally accepted. The court stressed that the question whether the payments would be considered impermissible because they exceeded legal limits was not resolved until later, when settled by court ruling. Id. at 203.

As the Committee's response notes, the Commission has provided a route by which committees may avoid violation of 2 U.S.C. § 441a(f) and still accept contributions that later prove impermissible. If a committee has a good enough system to identify contributions that appear to be illegal before deposit, it may deposit such funds, provided their receipt is noted in the committee's report and they are refunded or reattributed within a reasonable time. 11 C.F.R. § 103.3(b)(2).

it cannot argue that its actions were reasonable. The preliminary list of excessive contributions was provided to the Committee at the audit exit conference on February 5, 1981. The last excessive contribution had been received on October 9, 1980. Contributions eventually reattributed were held for an average of eleven months; those eventually refunded or given to charity were held for an average of fourteen months.

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The Committee asserts incorrectly that under the Commission's reading of CMA (i.e., that there is a knowing acceptance in a committee's receipt, deposit and reporting of excessive contributions), every acceptance of an impermissible contribution would result in a violation of 2 U.S.C. § 441a(f). That ignores the exception provided by 11 C.F.R. § 103.3(b)(2). Moreover, respondent's argument suggests that a Committee should escape liability because its recordkeeping system was inadequate to detect excessive contributions. The standard of "knowing acceptance" should not be construed to permit a committee that receives, deposits, and reports individuals' contributions totaling more than $1,000 to avoid violation of the Act.

The Committee urges that it sought and obtained reattributions for $46,772 in excessive contributions "as soon as the matter was brought to its attention." The statute would be made meaningless by measuring the time a committee has to correct excessive receipts from the point at which Commission auditors notified a committee of their past acceptance of impermissible contributions. The regulatory exception of 11 C.F.R. § 103.3(b)(2) is intended to benefit committees acting vigilantly and on their own; in the instant matter, the effort to determine the permissibility of questionable contributions was not undertaken by the Committee sua sponte, but only as a result of the audit process.

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The Committee also argues that it is "anomalous" that the General Counsel terms illegal the contributions for which reattributions eventually were obtained. It propounds the theory that, because a reattribution reveals for the first time a contributor's name, the contribution dates from the time of the reattribution. For that reason, the Committee argues, the contributions are not "illegal" because, once reattributed, they may be retained by the Committee. The General Counsel's probable cause recommendation is based upon acceptance of excessive contributions that were not reattributed within a reasonable time. The Committee received, deposited and reported individuals' contributions that, in the aggregate, exceeded $1,000. Only after Commission notification did the Committee seek to reattribute the excessive amounts by obtaining post hoc documentation from the individuals involved. See 11 C.F.R. §§ 100.7(c), 104.8(c), (d), 9034.2(c)(1).

Finally, the Committee's contention that it "substantially complied" with the Act because the amounts in question represent a small percentage of its total receipts is without statutory or regulatory basis, as noted in the General Counsel's brief. The regulatory provisions cited are inapplicable to treatment of excessive contributions; 11 C.F.R. §§ 102.9(d) applies to recordkeeping, and 104.7(a) applies to the treasurer's efforts to "obtain, maintain and submit (to the Commission)" information

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required for compliance with the Act.

C. Improper Pledges of Bank Loan Collateral

The General Counsel reaffirms its recommendation that the Commission find no probable cause to believe that Chemical Bank, Mark Twain Bank, and D.C. National Bank violated 2 U.S.C. § 441b(a) by making contributions to the Kennedy for President Committee in the form of loans made under terms that did not meet the requirements of 2 U.S.C. § 431(8)(b)(vii)(II). Therefore, the General Counsel also reaffirms its recommendation that the Commission find no probable cause to believe that the Committee violated 2 U.S.C. § 441b(a) by accepting such loans.

D. Individual's Excessive Contributions to the Kennedy for President Committee

The General Counsel reaffirms its recommendation that the Commission find probable cause to believe that Eve Mandelberg violated 2 U.S.C. § 441a(a)(1)(A), by making an excessive contribution to the Kennedy for President Committee.

As to respondent Robert S. Evans, the auditors noted contributions totaling $3,054, or $2,054 in excess of the statutory limitation. In response to the reason to believe notification, respondent submitted an accounting of his in-kind and joint contributions made with his spouse.

The Committee had reported contributions from Mr. Evans as follows:

$1,904	in-kind contribution (not reported in whole or in part as exempt expenses for party in home)
500	(later attributed to respondent's spouse)
1,150	other contributions by respondent
$3,554 total	

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Respondent lists the contributions as follows:

$1,654	in-kind exempt party expenses by respondent and spouse
500	spouse's successfully attributed contribution
1,400	contributions by respondent
$3,554	total

($250 listed by the Committee as in-kind was respondent's contribution at the party given in his home.)

The Committee's mistaken inclusion of the exempt party expenses of $1,654 (each spouse is permitted a $1,000 exemption by 11 C.F.R. § 100.7(b)(6)) partially accounts for the auditors' notation of an excessive contribution of $2,054 by respondent. What remains, following subtraction of the exempt party expenses, is a $1,400 total contribution by Mr. Evans.

While the Committee's reports showed a $500 reattributed contribution by Mrs. Evans, the Committee did not later reattribute any more contributions to her. A May, 1981 letter from the Committee to Mr. Evans, noting the excessives and asking how much he wished to reattribute to his spouse, was returned by Mr. Evans without an amount filled in. Instead, he indicated with a check-mark that he wished the excessive amount to be reattributed. The Committee then failed to make any reattribution.

Contributions by a married individual shall not be attributed to the individual's spouse, unless otherwise specified by the individual or spouse, under 11 C.F.R. § 100.7(c). In order to effect an attribution, the written instrument, or an accompanying statement signed by both contributors, must indicate

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the amounts attributable to each individual. 11 C.F.R. § 104.8 (d). Further, 11 C.F.R. § 9034.2(c)(1) requires checks drawn on joint accounts to be signed by both individuals to whom parts of the contribution are to be attributed.

While Mrs. Evans' signature did appear on the first attribution letter which the Committee asked Mr. and Mrs. Evans to complete, dated September 29, 1980, the second attribution letter (May, 1981), as noted supra, was returned without her signature. However, a sheet accompanying that second attribution request, entitled "verification of contribution", although completed by Mr. Evans, lists "Robert S. and Joyce Evans" as the names of the contributors.

The Commission's reason to believe finding to this matter was based on a total contribution of $3,054, exceeding Mr. Evans' contribution limits by $2,054. The evidence provided by Mr. Evans demonstrates that $1,654 of that total was exempt party expenses incorrectly reported by the Committee. The remaining $400 represents the total excessive contribution by Mr. Evans. In view of the evidence that Mr. Evans and Mrs. Evans intended the contribution to be attributed to Mrs. Evans, and in view of the fact that the excessive contribution totals $400, it is recommended that no further action be taken against Mr. Evans.

III. Conciliation and Civil Penalty

All unreported amounts now have been reported, and excessive contributions reattributed, refunded, or donated to charity by

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the Committee. The General Counsel recommends seeking a civil penalty of $7,759, or ten percent of the amount of excessive contributions accepted, together with a $250 penalty for the reporting violation. (See Attachment 1)

The General Counsel recommends seeking a civil penalty from Eve Mandelberg in the amount of $850, or fifty percent of the excessive portion of her contribution to the Committee. (See Attachment 2).

IV. RECOMMENDATIONS

The General Counsel recommends that the Commission:

1. Find probable cause to believe the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(2) and (3) and 441a(f).
2. Find no probable cause to believe the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1), 432(c)(1), and 441b(a).
3. Find no probable cause to believe Chemical Bank violated 2 U.S.C. § 441b(a).
4. Find no probable cause to believe Mark Twain Bank violated 2 U.S.C. § 441b(a).
5. Find no probable cause to believe D.C. National Bank violated 2 U.S.C. § 441b(a).
6. Find probable cause to believe Eve Mandelberg violated 2 U.S.C. § 441a(a)(1)(A).

3304410031

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Robert S. Evans
Evans, Sklarz and Early
261 Bradley Street
P.O. Box 2062
New Haven, Connecticut 06521

Dear Mr. Evans:

On March 11, 1982, the Commission found reason to believe that you had violated 2 U.S.C. § 441a by making contributions to the 1980 Kennedy for President Committee in excess of the limitations imposed by that statute. Following an investigation, the Commission decided on , 1982, to take no further action in the matter.

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

8304610032

Attachment 5

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Roy Niedermayer
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Niedermayer:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that D.C. National Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

Attachment 6

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Richard S. Simmons
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

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Attachment 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Carl A. Wattenberg, Jr.
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63124

Re: MUR 1393

Dear Mr. Wattenberg:

This is to advise you that, following an investigation, the Commission concluded on , 1982, that there is no probable cause to believe that Mark Twain Bank violated 2 U.S.C. § 441b(a).

The file in this matter will be closed following the Commission's action with respect to all other respondents involved. At that time, the matter will become part of the public record within thirty days. Should you wish to submit any additional factual or legal materials to appear on the public record, please do so within ten days.

If you have any questions, contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

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Attachment 8

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EPSTEIN BECKER BORSODY & GREEN, P.C.
ATTORNEYS AT LAW
1140 19TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 861-0900

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NEW YORK, NEW YORK 10177
(212) 370-9800

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ONE SUMMIT AVENUE
FORT WORTH, TEXAS 76102'
(817) 334-0701

235 MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94104'
(415) 398-5585

JEFFREY H. BECKER*
ROBERT P. BORSODY*
WILLIAM A. CARMELL*
STEVEN B. EPSTEIN
STUART M. GERSON
GILBERT J. GINSBURG
RONALD M. GREEN*
WILLIAM A. HELVESTINE*
WILLIAM C. KOPIT
FRANK C. MORRIS, JR.*
JOSEPH P. PARKER*'
FRANKLIN R. SEARS*'
RICHARD O. VERNON

AMY J. BEECH*
NANCY B. BENSAL*
PHILIP M. BERKOWITZ*
BRIAN A. BANNON
LAURENCE K. BROWN*
DALE E. CALLENDER*
KAREN BONNIE EATON
JACK A. EIFERMAN*
CYNTHIA A. EPSTEIN*
THOMAS M. FARAH
LAURENCE W. FUTTERMAN*
JEAN M. GALLOWAY

PHILIP M. GASSEL*
PETER S. GRAY
ELLIOT J. GROFFMAN*
DOUGLAS A. HASTINGS
GREGORY K. HIESTAND*
ROBERT L. JAUVTIS*
LISL E. KING
SANDRA R. KING
DENNIS A. LALLI*
JUDAH LIFSCHITZ
KATHLEEN C. LITTLE
DAVID C. MAIN, JR.
STEPHEN R. MILLS*
ROBERT J. MOSES
WILLIAM P. PERKINS*
DONALD S. PICARD
KATHERINE McBROOM-REDWINE
RICHARD J. REIBSTEIN*
ROBERT D. REIF
SUSAN SCHENKEL-SAVITT*
LYNN E. SHAPIRO
RICHARD L. STEER*
KENNETH B. WECKSTEIN
RANDALL G. WELLS*
KATHLEEN M. WILLIAMS
MICHAEL L. ZIEGLER*

DONALD PORTLAND*
OF COUNSEL

*NOT ADMITTED IN WASHINGTON
**ADMITTED TEXAS ONLY
'P.C. NEW YORK AND WASHINGTON, D.C. ONLY

August 3, 1982

Mrs. Marjorie Emmons
Secretary of the Commission
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Dear Mrs. Emmons:

In accordance with the instructions of Kenneth A. Gross in his letter of July 13, 1982, enclosed please find the original and ten copies of the Reply Brief of the Kennedy for President Committee to the General Counsel's Brief regarding unreported receipts and excessive contributions. Please note that three copies of the Brief have also been forwarded to the Office of the General Counsel.

Sincerely,

Donald S. Picard

Donald S. Picard

DSP:jsk
Enclosure

cc: Kenneth A. Gross, Esq.

8304041003

BEFORE THE FEDERAL ELECTION COMMISSION

August 3, 1982

IN THE MATTER OF KENNEDY FOR PRESIDENT COMMITTEE	MUR 1393

REPLY OF KENNEDY FOR PRESIDENT COMMITTEE TO GENERAL COUNSEL'S BRIEF REGARDING UNREPORTED RECEIPTS AND EXCESSIVE CONTRIBUTIONS

The General Counsel's Brief dated July 9, 1982, identifies two areas where the General Counsel is prepared to recommend that the Commission find probable cause to believe that the Kennedy for President Committee (the "Committee") violated the Federal Election Campaign Act (the "Act"), 2 U.S.C. §§ 431 et seq., as amended. G.C. Brief, p. 10. The General Counsel recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. §§ 434(b)(1) and (3) for failure to itemize and report to receipts totaling $1,900. In addition, the General Counsel has recommended that a finding of probable cause be made that the Committee violated 2 U.S.C. § 441a(f) by allegedly failing to timely refund or reattribute contributions that exceeded individuals contribution limits. G.C. Brief, p. 17.

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I. UNREPORTED RECEIPTS

The General Counsel's Brief identifies two receipts which the Committee ostensibly failed to itemize and report:

1) a loan check from an Arizona bank of $1,500, and

2) a contribution from the Communication Workers of America PAC in the amount of $400.

Since receiving the General Counsel's Brief, the Committee has checked with the Arizona bank and determined that the bank did in fact loan the $1,500 to the local committee. This receipt has since been reported by the Committee. As for the $400 contribution made by the Communications Workers of America PAC, the Committee has also reported this contribution.

The bank loan and contribution may previously have been reported. The auditors seem to have assumed that the bank loan went unreported because it went directly to a local committee. However, the Committee consistently filed the reports which it received from the state committees with the Commissioner, including the Arizona committee reports.

The Committee has not verified whether the bank loan or contribution were in fact reported. No detailed examination of the records has been made. At this stage of the proceedings, the burden is on the General Counsel to support its assertion that these receipts have not been reported. It is quite possible that if the auditors searched the records of receipts reported by the Committee, they

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would discover that they have in fact been reported. Until the auditors make such an examination, it would be highly inappropriate to even consider citing the Committee for violation of the Act.

Even assuming that the Committee did not timely report the two receipts, the Commission should consider this matter in the proper perspective.

According to the Commission's Reports on Financial Activity 1979-1980, Final Report, Presidential Pre-Nomination Campaigns, the Kennedy for President Committee had total receipts of $16,736,948. Inclusion of the 15,600.49 reported in an amendment on April 12, 1982 raises this total to $16,752,548. Further addition of the $1,900 would raise the total receipts to $16,754,448. We are therefore concerned with failure to report and adequately document one hundreth of one percent of the Committee's total receipts. Certainly a Committee that has accurately reported 99.99% of its receipts should be considered to be in substantial compliance with the Act and to have met the best effort test.

The Committee believes reasonableness should govern the Commission's review of this matter. We can only assume that the Commission would not impose a stricter standard of care than is required of the most exacting businesses. We dare say that 99.99% accuracy is better than even most on-going major businesses achieve.

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II. EXCESSIVE CONTRIBUTIONS

The General Counsel's Brief accuses the Committee of failing to timely refund or reattribute $75,092 in contributions which allegedly exceed individual limits. This amount can be broken down into two distinct categories -- approximately $46,772 for which the Committee received reattribution letters and $28,320 which was refunded.

A. Attribution Letters

The General Counsel had concluded that monies held by a committee pending receipt of reattribution letters which are obtained within a "reasonable time" constitute excessive contributions. G.C. Brief, p. 13. The General Counsel states that

> even where there is an eventual (untimely) reattribution, the amount improperly held before the correction represents an excessive contribution and is violative of 2 U.S.C. § 441a(f). The fact of eventual reattribution does not vitiate the Committee's knowing acceptance of excessive amounts from original contributions.

G.C. Brief, p. 13.

There are two essential flaws in this reasoning of the General Counsel. First is the assumption that a "knowing acceptance of excessive amounts" was made by the Committee. According to the General Counsel, § 441a(f) only requires the Committee to have known that it accepted funds and not that the funds accepted were in excess of the contributor's limitations. G.C. Brief, p. 15. The General Counsel mis-

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takenly relies on Federal Election Commission v. California Medical Association, 502 F.Supp., 196 (N.D. Cal. 1980) for this proposition. That case is in no way applicable to the present situation. Rather, it stands for the proposition that when a political committee accepts money which it knows exceeds the particular limitation (in that case, the limit was $5,000 as imposed by 2 U.S.C. § 441(a)(1)(C)) it is in violation of 2 U.S.C. § 441(a)(f). Id. at 203. The Committee must do more than merely accept a contribution as asserted by the General Counsel. Rather, it must have been aware of the illegal nature of the contribution to be in violation of the Act. See In re Election Campaign Litigation, 474 F.Supp. 1044, 1047 n.3 (D.D.C. 1979).

In California Medical Association, a PAC accepted tens of thousands of dollars in contributions from the same contributor each year for three years and was therfore in violation of 2 U.S.C. § 441a(f). To the contrary, the Committee was not aware that the contributions here in question exceeded the relevant limitations until a check could be run on the particular contributor. It would be ludicrous to find a political committee in violation of the Act for accepting excessive contributions merely because it accepted a contribution without first being given the opportunity to determine whether that contribution exceeded the donors contribution limitation.

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Following the General Counsel's reasoning to its logical conclusion would result in every political committee being in violation of 2 U.S.C. § 441a(f) whenever it endorsed a check from a contributor which resulted in a contribution exceeding that contributor's limitation. Surely this was not the intent of the Act, nor, as the General Counsel suggests, was it the holding in California Medical Association. The General Counsel's recognition of this fact is evidenced by his permitting a 30 day "grace period" for reattributing or refunding these contributions.

The second flaw in the General Counsel's reasoning is the assertion that the Committee violated § 431a(f) by accepting supposed excessive contributions from the "original contributors."

In its Reply to the General Counsel's Factual and Legal Analysis Regarding Unreported Receipts and Excessive Contributions dated April 9, 1982, the Committee challenged what it perceived to be a new legal theory being proffered by the General Counsel that reattribution results in a new contribution by the spouse to whom it is attributed. See Reply, pp. 5-6. As no counter argument has been offered, it can only be concluded that the General Counsel acquiesces in the Committee's conclusion that a primary purpose of requesting an attribution letter is to determine whether the original contributor was merely one spouse, or both. By

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definition, an attribution relates back to the date of the original contribution, otherwise it would be a meaningless exercise. Following receipt of an attribution letter, the original contribution is reported on amendments as of the date on which the original contribution was made to reflect the fact that both spouses were the original contributors. Hence, the Committee first learns who the original contributors are when it receives a reattribution letter.

As demonstrated above, the $46,772 in contributions for which attribution letters were received were not illegal contributions. It is anomalous that the General Counsel takes such a position in light of the fact that the Committee was permitted to retain these funds. Therefore, the worst violation for which the Committee may be cited is violation of the Acts record keeping or reporting requirements. Even if it is determined that the Committee violated the statutory requirements and Commission regulations on the handling of contributions, this does not automatically make the contributions so handled illegal.

2 U.S.C. § 432(c) and 11 C.F.R. § 102.9 impose specific record keeping requirements on the Committee. In addition, the Committee is obligated to file reports in accordance with the provisions of 2 U.S.C. § 434 and 11 C.F.R. 104.1 et. seq.

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While it might be contended that the Committee's handling of the reattributed contributions resulted in a violation of either the record keeping or reporting requirements, the Committee maintains that it did not violate these provisions. As soon as the matter was brought to its attention, the Committee took steps to determine the true nature of the contributions. Inquiries were sent to the individuals who had submitted the contributions requesting that they clarify whether it was a contribution from them alone or in conjunction with their spouse.

These actions of the Committee should be reviewed by the Commission in light of the fact that the Act provides that:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or Chapter 95 or 96 of Title 26.

2 U.S.C. §432(i). The recordkeeping regulations specifically provide that where the Committee has demonstrated that "best efforts" have been used, any records of the Committee will be deemed to be in compliance with the Act. 11 C.F.R. §102.9(d). With respect to reporting, the regulations again provide that where best efforts have been made, a committee's reports will be considered in compliance with the Act. 11 C.F.R. §104.7(a).

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As previously discussed, the Committee contacted the individuals who had submitted the contribution to determine who the original contributors were. Hence, the Committee is in full compliance with the Act and regulations. See 11 C.F.R. §§102.9(d), 104.7(b).

The General Counsel has also questioned the speed with which the Committee inquired as to the true nature of the contributions. In this regard, it is asserted by the General Counsel that 11 C.F.R. 103.3(b) does not apply to the present situation because it

> is designed to allow some flexibility in situations, unlike that here, where contributions which appear to be illegal, such as business firm checks or checks made out in amounts greater than $1,000, may be deposited while a determination is made that will confirm or refute the appearance of illegality.

G.C. Brief, p. 14. While the Committee agrees that the situations mentioned by the General Counsel are covered by 11 C.F.R. §103.3(b), we find it difficult to understand why the General Counsel has, sua sponte, decided to exclude from the coverage of the regulation fact patterns such as the one here at issue. We are especially surprised in light of the General Counsel's statement that the regulation is designed to "allow some flexibility in situations" where contributions appear illegal. There is nothing in the regulation which states or even implies that contributions must appear to be illegal the moment they are received in order for 11 C.F.R. §103.3(b) to be applicable. Rather, the underlying purpose

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behind this provision suggests that the Committee should be given an opportunity to determine if the contribution is proper. If, after an investigation, the Committee is able to ascertain that the contribution appears to be illegal, it must then conform its handling of the money to the strictures of 11 C.F.R. 103.3(b).

As indicated in the Reply of April 9, 1982, the Committee maintains that it did not violate 11 C.F.R. § 103.3(b) in any event. As soon as the matter was brought to its attention it took steps to inquire into the true nature of the contributions. The excessive portion of those contributions for which attribution letters were not obtained were refunded within a reasonable time after the Committee learned of the problem.

Contrary to the position taken by the General Counsel, see G.C. Brief, p. 15, there is nothing in the Act or regulations which requires that contributions be refunded within 30 days if the funds cannot be determined to be legal. Rather, 11 C.F.R. §103.3(b)(2) allows a "reasonable time" to accomplish this task. That the General Counsel attempted to enforce 2 U.S.C. §441a(f) and 11 C.F.R. §103.3(b) in all other 1980 Presidential MURs when the committee had not refunded or reattributed excessive contributions within 30 days of the reported date of receipt, see G.C. Brief, p.15, does not of itself make that time period reasonable for all

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cases. Rather, a "reasonable time" period should be established for each case based on its particular facts. Under the circumstances faced by the Committee there is little doubt that it handled the questionable contribution in a timely manner.

The Committee has at all times sought to fully comply with law, but has had limited resources to do so. From the very beginning of the campaign, much of the Committee's compliance resources have been devoted to satisfying the everchanging requests of the Commission's auditors for documents and information. From the threshold audit, through the interim audit and the final audit report, up to the present time, personnel and resources that could have been devoted to compliance have been diverted to cooperate as fully as possible with the Commission's audit requests. In such circumstances, the Committee did the best it could in determining the acceptability of the funds it received.

B. Potential Excessive Contributions

There remains $28,320 in unattributed, possibly excessive contributions. As noted in the Committee's Reply of April 9, 1982, $1,904 of the amount listed for Mr. Robert S. Evans was in fact expenses for entertainment at his home that were erroneously reported as an in kind contribution. Hence, there remains only $26,416 in excessive contributions.

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As with the recordkeeping and reporting issue discussed above, we request that the Commission keep this matter in perspective. According to the audit staff, we are dealing with a total of 73 contributors out of the nearly 90,000 contributions from individuals and political organizations which contributed money to the Committee. In addition, the FEC Reports on Financial Activity show the Committee received contributions totalling $8,023,988. The $26,416 in true excessives is therefore only three-tenths of one percent of the Committee's total contribution activity. Accordingly, we are involved in an enforcement proceeding because the Committee's contributions were only 99.7% correct. (Even with the attributed contributions and the Evans expenses included, the Committee's contributions would still be 99.1% correct.)

Given the size of the Committee's financial activity, the Committee should be deemed to be in substantial compliance with the Act. All excessive contributions that were not attributed have either been refunded to the contributor or donated to charity. The Committee has done everything it reasonably can do to comply with the Act. It is inevitable in a campaign handling millions of dollars, often with part-time and volunteer personnel, that errors will occur. In such circumstances, a committee that achieves over 99% accuracy, and then takes all steps necessary to rectify such errors that occurred, should not be penalized.

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CONCLUSION

With both these alleged violations, the Committee did everything it could to correct the violations once discovered. 100% accuracy is impossible in a campaign, but over 99% accuracy is an achievement the Committee can be proud of given its limited resources for compliance and the demands made thereon by the Commission. The Commission should recognize these factors in its review of this matter. For all practical purposes, no material information was denied the public nor did the Committee profit from these inadvertent errors. Because the Committee has brought itself into compliance with the Act, and was in susbtantial compliance to begin with, the proper resolution of this matter is for the Commission to close the file and take no further action.

Respectfully submitted,

William C. Oldaker
Treasurer

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EPSTEIN BECKER BORSODY & GREEN, P. C.
ATTORNEYS AT LAW
1140 19TH STREET, N. W.
WASHINGTON, D. C. 20036

Federal Election Commission
Office of General Counsel
1325 K Street, N.W.
Washington, D.C. 20463

Attn: Kenneth A. Gross, Esq.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 22, 1982

William C. Oldaker, Esquire
Epstein, Becker, Borsody and Green
1140 - 19th Street, N.W.
Washington, D.C. 20036

Re: MUR 1393

Dear Mr. Oldaker:

Your request, dated July 19, 1982, for a twenty-day extension of time within which to file a responsive brief in the above-referenced matter is hereby granted.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

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July 19, 1982

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Mr. Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1393

Dear Mr. Steele:

On July 14, 1982, I received your letter indicating that your office is prepared to recommend that the Commission find probable cause to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1) and (3), and 441a(f).

In accordance with that letter, the Committee hereby requests that an extension of twenty days be granted within which to file a responsive brief.

Thank you for your consideration of this matter.

Sincerely,

William C. Oldaker

WCO/DSP:jsk

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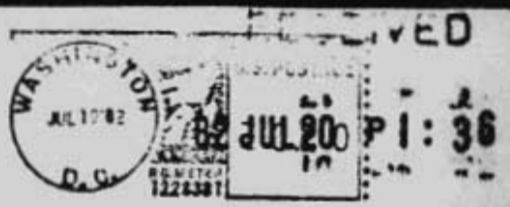
EPSTEIN BECKER BORSODY & GREEN, P.C.
1140 19TH STREET, N.W.
WASHINGTON, D.C. 20036



Mr. Charles N. Steele
General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

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July 20, 1982

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MUR 1393

Dear Mr. Gross:

I wish to acknowledge receipt of your letter of July 13, 1982 together with a copy of the General Counsel's brief setting forth the General Counsel's recommendation that the Commission find no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

On behalf of our client, Chemical Bank, we wish to inform you that we will not avail of the opportunity to submit a brief.

Sincerely,

Richard S. Simmons

Richard S. Simmons

Kenneth A. Gross, Esq.,
Associate General Counsel,
Federal Election Commission,
Washington, D. C. 20463

Copy to Mr. Robert Conway,
Vice President,
Chemical Bank,
140 Broadway,
New York, N.Y. 10005

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rd S. Simmons
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U.S.POSTAGE

Kenneth A. Gross, Esq.,
Associate General Counsel,
Federal Election Commission,
Washington, D. C. 20463

July 13, 1982

MEMORANDUM TO: Marjorie Emmons

FROM: Steven Barndollar

SUBJECT: MUR 1393

Please have the attached Memo and Briefs distributed to the Commission on an informational basis. Thank you.

Attachment

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

William C. Oldaker, Esquire
1050 - 17th Street, N.W.
Washington, D.C. 20005

Re: MUR 1393

Dear Mr. Oldaker:

On March 11, 1982, the Commission found reason to believe that the Kennedy for President Committee ("the Committee") had violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation in this matter. After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. §§ 434(b)(1) and (3) and 441a(f), and no probable cause to believe that the Committee violated 2 U.S.C. §§ 434(b)(2), 432(c)(1) and 441b(a).

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues in the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies are preferred) stating your position on the issues. Three copies of the brief also should be forwarded to the Office of General Counsel, if possible. The General Counsel's brief, together with any brief that you may submit, will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time of up to twenty days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt, for a period of not less than thirty, but not more than ninety, days to settle this matter through conciliation.

Should you have any questions, please contact Nancy B. Nathan, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Roy Niedermayer
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Re: MUR 1393

Dear Mr. Niedermayer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that D.C. National Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Richard S. Simmons
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons :

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that Chemical Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Carl A. Wattenberg, Jr.
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63125

Re: MUR 1393

Dear Mr. Wattenberg:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that Mark Twain Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

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Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Ms. Eve Mandelberg
60 East Seventeenth Street
Brooklyn, New York 11226

Re: MUR 1393

Dear Ms. Mandelberg:

On March 11, 1982, the Commission found reason to believe that you had violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and instituted an investigation in this matter. After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that you violated the Act.

Submitted for your review is a brief stating the position of the General Counsel on the factual and legal issues in the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies are preferred) stating your position on the issues. (Three copies of the brief also should be forwarded to the Office of General Counsel, if possible.) The General Counsel's brief, and any brief that you may submit, will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days you may submit a written request to the Commission for an extension of time of up to twenty days.

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A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

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RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 JUL 13 P4: 29

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 13, 1982

MEMORANDUM TO: The Commission

FROM: Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

RE: MUR 1393
(Kennedy for President Committee, Chemical Bank, D.C. National Bank, Mark Twain Bank, Robert S. Evans, Eve Mandelberg)

Attached for the Commission's review are five briefs that state the position of the General Counsel on the legal and factual issues in the above-referenced MUR. A copy of each brief and a letter notifying each respondent of the General Counsel's recommendation to the Commission was mailed on July 13, 1982. Following the receipt of each of the respondents' replies to the notice, this Office will make a further report to the Commission.

Attachments
1. Briefs (6)
2. Letters (6)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter)
)
Kennedy for President)
Committee) MUR 1393

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

This matter was referred to the Office of General Counsel by the Audit Division based upon information obtained during an audit of the Kennedy for President Committee ("the Committee"). On March 11, 1982, the Commission found reason to believe the Committee had violated 2 U.S.C. §§ 434b(1) and (2); 432(c)(1); 441b(a) and 441a(f). Notice of the Commission's findings was sent to the Committee on March 12, 1982; counsel for the Committee submitted responses on April 8 and 9, 1982.

A. Unreported Receipts and Recordkeeping Violations

The Commission found reason to believe that the Committee failed to report receipts totalling $17,500.49 in either its cash-on-hand or total receipts figures. That amount includes deposits in state and scheduling accounts for which no documentation, or illegible documentation, was provided by the Committee following the interim audit report. Further, the Commission found reason to believe that the Committee had failed to keep an accurate account of $14,583.57 in apparent contributions.

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Attachment 1 - 1 of 17

The Commission's auditors first determined that $52,602.79 in deposits to state and scheduling accounts were not transferred from national accounts. Later, the following amounts were subtracted from that unreported amount:

amount	reason subtracted
$15,043.38	reported in comprehensive amendment
$12,710.00	reported in MUR 1370 (Puerto Rico)
$ 6,598.92	documented transfers from national account
$ 750.00	previously-reported contributions
$35,102.30	

Subtracting that $35,102.30 total left $17,500.49 unreported. The Committee filed an amendment on April 12, 1982 reporting $15,600.49 of that amount. The remaining $1,900 comprises two receipts, as yet unreported: a $1,500 loan check from an Arizona bank, and a $400 contribution from the Communication Workers of America PAC.

The $14,583.57 which the Commission found reason to believe had not been accurately accounted for represents the total for which adequate documentation never has been provided by the Committee, following its requests for bank records. It includes $9,249.50 for which bank records were provided but which were illegible, and $5,334.17 for which no documentation was received from banks following written requests by the Committee.

The Committee's response argues that the "best efforts" test of 2 U.S.C. § 431(i) and 11 C.F.R. §§ 102.9(d) and 104.7(a) was

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met by its written requests to banks in an effort to obtain the documentation necessary to enable it to comply with reporting and recordkeeping requirements. The final audit report noted that copies of the Committee letters requesting records from appropriate banks had been provided to auditors by the Committee. The Committee's response notes also that, where the first written requests yielded illegible documents, second requests were made, only some of which yielded legible documents. In the case of one bank, no microfilmed records had been kept.

In addition to asserting its satisfaction of the "best efforts" test, the Committee also contends that the reporting and recordkeeping violation is de minimis, since the unreported amount represents 0.1% of the campaign's total receipts. Reasonableness, and the "best efforts" measure of substantial compliance, both would dictate that the Committee's recordkeeping and reporting be considered adequate, the Committee argues.

Two contributions were not itemized on Committee reports and also were not reported, even in the most recent amendment filed by the Committee after the audit report. These were checks received from the political action committee of the Communications Workers of America ($400), 1/ and from an Arizona bank for a loan ($1,500).

1/ Commission records show that the unreported CWA check did not represent an excessive contribution by that union PAC which had not otherwise contributed to the Committee.

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B. Improper Pledges of Collateral for Bank Loans

The audit raised questions concerning the art works pledged by the Committee as collateral in obtaining certain bank loans. The apparent non-existence of certain works at the time pledged led to the Commission's findings of reason to believe that three respondent banks had made corporate contributions, rather than loans, to the Committee, and that the Committee knowingly had accepted those contributions.

The responses submitted by the Committee and by the three respondent banks (Chemical Bank of New York, D.C. National Bank, and Mark Twain Bank of St. Louis) assert that, in each case, the banks held other collateral that they reasonably considered to have adequately secured the loans in question. In addition, the responses provide credible evidence that the banks all were unaware that the works in question had not been printed.

The response submitted by Chemical Bank of New York declares that the collateral available for the loans of $210,000 and $540,000, apart from the unprinted works in question, was valued "well in excess of any collateral value which Chemical would normally require for a loan secured by works of art." 2/ In addition, the bank submitted a copy of a May 2, 1980 letter it received from Twichell-Nichols, printmakers, confirming that the Krushenik serigraphs had been printed. In case of this loan, the

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2/ Already pledged to Chemical as collateral by the Committee were various art works valued at over $1,000,000 and Warhol prints valued at $300,000.

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other work whose existence was questioned was an original acrylic by Anuszkiewicz. The bank's response asserts that, even if that work had not yet been created, it was unnecessary to secure the loan. (The Anuszkiewicz original was valued by bank appraisers at $9,000.)

The D.C. National Bank's response to the reason-to-believe finding also asserts that other collateral was pledged (300 Jamie Wyeth prints) which adequately secured that bank's $240,000 loan to the Committee; further, the bank says, the Committee's "normal cash flow" also was looked to assure repayment. In fact, D.C. National terms the art work (the Wyeth prints as well as the other pledged works) a "secondary" source of repayment, with the "cash generated by fund-raising, including prospective matching funds" the primary source. The bank states in its response that appraisals of the art works pledged were more than sufficient under standard underwriting criteria; it also attaches copies of documents assuring it, it asserts, of the physical existence and location of the collateral. Further, the bank notes, it was only when the Committee made a series of curtailment payments on a first loan, and sought partial release of about 100 of the Wyeth prints pledged, that the Committee "voluntarily requested the Bank to supplement the collateral for the loan by the addition of further art work," which included the works cited by the Commission in the reason-to-believe finding (i.e., the Yao and

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Rosenblum prints). The bank declares that the remaining original collateral (about 200 Wyeth prints valued at about $1,000 each), the anticipated campaign funds, and the curtailment payments were more than adequate security without the Yao and Rosenblum works, even after the partial release of Wyeth prints following some curtailment payments. It was for that reason, D.C. National Bank says, that it did not follow verification procedures as to the Yao and Rosenblum works, as it had with the Wyeth prints.

The response of Mark Twain Bank of St. Louis asserts that other artwork pledged to that bank by the Committee for a previous $10,000 loan (forty Rauschenberg lithographs) was more than adequate to also collateralize the second $10,000 loan, which gave rise to the Commission's reason-to-believe finding, for which the Committee pledged works by several artists, including Yao and Rosenblum. The bank says that, even when some Rauschenberg prints were released as payments were made, the value of those remaining was sufficient to cover the unpaid balance of the first loan, as well as the new loan.

The Committee asserts that neither the bank officers nor the Committee officials who negotiated the loans knew any of the works had not yet been printed. In fact, it says, the Committee had no knowledge that the works were not printed until the summer of 1981, during the audit process. The works not printed

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comprised a very small percentage of the total number given to the Committee, and of the number pledged for the various loans. Both the Committee and the respondent banks submitted copies of documents obtained from appraisers, from printers and from custodians, listing the works in question together with the many other works given to the Committee by artists.

C. Acceptance of Contributions Exceeding Individuals' Limits Under the Act

The final review by the auditors of the Committee's response to the interim audit report set the total amount improperly held by the Committee, through failure to timely refund or reattribute excessive contrbutions until after the conclusion of the field audit, at $75,092. 3/ That represented contributions from 182 individuals.

The Committee's response notes that attribution letters were obtained for $48,367 of the $75,092 total for which the Commission found reason to believe there had not been timely refund or reattribution. It argues that the Commission erred in including the eventually-reattributed amount, because, it asserts, an attribution "relates back to the date of the original contribution," and a reattribution letter "certifies that it (the contribution) was intended as a contribution by both spouses when

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3/ The measure of reasonable timeliness used in 1980 Presidential MURs, and which was used here, has been thirty days following receipt. However, in this matter most delays were of more than several months' duration.

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made." Therefore, the Committee argues, that portion of the excessive contributions total which was reattributed, however tardily, always properly was Committee funds and should not be included in the amount-in-violation.

"It [the tardiness] may state a violation of the Commission's regulations for handling illegal-appearing contributions, but it does not render the contribution itself illegal," the Committee contends. But it further says that there was no violation of the regulations, since the question of timeliness should be judged once the Committee becomes aware that a reattribution or refund is needed. It argues that it made refunds within a reasonable time for those contributions for which it learned that reattributions could not be obtained. The Committee also notes that all such amounts had been refunded by December 18, 1981; the First General Counsel's Report failed to make clear that those refunds had been accomplished, the Committee says. (A list appearing as Attachment 2 to the Report did so state.)

In conversation with Office of General Counsel staff, Committee counsel propounded an additional explanation, not included in the Committee's written response, for its failure to make timely refunds of excessive contributions. Computer entry error, it was said, resulted in the Committee's inability to recognize some excessive contributions when received from

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individuals who previously had contributed, but whose first contributions were entered under incorrect names or addresses. The Commission's auditors have determined that, for about eleven per cent of the total excessive refunded contributions which formed the basis for the Commission's reason-to-believe finding, the computer entries appeared to have been in error. 4/

The Committee argues that its record as to treatment of excessive contributions should be judged by a "reasonableness" standard, and that by such a standard, the violation is shown to involve a very small part (0.3%) of the Committee's total receipts, and the Committee is in substantial compliance with the law's requirements on treatment of excessive contributions.

II. Legal Analysis

A. Unreported Receipts and Recordkeeping Violations

The Federal Election Campaignd Act of 1971, as amended, ("the Act"), provides that a Committee may demonstrate that "best efforts" have been used to comply with the recordkeeping and reporting provisions of the Act. 2 U.S.C. § 432(i). Specifically, the Code of Federal Regulations ("the Regulations") provides that written requests issued in order to obtain duplicate copies of records will satisfy the "best efforts" test of substantial compliance. 11 C.F.R. § 102.9(d). Further,

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4/ Of approximately $21,000 in excessive contributions eventually refunded (not reattributed), auditors have determined that the Committee may have failed to timely refund about $2,335 due to errors in computer entry.

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the regulations provide that, where a Committee demonstrates that "best efforts" have been made, its report will be considered in compliance with the Act. 11 C.F.R. § 104.7(a).

The Committee has demonstrated that written requests were made to each bank in which unreported receipts were deposited, and that second requests were made where the first yielded inadequate documentation.

It is the General Counsel's view that the written requests do bring the Committee into compliance with the reporting and recordkeeping requirements of the Act, as provided by 11 C.F.R. §§ 102.9(d) and 104.7(a), and by 2 U.S.C. § 432(i).

Because of this, it is unnecessary to address the Committee's further contention that its reporting and recordkeeping were in substantial compliance because the undocumented amounts represent such a small percentage of the Committee's total receipts. The General Counsel recommends that the Commission find no probable cause to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1) and (2), and 432(c)(1), as to the bulk of the unreported receipts which have been reported in the Committee's most recent amended report filed April 12, 1982.

As to the Committee's failure to itemize and report two receipts, a contribution from the Communication Workers of America PAC, and a loan from an Arizona Bank, the General Counsel

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recommends that the Commission find probable cause to believe that the Committee violated 2 U.S.C. § 434(b)(1) and (3).

B. Improper Pledges of Bank Loan Collateral

Under 2 U.S.C. § 441b(a), a corporation is prohibited from making any contribution or expenditure in connection with a federal election. The term "contribution" is defined at 2 U.S.C. § 441b(b)(2) and § 431(8)(A) to include, inter alia, any loan of money. At 2 U.S.C. § 431(8)(B)(vii), however, bank loans made in the ordinary course of business and with specified characteristics are exempted from the "contribution" definition. The pertinent loan characteristic in this matter is specified at 2 U.S.C. § 431(8)(B)(vii)(II), which provides that loans made in the ordinary course of business must also, inter alia, be "made on a basis which assures repayment." Because the audit indicated that, for some loans obtained by the Kennedy for President Committee, the pledged collateral may not have existed, and therefore that the loan may have been made on a basis that did not assure repayment, the Commission found reason to believe that the loans may have been contributions, in violation of 2 U.S.C. § 441b.

The responses to the reason-to-believe findings submitted by the three respondent banks that made loans to the Committee, and by the Committee itself, provide credible evidence that, in each loan transaction, both parties were unaware that some of the

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art works pledged as collateral were not yet printed. By making the loans without knowledge that the collateral did not physically exist and, in fact, with affirmative evidence of the existence of that collateral, the banks appear to have made those loans "on a basis assuring repayment." The banks reasonably could have believed the loans to be adequately secured.

In addition to the evidence that the banks and the Committee representatives had no reason to doubt that a few of the many pledged works had been printed, particularly since they were listed on appraisal lists with other pledged works, the responses also demonstrate that other collateral pledged for the same loans satisfied the requirements of § 431(8)(B)(vii)(II) without the unprinted collateral in question. The banks' responses show that, in each case, the unprinted works were of significantly less value than other, major works also pledged and which, according to the banks, more than adequately supported the loans by themselves. In addition, the largest loan in question, by D.C. National Bank, was also considered secured by future matching payments. The Commission has recognized the validity of a bank's looking to matching payments as collateral for loans. See AO 1980-108.

It is the General Counsel's view that the loan decisions met the test of 2 U.S.C. § 431(8)(B)(vii)(II), because each was made

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on a basis that assured repayment, and therefore that the loans were not contributions. Therefore, the General Counsel recommends that the Commission find no probable cause to believe that the Kennedy for President Committee violated 2 U.S.C. § 441b(a) by accepting the above-specified loans from banks.

C. Acceptance of Contributions Exceeding Individual Limits Under the Act

The Committee argues that the Commission erred in arriving at the total amounts of excessive contributions which the Committee is charged with having failed to timely refund or reattribute, in violation of 2 U.S.C. § 441a(f). The total $75,092 that formed the basis for the reason to believe finding should not have included $48,367 in contributions eventually reattributed to contributors' spouses, according to the Committee. It argues that failure to timely reattribute the amounts does not render them excessive.

In the General Counsel's view, even where there is an eventual (untimely) reattribution, the amount improperly held before the correction represents an excessive contribution and is violative of 2 U.S.C. § 441a(f). The fact of the eventual reattribution does not vitiate the Committee's knowing acceptance of the excessive amounts from the original contributor.

The Committee argues that, at most, it should be cited for violation of 11 C.F.R. § 103.3(b)(2). On the assumption that the regulation would even apply to the present situation, the

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Committee also contends that the Commission may not, without amending the regulations, interpret "reasonable time" to require that excessive contributions be refunded or reattributed within thirty days of receipt.

As is demonstrated infra, however, 11 C.F.R. § 103.3(b) does not excuse the Committee's violation of 2 U.S.C. § 441a(f). The regulation is designed to allow some flexibility in situations, unlike that here, where contributions which appear to be illegal, such as business firm checks or checks made out in amounts greater than $1,000, may be deposited while a determination is made that will confirm or refute the appearance of illegality. The regulatory provision therefore affords an opportunity of avoiding violation of 2 U.S.C. § 441a(f), under which acceptance of illegal contributions otherwise would be a violation of law, where the Committee receiving them is aware, before deposit, of their questionable legality and so advises the Commission on its next reports. 5/.

Because § 103.3(b) does not apply to the present facts, the Committee's acceptance of excessive contributions is subject to

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5/ The Committee also has argued, in an alternative sense, that the regulation applies only to refund, not to reattribution, situations because of its use of the specific term "refund." While it is not necessary to reach that argument, this Office would argue that the function of the regulation clearly is to address all means for resolution of excessive contributions which appear before deposit to be illegal. Moreover, the Committee's underlying suggestion - that since § 103.3(b) does not apply, no time restraints whatsoever govern reapportionments - is clearly without logic.

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the standard of § 44la(f). That provision only requires that the respondent knew that it accepted the funds in question, not that the respondent knew its acceptance of the funds was in excess of the limitations and hence in violation of the law. See Federal Election Commission v. California Medical Association, 502 F.Supp. 196 (N.D.Cal. 1980). Although technically the Committee violated § 44la(f) when it deposited each excessive contribution, the Commission only pursued the Committee for those excessives that were not reattributed or refunded within 30 days of their reported date of receipt. This treatment was accorded the respondents in all other 1980 Presidential MURs, as well. While the Committee is correct that no 30-day time period is set forth in the statute or regulations, the Commission's application of a 30-day grace period gave the Committee some protection that § 44la(f) would not otherwise provide, and the Committee should not be heard to complain.

In the case of the excessive contributions illegally held by the Committee, there seems to have been little effort expended to ascertain whether the amounts were excessive and to promptly correct those that were. The Committee asserts that it took steps to investigate the contributions' legality "as soon as the matter was brought to its attention [by the Auditors]". The Committee does not deny that it did not itself identify the

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contributions as questionably illegal, and does not assert that it attempted to determine their legality sua sponte within a reasonable time (not necessarily within thirty days) of the deposits.

The Committee's further contention -- that computer error prevented the Committee from making timely refunds of excessive contributions, because of its inability to detect the receipt of additional contributions from individuals whose first contributions were entered with errors in names or addresses --is unpersuasive. While it is true that computer error was present and therefore might explain up to eleven percent of the refunds not timely made, violations of § 441a(f) are not excused by such evidence of inadvertent interference with a party's ability to comply with the law. At most, consideration of the computer error factor might result in a mitigation of any proposed civil penalty, because it may be seen as evidence of the Committee's good faith.

The Committee also argues that, even including the contested amounts eventually reattributed, the Committee's record of treatment of illegal contributions amounts to substantial compliance. 6/

6/ By the Committee's figures, 0.3% of total receipts were not timely refunded. When reattributed receipts are included, the amount in violation represents 0.9% of total receipts, according to the Committee.

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There is no statutory or regulatory basis for such an argument. Whether it is or is not inevitable that a campaign handling such substantial amounts of contributions, often with volunteer help, will sometimes inadvertently violate the law, the Regulations do not recognize "substantial compliance" or "best efforts" in the area of handling of illegal contributions, as they do in the area of recordkeeping. (See supra.) The only regulatory exception to the Act's § 441a(f) stricture is that made available by 11 C.F.R. § 103.3(b); as is noted supra, however, that provision is inapplicable here.

Therefore, it is the General Counsel's recommendation that the Commission find probable cause to believe that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) by failing to timely refund or reattribute contributions that exceeded individual contributors' contribution limits under the Act.

III. General Counsel's Recommendation

1. Find no probable cause that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(2), 432(c)(1), and 441b(a).

2. Find probable cause that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1) and (3) and 441a(f).

July 9, 1982
Date

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Attachments

Att. 1 - 17 of 17

3040131

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Chemical Bank) MUR 1393

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On March 11, 1982, the Commission found reason to believe that Chemical Bank ("the bank") violated 2 U.S.C. § 441b(a) by accepting unprinted art works pledged as collateral for two bank loans by the Kennedy for President Committee ("the Committee") and thereby failing to comply with the requirements of 2 U.S.C. § 431(8)(B)(vii)(II).

II. Factual and Legal Analysis

The bank's response to the Commission's notification of its reason-to-believe finding asserted that the total collateral pledged by the Committee for loans of $210,000 and $540,000 was valued "well in excess of any collateral value which Chemical would normally require for a loan secured by works of art." Among the other art works pledged by the Committee were pieces with a total value of over $1,000,000, and, additionally, Warhol prints valued at $300,000. (The unprinted Krushenik serigraphs, and an original printing by Anuszkiewicz, valued at $9,000, were pledged by the Committee in addition to that collateral.)

In addition to its assertion that other art works pledged by the Committee were sufficient collateral by banking standards,

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Chemical Bank also submitted a May 2, 1980 letter to the bank from Twichell-Nichols, printmakers, which indicated that the Krushenik serigraphs had, in fact, been printed. That evidence indicates that the bank had reason to believe, when making the loan, that the pledged collateral was in existence. It thus appears that the loan was made on a basis assuring repayment. This evidence of the bank's belief that such a basis existed is further support for the bank's assertion that it acted in the ordinary course of business in making the two loans to the Committee.

Therefore, the Office of General Counsel recommends that the Commission find no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

III. General Counsel's Recommendation

Find no probable cause to believe that Chemical Bank violated 2 U.S.C. § 441b(a).

July 9, 1982
Date

Charles N. Steele
General Counsel

BY:
Kenneth A. Gross
Associate General Counsel

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Att. 2-2 of 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
D.C. National Bank) MUR 1393

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On March 11, 1982, the Commission found reason to believe that D.C. National Bank ("the bank") violated 2 U.S.C. § 441b(a) by accepting unprinted art works pledged by the Kennedy for President Committee ("the Committee") as collateral for a $240,000 loan and thereby failing to comply with the requirements of 2 U.S.C. § 431(8)(B)(vii)(II).

II. Factual and Legal Analysis

The bank's response to the Commission's reason-to-believe finding asserted that other art works pledged by the Committee (including 300 Jamie Wyeth prints) adequately secured the loan, without consideration of the unprinted Yao and Rosenblum works.

Further, the bank asserted that its lending decision was based on factors in addition to the collateral pledged which it termed a secondary source of repayment. The Committee's "normal cash flow" was looked to as the primary source, the bank said, referring to the "cash generated by fund-raising, including prospective matching funds."

The unprinted Yao and Rosenblum works were pledged by the Committee "voluntarily," the bank said. When the Committee made

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a series of curtailment payments on a first loan, it sought to supplement the already-pledged collateral with the Yao and Rosenblum works. The bank's response contended that the Wyeth prints, campaign funds, and curtailment payments were sufficient to collateralize the loan, without the works in question, even after the release of some Wyeth prints following curtailment payments.

The bank submitted documents with its response that had been supplied by the Committee at the time of the loan and that indicated that the works had been printed, since they were listed as being held by a custodian and were assigned values. The bank noted that it did not follow its usual verification procedures for the Yao and Rosenblum prints, because of the bank's view that that collateral was unnecessary to secure the loan.

Evidence that D.C. National Bank had reason to believe that the unprinted works did exist supports the bank's assertion that it acted in the ordinary course of business in making the loan to the Committee and that the loan was made on a basis assuring repayment.

Additionally, the bank's assertion that the unprinted works were unnecessary to collaterlize the loan appears persuasive. The value of the Wyeth prints was "more than sufficient security under standard underwriting criteria," the bank said. Further, the Commission has recognized that a loan may properly be

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secured by the prospect of matching fund payments. See Advisory Opinion 1980-108. In view of the evidence that a bank acting in the ordinary course of business could have made the loan in question without reference to the unprinted works offered as secondary collateral in this case, no violation of 2 U.S.C. § 431(8)(B)(vii)(II) is apparent.

The Office of General Counsel recommends that the Commission find no probable cause to believe that D.C. National Bank violated 2 U.S.C. § 441b(a) by making a loan to the Kennedy for President Committee.

III. General Counsel's Recommendation

Find no probable cause to believe that D.C. National Bank violated 2 U.S.C. § 441b(a).

July 9, 1982
Date

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

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att. 3-343

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Mark Twain Bank) MUR 1393

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On March 11, 1982, the Commission found reason to believe that Mark Twain Bank ("the bank") violated 2 U.S.C. § 441b(a) by accepting unprinted art works pledged by the Kennedy for President Committee ("the Committee") as collateral for a $10,000 loan and thereby failing to comply with the requirements of 2 U.S.C. § 431 (8)(B)(vii)(II).

II. Factual and Legal Analysis

The bank's response to the Commission's reason-to-believe finding asserted that other works pledged by the Committee on a previous $10,000 loan (forty Rauschenberg lithographs) was more than adequate to also collateralize the second $10,000 loan for which the Committee pledged works by several artists, including the unprinted works by Yao and Rosenblum. The bank said that, even when some Rauschenberg prints were released to the Committee as loan repayments were made, the value of those remaining was sufficient to cover the unpaid balance of the first loan and the new loan.

The bank submitted copies of a trust receipt furnished to the bank by the Committee at the time of the transaction, reciting that the unprinted works were among others being

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held by the Committee for the bank. Such evidence that Mark Twain Bank had reason to believe that the unprinted works did exist supports the bank's assertion that it acted in the ordinary course of business in making the loan to the Committee and that the loans were made on a basis assuring repayment.

Additionally, the bank's assertion that the unprinted works were unnecessary to collateralize the loan appears persuasive. The value of the Rauschenberg prints was four or five times the amount of the loan, the bank said. In view of the evidence that a bank acting in the ordinary course of business could have made the loan in question without reference to the unprinted works, no violation of 2 U.S.C. § 431(8)(B)(vii)(II) is apparent.

The Office of General Counsel recommends that the Commission find no probable cause to believe that Mark Twain Bank violated 2 U.S.C. § 441b(a) by making a loan to the Kennedy for President Committee.

III. General Counsel's Recommendation

Find no probable cause to believe that Mark Twain Bank violated 2 U.S.C. § 441b(a).

July 9, 1982
Date

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

att. 4-2-82

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Eve Mandelberg) MUR 1393

GENERAL COUNSEL'S BRIEF

I. Statement of the Case

On March 11, 1982, the Commission found reason to believe that Eve Mandelberg ("respondent") violated 2 U.S.C. § 441a by contributing in excess of limitations imposed by that provision of the Federal Election Campaign Act of 1971, as amended, to the Kennedy for President Committee ("the Committee") during the 1980 Presidential election campaign. This matter resulted from the Commission's audit of the Committee.

II. Factual and Legal Analysis

Auditors noted contributions from respondent totalling $2,700, or $1,700 in excess of limitations.

Respondent did not submit a response to the notification of the Commission's reason-to-believe finding.

Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that Eve Mandelberg violated 2 U.S.C. § 441a(a)(1)(A).

III. General Counsel's Recommendation

Find probable cause to believe that Eve Mandelberg violated 2 U.S.C. § 441a(a)(1)(A).

July 9, 1982
Date

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Kenneth A. Gross
Associate General Counsel

Att. 5

8304101 22

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

William C. Oldaker, Esquire
1050 - 17th Street, N.W.
Washington, D.C. 20005

Re: MUR 1393

Dear Mr. Oldaker:

On March 11, 1982, the Commission found reason to believe that the Kennedy for President Committee ("the Committee") had violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and instituted an investigation in this matter. After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that the Committee violated 2 U.S.C. §§ 434(b)(1) and (3) and 441a(f), and no probable cause to believe that the Committee violated 2 U.S.C. §§ 434(b)(2), 432(c)(1) and 441b(a).

Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues in the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies are preferred) stating your position on the issues. Three copies of the brief also should be forwarded to the Office of General Counsel, if possible. The General Counsel's brief, together with any brief that you may submit, will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request to the Commission for an extension of time of up to twenty days.

8304010128

att 6 - 1 of 2

A finding of probable cause to believe requires that the Office of General Counsel attempt, for a period of not less than thirty, but not more than ninety, days to settle this matter through conciliation.

Should you have any questions, please contact Nancy B. Nathan, at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

8304041012

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Roy Niedermayer
Melrod, Redman and Gartlan
Suite 1100
1801 K Street, N.W.
Washington, D.C. 20006

Re: MUR 1393

Dear Mr. Niedermayer:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that D.C. National Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

3304101

Att. 7-1of2

Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

83040410125

Att. 7-2 of 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Richard S. Simmons
Cravath, Swaine and Moore
One Chase Manhattan Plaza
New York, New York 10005

Re: MUR 1393

Dear Mr. Simmons :

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that Chemical Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

3 3 0 4 0 1 0 2 7

AH. 8-1/2

Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

8304041012 8

Att. 8 - 2 of 2

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Carl A. Wattenberg, Jr.
Vice President
Mark Twain Bank
8820 Ladue Road
St. Louis, Missouri 63125

Re: MUR 1393

Dear Mr. Wattenberg:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission, on March 11, 1982, found reason to believe that Mark Twain Bank had violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended, and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find no 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 fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (10 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 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 no probable cause to believe a violation has occurred.

3 3 0 4 0 1 2 9

AM 9-1of7

Should you have any questions, please contact Nancy B. Nathan at (202) 523-4075.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure
Brief

83040101 3C

AH 9-212

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 13, 1982

Ms. Eve Mandelberg
60 East Seventeenth Street
Brooklyn, New York 11226

Re: MUR 1393

Dear Ms. Mandelberg:

On March 11, 1982, the Commission found reason to believe that you had violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and instituted an investigation in this matter. After considering all the evidence available to the Commission, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe that you violated the Act.

Submitted for your review is a brief stating the position of the General Counsel on the factual and legal issues in the case. Within fifteen days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies are preferred) stating your position on the issues. (Three copies of the brief also should be forwarded to the Office of General Counsel, if possible.) The General Counsel's brief, and any brief that you may submit, will be considered by the Commission before proceeding to a vote of probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days you may submit a written request to the Commission for an extension of time of up to twenty days.

3304101 31

att. 10-1 of 2

A finding of probable cause to believe requires that the Office of General Counsel attempt for a period of not less than thirty, but not more than ninety, days to settle this matter through a conciliation agreement.

Should you have any questions, please contact Nancy B. Nathan at (202) 523-4073.

Sincerely,

Charles N. Steele
General Counsel

By: Kenneth A. Gross
Associate General Counsel

Enclosure

83040410132

AR10-1of2

6ccH 7546

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

82 APR 15 P2:42

MEMORANDUM TO: CHARLES N. STEELE

FROM: MARJORIE W. EMMONS mwe

DATE: APRIL 15, 1982

SUBJECT: MUR 1393

Attached hereto is a letter from Mr. Roy Niedermayer, attorney for the respondent in MUR 1393.

The letter was received by Chairman Reiche this morning, and he has asked us to forward it to you for appropriate action.

Attachment as noted

8304010[illegible]

MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

SUITE 1100 K
1801 K STREET, N. W.
WASHINGTON, D. C. 20006

TELEPHONE (202) 822-5300

CABLE: REDMEL
TELEX: 89-7414
TELECOPIER 833-2090

LEONARD S. MELROD
LIPMAN REDMAN
JOSEPH V. GARTLAN, JR.
JERRY M. HANOVIT
WARREN S. KAPLAN
STEPHEN D. KAHN
PHILIP A. GORELICK
MICHAEL D. GOLDEN
DOROTHY SELLERS
JOEL Z. SILVER
ROY NIEDERMAYER
PHILIP M. HOROWITZ
DAVID F. SANTLEON
ALLAN J. WEINER
HOWARD S. JATLOW
NEIL I. LEVY
ROBERTA F. COLTON

STEVEN M. GLAZER
J. JONATHAN SCHRAUB
ROBERT J. FREDA
WM. DANIEL SULLIVAN
STANTON J. LEVINSON
ROBERT F. ADAMS
HOWARD N. SOLOOKY
DANIEL M. LITT
JAMES S. FEIGENBAUM
DENISE M. RECHTER
CRAIG SPRAGUE
JAMES W. KAYWELL
JOHN LUND ALTMAN
CAROLINE C. BLAKELY
STEVEN A. TEITELBAUM
ANDREW G. WACHTEL
DOUGLAS B. NISHKIN

WRITER'S DIRECT DIAL NUMBER
(202) 822-5364

April 14, 1982

Mr. Frank P. Reiche, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

ATTN: Nancy B. Nathan, Esq.

Re: MUR 1393; District of Columbia
National Bank, Washington, Respondent

Dear Chairman Reiche:

Enclosed please find a copy of the promissory note signed by the Kennedy for President Committee, which supplements the response of District of Columbia National Bank to the inquiry by the Commission.

Sincerely yours,

Roy Niedermayer

Roy Niedermayer

Enclosure

RN/nmn

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of the terms of this note

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DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON

COLLATERAL NOTE-TIME

LOAN NO 27815

Washington, D.C. March 7th, 19 8

Loan Amount ---Two Hundred Forty-Thousand and 00/00---------- Dollars ($240,000.00-----

--------On Demand*---------- after the above date, for value received, the undersigned jointly and severally promise to pay to the order of DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, at its banking house in Washington, D.C., the loan amount set forth above, with interest on the unpaid balance thereof accruing at the rate of --See Reverse of Note**---- percent (---------- per annum from the date hereof until the loan amount is paid in full, in immediately available funds, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount. Interest hereon shall be computed on a 360-day or 365-day basis, in Bank's sole discretion.

Interest hereon shall be payable At Maturity.

And to secure the payment of this note – and of any other present or future liability of any nature whatsoever of any of the undersigned to the holder, whether absolute or contingent, direct or indirect, due or not due, secured or unsecured, joint, several or joint and several (hereafter "any other liability") – the undersigned hereby transfer, assign, pledge and deliver to the holder the following described property and any additions thereto or substitutions or exchanges therefor and all dividends, distributions, coupons, interest, rights and accruals thereon, together with the proceeds thereof, to wit:

300 Serially Numbered Wyeth Kennedy '80 lithograph art prints titled "To Sail Against the Wind", as more particularly described in a Security Agreement dated March 7, 1980.

(hereinafter "security"), free of all other liens and encumbrances, with authority to the holder to use, transfer, and hypothecate the security.

Upon the full payment of this note in accordance with its terms the holder may return to the undersigned or any of them an equal quantity of the said security and not the specific security deposited. The holder is hereby expressly empowered at any time or times hereafter and without notice to anyone to surrender or release all or part of the security to the undersigned, or any of them, and to receive, collect, compromise, renew, extend, substitute, exchange, or otherwise deal with, or to refrain from exercising any of the aforesaid powers in respect to, the security without liability of any kind of the holder and without in any manner releasing the obligations of any of the undersigned to the holder.

Whenever this note or any other liability matures, whether by acceleration in accordance with the terms hereof or otherwise, the holder may thereupon and at any time or times thereafter sell (and the holder is hereby given full and irrevocable power and authority to sell), assign and deliver the security or any part thereof at any brokers' board or at public or private sale, without notice, advertisement, or demand of any kind to anyone and without prejudice to any other remedies afforded by this instrument or by law, and may apply the proceeds of sale, after deducting all costs and expenses thereof including attorneys' fees, to the payment of this note and of any other liability, returning the overplus, if any, to the undersigned or any of them, and the holder hereof may purchase any of the security at any such sale. The undersigned hereby agree to remain jointly and severally liable for, and to pay forthwith, any deficiency remaining unpaid after such application.

Whenever this note or any other liability matures, whether by acceleration in accordance with the terms hereof or otherwise, any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, or held by, or in the possession of the holder, or in transit to or from the holder by mail or carrier, as collateral or otherwise, to the credit of or for the account of any of the undersigned may, at the option of the holder and without notice to or consent by any of the undersigned, be applied forthwith to pay or secure payment on this note or any other liability. The rights of the holder shall not be affected by the fact that the holder may have other security for the amount due hereon or on any other liability.

Upon failure to pay any payment hereon in full when the same shall become due, or in the event the security shall depreciate in value so that it becomes in the opinion of the holder inadequate to secure payment of this note, or if the holder shall in good faith feel itself insecure or unsafe as a result of acts or events which bear upon the financial condition of the undersigned or the repayment of the loan amount, or in the event of the insolvency of, or the commission of any act of bankruptcy by, or death of, any of the undersigned, or the appointment of a receiver of any property of any of the undersigned by a bankruptcy court or other court of competent jurisdiction, the entire loan amount plus accrued interest thereon (less any payments theretofore made) and all other obligations of the undersigned to Bank, shall, at the option of the holder, thereupon mature and become immediately due and payable without notice to any of the undersigned of the exercise of said option. At any time, whether in case of decline in the market value of the security or any part thereof or otherwise, the holder may demand the transfer, assignment, pledge, and delivery of additional or substitute security of quality and amount satisfactory to the holder; and the failure of the undersigned so to deliver such additional or substitute security within 24 hours following receipt of actual notice of demand therefor by any of the undersigned, or within 2 business days following the mailing or telegraphing of such notice to any of the undersigned at the address listed below, shall cause this note and any other liability to mature and become immediately due and payable. In addition, failure to pay any payment hereon in full when the same shall become due shall entitle the holder to assess a late charge of $.05 per dollar of payment overdue, and this late charge shall be deemed to be compensation to the holder for the cost of handling overdue obligations and not a penalty.

The undersigned jointly and severally (1) hereby agree to any modifications of any of the terms or conditions hereof and/or to any renewals or extensions of time of payment or performance of any of the terms or conditions of this note; that it shall not be necessary for the holder to resort to legal remedies against any of the undersigned before proceeding against any other of the undersigned; and that no release of one or more of the undersigned whether by operation of law or by any act of the holder shall release any other of the undersigned; (2) do hereby waive notice of any election, acceptance, demand, protest, notice of protest and notice of default, presentment for payment, diligence in collection, and waive, to the extent permitted by law, all benefit of valuation, appraisement, and all exemptions under the laws of the District of Columbia and/or any other State or territory of the United States, and (3) agree, if this note is placed in the hands of an attorney for collection, to pay, in addition to all other sums of money due, all cost of collection and reasonable attorneys' fees.

All rights and remedies of the holder hereunder are cumulative and not alternative. Indulgence by the holder with respect to any of the terms and conditions herein contained or the failure of the holder to exercise any of its rights hereunder shall not constitute a waive thereof, and the undersigned shall remain liable for the strict performance of all of their undertakings until this note shall be fully paid in accordance with its terms.

"Undersigned" as used herein shall include all makers, endorsers, sureties, guarantors or other persons executing this note whether on the face or on the reverse hereof.

This instrument shall be interpreted in accordance with the laws of the District of Columbia.

*on demand, or if demand is not made, $90,000 on or before April 18, 1980, with the balance due in full on or before May 9, 1980.

Kennedy For President Committee (Name of Borrower – typed)

BY: [signature] (Seal) (Signature and Title if Borrower is not Individual)

(Name of Borrower – typed)

Stephen Smith (Seal) (Signature and Title if Borrower is not Individual)

1250 22nd Street, N.W. (Street)

(Seal) (Signature and Title if Borrower is not Individual)

Washington, D. C. 20037. (City & State) (Zip code)

(Seal) (Signature and Title if Borrower is not Individual)

(Account Number)

(Seal) (Signature and Title if Borrower is not Individual)

PAID DEC 9 1980 D. C. NAT'L BANK WASHINGTON

21 (Commercial Only)

(rev. 7/76)

BANK USE ONLY – Not part of the terms of this note.

Principal	$
Interest	$
Total Due	$
Date Due	Demand
O.D.	N
O.A.	$ N
P.P.	DIF
D.L.S.	
V.P.	$

...ned as endorser(s) jointly and severally ...rantee payment, waive pre... and demand, and notice of dishonor of the ...in note and ...e the benefits of his and their homestead exemptions ... to the obligations hereof. The undersigned also acknowledges that they have read and agreed to be bound by the terms and conditions on the face of this note.

0 4 0 4 1 0 1 6

_____(Seal)

_____(Seal)

_____(Seal)

_____(Seal)

(continued from the face of the Note of Kennedy for President Committee to the order of District of Columbia National Bank, Washington)

**interest accruing on the unpaid balance thereof at a rate equal to One percent (1%) per annum in excess of the published Prime rate of Citibank, New York, New York. Changes in the interest rate applicable to the unpaid balance of this Note shall become effective on the same day as the said Citibank announces a change in said Prime rate. Said interest shall accrue at said rate from the date hereof until the loan amount is paid in full, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount.

KENNEDY FOR PRESIDENT COMMITTEE 7

Addendum to Promissory Note dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, in the original principal amount of $240,000.00. The following art work will be held as additional security on the mentioned loan:

1) C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2) Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

KENNEDY FOR PRESIDENT COMMITTEE

By: [signature]

Kennedy For President Committee
(Name of Borrower - typed)

BY: [signature]
(Signature and Title if Borrower is not Individual)

Stephen Smith (Seal)
(Signature and Title if Borrower is not Individual)

(Name of Borrower - typed)

(Seal)

ELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
1900 K
K STREET, N.W.
WASHINGTON, D.C. 20006

330411

Mr. Frank P. Reiche, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

ATTN: Nancy B. Nathan, Esq.

82 APR 15 A9:24

Ccc# 7551

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

...LPH L. McAFEE
...RY W. McROSKIAN
...LEN F. MAULSBY
...TEWARD R. BROSS, JR.
HENRY P. RIORDAN
JOHN R. HUPPER
SAMUEL C. BUTLER
WILLIAM J. SCHRENK, JR.
BENJAMIN F. CRANE
JOHN F. HUNT
GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK
GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
DAVID L. SCHWARTZ
RICHARD J. HIEGEL

CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
PAUL M. DODYK
RICHARD M. ALLEN
THOMAS R. BROME
ROBERT D. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
RONALD S. ROLFE
JOSEPH R. SAHID
PAUL C. SAUNDERS
MARTIN L. SENZEL
DOUGLAS D. BROADWATER
ALAN C. STEPHENSON
RICHARD L. HOFFMAN
JOSEPH A. MULLINS
MAX R. SHULMAN
WILLIAM P. DICKEY
STUART W. GOLD
JOHN W. WHITE
JOHN E. BEERBOWER

COUNSEL
MAURICE T. MOORE
FRANCIS F. RANDOLPH, JR.

TELEPHONE
212 422-3000

TELEX
RCA 233663
WUD 125547
WUI 620976

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, LONDON E. C. 2

33 THROGMORTON STREET
LONDON, EC2N 2BR, ENGLAND
TELEPHONE: 1-606-1421
TELEX: 881-4901
RAPIFAX/INFOTEC
1-606-1425

April 15, 1982

82 APR 16 A10:52

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The Federal Election Commission
Washington, D. C. 20463

Attention of Ms. Nancy B. Nathan

Re: MUR 1393

Dear Sirs:

Reference is made to Mr. Frank P. Reiche's letter of March 12, 1982, to Mr. Norborne Berkeley, President of Chemical Bank, and further with respect to the attached General Counsel's factual and legal analysis.

I attach herewith an Affidavit of Robert P. Conway, a Vice President of Chemical Bank, with respect to the questions raised, as well as the related exhibits. Please let me know whether you desire any further information with respect to this matter.

Very truly yours,

R. S. Simmons RW.

Richard S. Simmons

Encls.

T

DELIVERY BY MESSENGER

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

ROBERT P. CONWAY, being duly sworn, deposes and says:

1. I am a Vice President of Chemical Bank (Chemical) and was in charge of the lending arrangements with respect to two loans made by Chemical to the Kennedy for President Committee (the Committee), one in the amount of $210,000 on April 18, 1980, and the second in the amount of $540,000 made on May 2, 1980.

2. There is attached hereto with respect to the May 2, 1980, loan true and correct copies of the following documents:

(i) confirmation dated May 2, 1980, of Twichell-Nichols, print makers, as to completion of certain editions and a certification of the Treasurer for the Committee dated May 2, 1980, that the collateral is currently in possession of Mr. John Nichols;

(ii) appraisal dated April 15, 1980, and stamped with my receipt, on May 2, 1980;

(iii) confirmation from Mr. Nichols dated May 2, 1980, as to the prints in his possession;

(iv) the Security Agreement relating to the foregoing.

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3. There is also attached hereto true and correct copies of further appraisals of April 15, 1980, April 15, 1980, May 9, 1980 (an updating appraisal), and May 23, 1980.

4. There is also attached hereto true and correct copies of a letter agreement dated April 18, 1980, between Chemical and the Committee, the Security Agreement and a letter dated April 18, 1980, from the Treasurer of the Committee certifying that the collateral covered by the Security Agreement is in the possession of Mr. Joseph Hakin of the Park Agency.

5. To the best of my knowledge and belief the collateral supporting the April 18 loan was as follows:

Artists Name	Number of Prints Held		Appraised Value Per Print		Total Appraised Value
Herb Aach	185	X	$ 250	=	$ 46,250
Richard Anuszkiewicz	1	X	9,000	=	9,000
Ilya Bolotowsky	135	X	450	=	60,750
Nassos Daphnis	285	X	350	=	99,750
Nicholas Kruschenik	185	X	350	=	64,750
Seong Moy	85	X	300	=	25,500
Lowell Nesbitt	185	X	400	=	74,000
Dennis Oppenheim	185	X	450	=	83,250

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David Prentice	185	X	225	=	$ 41,625
Jay Rosenblum	255	X	350	=	89,250
Donald Saff	110	X	500	=	55,000
Total Appraised Value					$649,125

6. To the best of my knowledge and belief the collateral supporting the May 2 loan was as follows:

Artists Name	Number of Prints Held		Appraised Value Per Print		Total Appraised Value
Herb Aach	285	X	$ 250	=	$ 71,250
Richard Anuszkiewicz	1	X	9,000	=	9,000
Ilya Bolotowsky	135	X	450	=	60,750
Nassos Daphnis	220	X	350	=	77,000
Nicholas Kruschenik	285	X	350	=	99,750
Seong Moy	85	X	300	=	25,500
Lowell Nesbitt	185	X	400	=	74,000
Dennis Oppenheim	185	X	450	=	83,250
David Prentice	285	X	225	=	64,125
Jay Rosenblum	255	X	350	=	89,250
Donald Saff	110	X	500	=	55,000
Les Levine	285	X	350	=	99,750
Leon Polk Smith	235	X	500	=	117,500
Alan Sonfist	285	X	350	=	99,750
Bob Stanley	100	X	300	=	30,000
Harry Koursaros	285	X	375	=	106,875
Gordon Hart	285	X	300	=	85,500
Total Appraised Value					$1,248,250

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7. As additional collateral, there was also available to Chemical 350 Andy Warhol screen prints, having an aggregate appraised value of $300,000 (see attached letter dated February 6, 1980, of Associated American Artists dated February 6, 1980; letters from Mr. Hakim dated February 11, 1980, and April 17, 1980; and letter from Mr. Conway to the Committee dated April 28, 1980).

8. The documentation makes adequately clear that the 265 Krushenick serigraph prints were, in fact, pledged. Even if the original work by Anuszkiewicz was not available (and I have no knowledge that this in fact was the case), the value ascribed to that work was totally immaterial in light of the total value of the collateral, which value was well in excess of any collateral value which Chemical would normally require for a loan secured by works of art. The two loans in question were handled in the same manner as any other collateral loan by Chemical of this nature. I have never been informed, nor to the best of my knowledge has anyone at Chemical ever been informed, that any of the works of art that were pledged as collateral did not exist or were not pledged, and in the case of both loans such works of art were in the possession of reputable art dealers who were acting as bailee for Chemical.

Robert P. Conway

Robert P. Conway

0304101

Subscribed and sworn to before
me this 14 day of April 1982.

Howard Breslow
Notary Public

HOWARD BRESLOW
Notary Public, State of New York
No. 31-5442402
Qualified in New York County
Commission Expires March 30, 19 84

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File - Art & Appr

R.P.C.

MAY 9 1980

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Robert Morris
Robert Rauschenberg
Richard Serra
Jack Youngerman

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $520,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Robert Morris	Lithograph edition of ~~300~~ 285 Untitled 22 x 30	$ 500	~~$150,000~~ 142,500
Robert Rauschenberg	Two editions of photographs ~~100~~ 185 each Untitled	600	~~120,000~~ 111,000
Richard Serra	Serigraph edition of ~~200~~ 185 untitled 40 x 53	750	150,000 138,750
Jack Youngerman	Serigraph edition of ~~200~~ 185 Swirl 30 x 32	500	100,000 92,500
			~~$520,000~~ 484,750

Respectfully submitted,

PAUL ZERLER

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

R.P.C.
MAY 27 1980

May 23, 1980

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Jay Rosenblum	Nicholas Kruschenick
Nassos Daphnis	Ching Jang Yao
David Prentice	Charles Earley
Lowell Nesbitt	Peter Lobello
Ilya Bolowtowsky	Les Levine
	Robert Rauschenberg

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

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Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $1,081,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Jay Rosenblum	Lithograph 3 editions of 100 19 x 38 "Solo"	$ 350	$105,000
Nassos Daphnis	Lithograph edition of 75 26 x 42 "SSK II 80"	450	33,750
David Prentice	Lithograph edition of 275 24 x 34 1/2 Untitled	225	61,875
Lowell Nesbitt	Lithograph edition of 200 24 x 35 "Tulip"	400	80,000
Ilya Bolowtowsky	Lithograph edition of 200 15 x 25 1/2 "Scarlet Vertical Elipse"	450	90,000
Nicholas Kruschenick	Serigraph edition of 275 30 x 42 "Par Avion"	350	86,250
Ching Jang Yao	Lithograph edition of 200 24 x 36 Untitled	350	70,000
Charles Earley	Silkscreen edition of 200 30 x 40 "Cyclone"	275	50,000

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ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Peter Lobello	Lithograph edition of 285 43 x 29 "7 Tiered Spill"	275	$ 78,375
Robert Mangold	4 editions of 50 22 1/2 x 30 "Rectangle Within Three Rectangles"	550	110,000
Les Levine	Serigraph edition of 275 "Tired Earth"	350	86,250
Robert Rauschenberg	Serigraph edition of 100(signed) edition of 400(unsigned) 27 1/2 x 40 Untitled	1,500 200	150,000 80,000
			$1,081,500

Respectfully submitted,

PAUL ZERLER

FILE - Art Apprais.

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

R.P.C.
MAY 9 1980

May 9, 1980

Mr. Robert P. Conway
Vice President
Chemical Bank
140 Broadway
New York, NY

Dear Sir:

I recently had the opportunity to review my appraisals made previously on Herb Aach, Nassos Daphnis, Nicholas Kruschenik, David Prentice and Gordon Hart. The edition sizes have changed. My appraisals based on the new edition numbers are:

ARTIST	DESCRIPTION	APPRAISAL UNIT VALUE
Herb Aach	Color serigraph edition of 300 "Split Infinity" 30 x 42	$250
Nassos Daphnis	Color serigraph edition of 235 "SSK-80" 30 x 42	350
Nicholas Kruschenik	Color serigraph edition of 300 Untitled 38 x 50	350
David Prentice	Color serigraph edition of 300 Untitled	225
Gordon Hart	Color serigraph edition or 300 Untitled 30 x 42	300

Respectfully submitted,

Paul Zerler

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Herb Aach	Lowell Nesbitt
Richard Anuszkiewicz	Dennis Oppenheim
Ilya Bolotowsky	David Prentice
Nassos Daphnis	Jay Rosenblum
Nicholas Kruschnik	Donald Saff
Seong Moy	

My backround as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $714,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Herb Aach	Color serigraph edition of 200 "Split Infinity" 30 x 42	$ 250	$ 50,000
Richard Anuszkiewicz	Acrylic on canvas 4 to 5 colors untitled 48 x 48	9,000	9,000
Ilya Bolotowsky	Color lithograph edition of 150 "Red White Blue" 12 x 24	450	67,500
Nassos Daphnis	Color serigraph edition of 300 "SSK-80" 30 x 42	350	105,000
Nicholas Kruschenik	Color serigraph edition of 200 untitled 38 x 50	350	70,000
Seong Moy	Color serigraph edition of 100 "Tranquility" 22 x 30	300	30,000
Lowell Nesbitt	Black and white serigraph edition of 200 "Grey Iris-80" 30 x 41	400	80,000
Dennis Oppenheim	Blueprint serigraph edition 200 "Diamond Cutter's Wedding" 38 x 50	450	90,000

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David Prentice	Color serigraph edition of 200 untitled	225	45,000	
Jay Rosenblum	Color serigraph "State 1,2,3" three editions of 100 20 x 41	350	105,000	
Donald Saff	Hand colored etching edition of 125 "Trophy for John" 17 x 14	500	62,500	
		GRAND TOTAL:	$714,000	

Respectfully submitted,

PAUL ZERLER

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File - Art; Apprais

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

R.P.C.
MAY 2 1980

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Les Levine	Bob Stanley
Gary Rich	Gordon Hart
Leon Polk Smith	Harry Koursaros
Alan Sonfist	

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

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Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $667,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Les Levine	Serigraph edition of 300 "State of Consciousness" 25 x 38	$ 350	$105,000
Gary Rich	Serigraph edition of 300 "Naive Artist"	250	75,000
Leon Polk Smith	Color serigraph edition of 250 Untitled 30 x 41	500	125,000
Alan Sonfist	Hand colored lithograph edition of 300 Untitled 30 x 40	350	105,000
Rob Stanley	Serigraph 1 Standard edition of 100 1 Deluxe edition of 100 "Boston Beans" 32 x 40	 300 400	30,000 40,000
Gordon Hart	Color serigraph edition of 250 Untitled 30 x 42	300	75,000
Harry Koursaros	Serigraph edition of 300 "Karmi" 24 x 38 1/8	375	112,500
			$667,500

Respectfully submitted,

PAUL ZERBER

KENNEDY FOR PRESIDENT

File - Agreement & Doc

May 2, 1980

Chemical Bank
140 Broadway
New York, New York 10015

Attention of Robert P. Conway, Vice President

Dear Sirs:

As treasurer of the Kennedy for President Committee, I have been authorized by the officers of the Committee to sign, agree to, and execute and deliver to Chemical Bank a Letter Agreement and a Security Agreement both dated May 2, 1980, between the Committee and Chemical Bank, and such additional agreements, instruments, financing statements and other documents as the Bank may require, in connection with a loan being made by Chemical Bank to the Committee.

Specifically, the officers of the Committee have authorized me to borrow money, not to exceed $200,000.00 from Chemical Bank. The loan shall be in the form of a demand note at one-half percent above the prime interest rate of Chemical Bank. Further, I have been authorized to pledge as security for this loan the collateral described in the Security Agreement. This collateral is currently in the possession of Mr. John Nichols, 75 Grand Avenue, New York, New York 10013.

Sincerely,

Carolyn A Reed

Carolyn Reed
Treasurer

8304101136

1250 22ND STREET N.W. WASHINGTON D.C. 20037 TELEPHONE: (202) 861-6000

A copy of our report is filed with the Federal Election Commission
and is available for purchase from the Federal Election Commission, Washington, D.C.

File - Artwork ½ Pg.

Kennedy W

TWICHELL - NICHOLS
Printmakers
75 GRAND STREET, NEW YORK, NEW YORK 10013

May 2, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of Len Conway

Dear Mr. Conway:

This letter will confirm completion of the following editions:

Nicholas Krushenick	300
Nassos Daphnis	235
Herb Aach	300
David Prentice	300

Sincerely,

John Nichols

8004101370

File - Artwork : Appraisal

75 GRAND STREET
NEW YORK, NEW YORK 10013

May 2, 1980

Chemical Bank
140 Broadway
New York, NY 10015

Attention of Robert P. Conway, Vice President

Dear Sirs:

In connection with a loan being made by you to the Kennedy for President Committee (the "Committee"), pursuant to a Letter Agreement of even date between the Committee and secured by a Security Agreement of even date, a copy of which is in my possession:

(1) As agent of the Committee I have possession of the collateral described as:

285 serially numbered (16 through 300) States of Consciousness color serigraphs each signed by Les Levine;

235 serially numbered (16 through 250) untitled color serigraphs each signed by Leon Polk Smith;

285 serially numbered (16-300) Views of America color lithographs each signed by Alan Sonfist;

85 serially numbered (16-100) Boston Baked Beans color serigraphs each signed by Bob Stanley;

100 serially numbered (1-100) Boston Baked Beans deluxe color serigraphs each signed by Bob Stanley;

285 serially numbered (16-300) untitled color serigraphs each signed by Gordon Hart; and

285 serially numbered (16-300) Kari color serigraphs each signed by Harry Koursaros.

(2) The collateral will be stored at my office, 75 Grand Street, New York, New York, or at a place or places approved by you in writing and released in whole or in part, for transfer to a contributor or purchaser only

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upon the presentation of a written release from the bank.

Very truly yours,

John Nichols

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File - Agreement & Doc

SECURITY AGREEMENT dated May 2, 1980, between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

(1) 285 serially numbered (16 through 300) States of Consciousness color serigraphs each signed by Les Levine;

(2) 235 serially numbered (16-250) untitled color serigraphs each signed by Leon Polk Smith;

(3) 285 serially numbered (16-300) Views of America color lithographs each signed by Alan Sonfist;

(4) 85 serially numbered (16-100) Boston Baked Beans color serigraphs each signed by Bob Stanley;

(5) 100 serially numbered (1-100) Boston Baked Beans deluxe color serigraphs each signed by Bob Stanley;

(6) 285 serially numbered (16-300) untitled color serigraphs each signed by Gordon Hart; and

(7) 285 serially numbered (16-300) Karmi color serigraphs each signed by Harry Koursaros.

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(2) Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The custodian shall be John Nichols. The Collateral will be stored at the offices of the custodian at 75 Grand Street, New York, New York, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shll or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue

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of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with this Agreement. (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not

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be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____

Carolyn A. Reed, Treasurer
1250 22nd Street, N.W.
Washington, D.C. 20037

CHEMICAL BANK,

by _____

140 Broadway
New York, NY 10015

8304101653

File - Agreement & Doc.

FILING FOR MAY 2 LOAN

UCC One General

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code	Maturity date (if any):

1. Debtor(s) Name (Last Name First)	2. Debtor(s) Complete Address(es)	For Filing Officer (Date, Time, and Number)
KENNEDY FOR PRESIDENT COMMITTEE 1250 22nd St. N.W. Washington, D. C. 22037	CHEMICAL BANK 140 Broadway New York, N.Y. 10015	
3. & 4. Secured Party(ies) and Complete Address(es)	5. & 6. Assignee(s) of Secured Party(ies) and Complete Address(es)	

7. This financing statement covers the following types (or items) of property: (Describe)

All of the property described in Exhibit A hereto.

(If collateral is crops) The above described crops are growing or are to be grown on: (Describe Real Estate)

(If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to: (Describe Real Estate)

8a. (x) Proceeds are also covered. 8b. ( ) Products of collateral are also covered.	No. of additional sheets presented. (1)

9. This statement to be returned after recordation to Secured Party, shown above or to _____

Signature(s) of Debtor(s)	Signature(s) of Secured Party(ies) or Assignee(s)
for KENNEDY FOR PRESIDENT COMMITTEE	for CHEMICAL BANK

Type or Print Names Clearly Below Signature.

LERNER LAW BOOK CO., 53 E St., N.W., Washington, D.C. 20001

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Exhibit A

All of the property listed below and whatever is received when such property is disposed of and all proceeds thereof including any account arising when a right to payment is earned under a contract:

(1) 285 serially numbered (16 through 300) "States of Consciousness" color serigraphs each signed by Les Levine;

(2) 235 serially numbered (16 through 250) untitled color serigraphs each signed by Leon Polk Smith;

(3) 285 serially numbered (16 through 300) "Views of America" color lithographs each signed by Alan Sonfist;

(4) 85 serially numbered (16 through 100) "Baked Beans" color serigraphs each signed by Bob Stanley;

(5) 100 serially numbered (1 through 100) "Baked Beans" deluxe color serigraphs each signed by Bob Stanley;

(6) 285 serially numbered (16 through 300) "Kari" color serigraphs each signed by Harry Koursaros;

(7) 100 serially numbered (201 through 300) "Split Infinity" color serigraphs each signed by Herb Aach; and

(8) 100 serially numbered (201 through 300) untitled color serigraphs each signed by Nicholas Kruschenik.

(9) 285 serially numbered (16 through 300) untitled serigraphs each signed by Gordon Hart.

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CHEMICAL BANK
140 Broadway
New York, N. Y. 10015

April 18, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of William C. Oldaker

Dear Sirs:

You have requested the undersigned to lend to your Committee $210,000.00 to be evidenced by your Committee's promissory note payable to the order of the undersigned and to be substantially in the form attached hereto as Exhibit A (hereinafter called "the Note"). It is understood that such loan shall be payable on demand and shall bear interest at 1/2 of 1% per annum above the rate from time to time in effect of the undersigned for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest rate to change as of the opening of business on any day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year and shall be paid on the first of each month commencing May 1, 1980, until payment in full of the principal of such loan. The loan is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest on the loan, and then to the unpaid principal amount of the loan.

In consideration of the undersigned's agreement to make such loan, you hereby agree, by your execution hereof, to execute a Security Agreement of even date securing this loan and all prior loans (hereinafter called the "Prior Loans") made pursuant to Letter Agreements dated November 15, 1979, February 11, and March 14, 1980, between the undersigned and your Committee. In connection therewith, you agree to deposit all moneys received for contributions relating to the Collateral (as that term is defined in such Security Agreement) in an account maintained with the undersigned designated for that purpose until payment in full of the principal and interest on such loan. You also hereby authorize the undersigned to charge such account for payments of principal and interest on such loans.

Copy - Original to me

Pursuant to the Letter Agreement dated November 15, 1979, between you and the undersigned, you have obtained policies insuring without any condition the life of Senator Edward M. Kennedy and insuring in the event of any permanent disability which prevents Senator Edward M. Kennedy from effectively pursuing the nomination for presidential candidate, each in the amount of $1,150,000. The undersigned has been designated as beneficiary thereof up to such amount as is required to pay in full the aggregate principal amount of the Prior Loans of $199,074 and any accrued interest thereon. Such policies contain endorsements to the effect that they may not be canceled or terminated or the beneficiary changed without the prior written consent of the undersigned. You hereby agree that the undersigned's interest in such policies insuring Senator Edward M. Kennedy shall be increased to the extent of any accrued interest on and unpaid principal amount of the Note and all other obligations of the Committee to the undersigned under this Letter Agreement; it being understood that the undersigned will consent to the cancelation of the policies upon payment in full of the principal of and interest on the Prior Loans and the Note, and the undersigned will further agree to periodic reductions in the amount of coverage as the principal of such loans is reduced.

In order to induce the undersigned to make this loan, you hereby represent and warrant to the undersigned that (a) you are a political committee duly established and in compliance with 2 U.S.C. Sec. 433 and that you will comply with 2 U.S.C. Sec. 434 and that all contributions solicited by you shall be in compliance with 2 U.S.C. Sec. 441a; (b) no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary to the valid execution, delivery or performance by you of this Letter Agreement, the note or the Security Agreement; and (c) you have incurred no unusual forward or long-term commitments or claims which are substantial in amount in relation to your projected receipts from contributions and from the Secretary of Treasury under 26 U.S.C. Sec. 9037.

This Letter Agreement shall be governed by and construed under the laws of the State of New York and is not subject to amendment, waiver or modification unless the same shall be in writing.

You shall pay all costs and expenses in connection with this Letter Agreement and the loan.

0040137

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

by Robert P. Conway

Accepted and agreed to this
18th day of April 1980.

Carolyn A Reed

8004110165

Copy - ORIG TO MLD

SECURITY AGREEMENT dated April 18, 1980, between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

(1) 185 serially numbered (16 through 200) Split Infinity color serigraphs each signed by Herb Aach;

(2) one acrylic on canvas four to five colors untitled signed by Richard Anuszkiewicz;

(3) 135 serially numbered (16 through 150) Red, White and Blue color lithographs each signed by Ilya Bolotowsky;

(4) 285 serially numbered (16 through 300) SSK-80 color serigraphs each signed by Nassos Daphnis;

(5) 185 serially numbered (16 through 200) untitled color serigraphs each signed by Nicholas Kruschenik;

(6) 85 serially numbered (16 through 100) Tranquility color serigraphs each signed by Seong Moy;

(7) 185 serially numbered (16 through 200) Grey Iris-80 black and white serigraphs each signed by Lowell Nesbitt;

(8) 185 serially numbered (16 through 200) Diamond Cutter's Wedding blueprint serigraphs each signed by Dennis Oppenheim;

(9) 185 serially numbered (16 through 200) untitled color serigraphs each signed by David Prentice;

(10) 85 serially numbered (16 through 100) State 1 color serigraphs each signed by Jay Rosenblum;

(11) 85 serially numbered (16 through 100) State 2 color serigraphs each signed by Jay Rosenblum;

(12) 85 serially numbered (16 through 100) State 3 color serigraphs each signed by Jay Rosenblum; and

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(13) 110 serially numbered (16 through 125) Trophy for John hand colored etchings each signed by Donald Saff.

(2) Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The custodian shall be Joseph E. Hakim. The Collateral will be stored at the offices of the custodian in Suite 3021, 200 Park Avenue, New York, New York, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue

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of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with this Agreement. (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not

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be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A Reed

1250 22nd Street, N.W.
Washington, DC 20037

CHEMICAL BANK,

by Robert P. Conway
VICE PRESIDENT

140 Broadway
New York, NY 10015

8040117

KENNEDY FOR PRESIDENT

April 18, 1980

Chemical Bank
140 Broadway
New York, New York 10015

Attention of Robert P. Conway, Vice President

Dear Sirs:

As treasurer of the Kennedy for President Committee, I have been authorized by the officers of the Committee to sign, agree to, and execute and deliver to Chemical Bank a Letter Agreement and a Security Agreement both dated April 18, 1980, between the Committee and Chemical Bank, and such additional agreements, instruments, financing statements and other documents as the Bank may require, in connection with a loan being made by Chemical Bank to the Committee.

Specifically, the officers of the Committee have authorized me to borrow money, not to exceed $210,000.00 from Chemical Bank. The loan shall be in the form of a demand note at one half percent above the prime interest rate of Chemical Bank. Further, I have been authorized to pledge as security for this loan the collateral described in the Security Agreement. This collateral is currently in the possession of Mr. Joseph Hakim, Park Agency, Suite 3021, 200 Park Avenue, New York, New York.

Sincerely,

Carolyn Reed
Treasurer

Copy also to MLD

8040170

A copy of our report is filed with the Federal Election Commission
and is available for purchase from the Federal Election Commission, Washington, D.C.

ASSOCIATED
AMERICAN
ARTISTS

663 FIFTH AVENUE NEW YORK, N.Y. 10022
PLAZA 5-4211

February 6, 1980

Mr. Robert Conway
Chemical Bank
140 Broadway
New York, N.Y. 10005

Dear Mr. Conway:

I have been President and Director of Associated American Artists since 1958. AAA is a gallery which specializes in original prints. I am a Member of the Art Dealers Association of America and have served on the Board of Directors for 8 years and as Vice President for 4 years.

I have examined the 2 screen prints with glitter created by ANDY WARHOL of EDWARD KENNEDY.

I understand the edition consists of 350 impressions.

A regular edition of 300 in two colors numbered 1/300 through 300/300 and is to be signed by the artist.

Also a deluxe edition of 50 with a red, white and blue background (which I suggest be numbered in Roman numerals) and is to be signed by both the artist and Mr. Kennedy.

I believe the fair market value for the regular edition to be $750 per print and the value of the deluxe edition $1,500 per print.

Sincerely,

Sylvan Cole, Jr.

SC/jmt

cc; William Silverman

2312700

CHEMICAL BANK

140 Broadway, New York, NY 10005
Tel: (212) 770 2671

Robert P. Conway
Vice President

April 28, 1980

Kennedy for President Ccommittee
1250 22nd Street N.W.
Washington, D.C. 22037

Attention of W.C. Oldaker, Esq.

Change in Location of Warhol Prints

Dear Sirs:

In connection with a Security Agreement dated February 11, 1980, between you and the undersigned, this is to notify you that Chemical Bank hereby consents to storage of the Collateral (as such term is defined in said Security Agreement) at the offices of the custodian, Joseph E. Hakim, Suite 3021, 200 Park Avenue, New York, N.Y. 10017.

Very truly yours,

Chemical Bank,

by Robert P. Conway

Copies to Mr. Joseph E. Hakim
Suite 3021
200 Park Avenue
New York, N.Y. 10017

Cravath, Swaine & Moore
1 Chase Manhattan Plaza
New York, N.Y. 10005

Attention of David Harari, Esq.

8304101715

ROOM 3021
210 PARK AVENUE
NEW YORK, N. Y. 10017
949-4600

April 17, 1980

Mr. Robert P. Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Dear Bob:

This is to confirm to you that as of March 7, 1980, I obtained custody of 300 black and white Warhol prints, and 50 red, white and blue prints.

Sincerely,

Joseph E. Hakim

JEH/jvl

cc: David Harari

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200 PARK AVENUE
NEW YORK, NY 10017

February 11, 1980

Chemical Bank
140 Broadway
New York, NY 10015

Attention of Robert P. Conway, Vice President

Dear Sirs:

In connection with a loan being made by you to the Kennedy for President Committee (the "Committee"), pursuant to a Letter Agreement of even date between the Committee and you secured by a Security Agreement of even date, a copy of which is in my possession:

(1) As agent of the Committee I have possession of the collateral described in the Security Agreement;

(A) 300 serially numbered (1 through 300) Warhol Kennedy 80' black and white art prints signed by Andy Warhol; and

(B) 50 serially numbered (1 through 50) Warhol Kennedy 80' Deluxe Edition red, white and blue art prints signed by Andy Warhol.

(2) The collateral will be stored at the offices of Miles Rueben, Esq., 375 Park Avenue, New York, New York and released in whole or in part, for transfer to a contributor only upon the presentation of a written release from the bank.

Very truly yours,

Joseph Hakim

Joseph E. Hakim

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DELIVERY BY MESSENGER

R.S.Simmons

The Federal Election Commission
Washington, D. C. 20463

Attention of Ms. Nancy B. Nathan

K bet. 13 & 14

1325 K St. N.W 523-4089

1325K

7fl.

GCC#7534

BEFORE THE FEDERAL ELECTION COMMISSION

April 9, 1982

12 P5:30

IN THE MATTER OF	)	
	)	MUR 1393
KENNEDY FOR PRESIDENT COMMITTEE	)	
	)	

REPLY OF KENNEDY FOR PRESIDENT COMMITTEE TO
GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS
REGARDING UNREPORTED RECEIPTS AND EXCESSIVE CONTRIBUTIONS

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The General Counsel's factual and Legal Analysis identifies three categories of possible violations by the Kennedy for President Committee ("Committee"): (1) unreported and inadequately documented receipts, (2) possible violations of 2 U.S.C. §441b through bank loans, and (3) alleged excessive contributions. As the bank loan issue has no rational relationship to the other two categories of violations (other than that the questions arose during the audit) the Committee is responding to those allegations in a separate document.

8304101330

I. Unreported and Inadequate Documented Receipts

The General Counsel's Factual and Legal Analysis ("General Counsel's Analysis") accuses the Committee of:

(1) continued failure to report $17,500.49 in receipts.

(2) inadequate documentation to support $14,583.57 in receipts of state and scheduling accounts.

G.C. Analysis, p. 2.

The General Counsel's Analysis asserts that the Committee failed to report receipts of $17,500.49 and keep an account of $14,583.57. The only authority cited for this proposition is the Final Audit Report. GC Analysis, p. 2. No evidence is provided. The Final Audit Report in fact makes no such claim. It does not even mention these receipts. We are not aware of a secret Final Audit Report prepared in addition to the public Final Audit Report. If there is such a document,

we are entitled to see it. We therefore must assume the GC Analysis' reference is erroneous. No other evidence is presented. No copies of bank statements are identified, no auditors' worksheets, no deposit slips to support this allegation. Merely a bald, factually incorrect assertion that the Final Audit Report says the Committee erred. Even for a reason to believe finding, the Commission should require the General Counsel to present some evidence. Here there is none.

The Committee does not know whether this assertion is factually correct or a mathematical error by the auditors. We do not believe the burden is on us to prove we have not violated the Act. Rather, at this stage, the burden is on the General Counsel to present some evidence to support at least a reason to believe finding. It is quite possible that these discrepancies are unitemized receipts that have in fact been previously reported and for which individual records need not be kept. See 2 U.S.C. §432(c). We have amended our reports, acting solely on the auditors' recommendations, to include the receipts we could verify, but it is also possible that all this is not our mistake but the auditors. Without the FEC auditors' workpapers and supporting documentation there is no way to verify the accuracy of their work. Because the burden of proof is on the Commission it is not our responsibility to attempt the expen-

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sive review of our records that would be necessary to prove a negative.

The allegations would seem to derive from the fact that $52,602.79 in deposits to state and scheduling accounts that could not be traced back to transfers from the Committee's national accounts. In response to the Interim Audit Report the Committee wrote to the banks where the accounts were maintained to obtain documentation on the deposits so that we could accurately amend our reports if necessary. Some of the banks sent back illegible documentation and one bank stated that it did not keep microfilm records of deposits. A second request was sent to those banks that had provided illegible documentation, but some of the documentation received in response was still ellegible.

On May 20,1981, the Committee amended its reports to reflect the information obtained from the banks. The Committees' accountant may have inadvertently failed to include as unitemized receipts the deposits for which legible documentation could not be obtained. The Committee has filed under protest a comprehensive amendment to correct this error on April 12, 1982.

There is little else the Committee can do to rectify this if it is an error, which is less than clear.

Even, assuming arguendo that the Committee did not timely report these contributions, the Commission should

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consider, in reviewing this alleged discrepancy two factors, First, the Act provides that:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or Chapter 95 or 96 of Title 26.

2 U.S.C. §432(h)(2)(i). 11 C.F.R. §102.9(d) provides that the best efforts test is satisfied by one written request for the missing documentation. See also H.R. Rep. NO. 422, 96th Cong. 1st Sess., 14 (1979). Here, the Committee has made every reasonable attempt to comply. The Commission accordingly should hold that the best efforts test has been satisfied and the Committee is in compliance with the Act.

The Commission should also consider this matter in its proper perspective. According to the Commission's Reports on financial Activity 1979-1980, Final Report, Presidential Pre-Nomination Campaigns, the Kennedy for President Committee had total receipts of $16,736,948. The inclusion of the unreported $17,500 would raise this total to $16,754,448. We are therefore concerned with failure to report and adequately document one tenth of one percent of the Committee's total receipts. Certainly a Committee that has accurately reported 99.9% of its receipts should be considered to be in substantial compliance with the Act and to have met the best

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efforts test.[1/]

The Committee believes reasonableness should govern the Commission's review of this matter. 99.9% accuracy is plainly adequate compliance with the Act. We dare say 99.9% accuracy is better than even most on-going major businesses achieve in their accounts.

II. EXCESSIVE CONTRIBUTIONS

The General Counsel's Analysis identifies some $75,092 in "excessive" contributions received by the Committee. GC Analysis, p.7. Yet Attachment 2 to the GC Analysis shows that the Committee obtained attribution letters for $48,367 of this total.

By definition an attribution relates back to the date of the original contribution, otherwise it would be a meaningless exercise. The statement signed by the contributor certifies that it was intended to be a contribution by both spouses when made. The contribution by the spouse is reported on amendments as of the date on which the original contribution was made. The General Counsel appears to adopt the novel legal theory that the attribution results in a new contribution by the spouse to whom it is attributed. As authority for this proposition it cites to the Commission's

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1/ Even if the original $52,602.79 figure is used, the Committee would still hyave accurately reported 99.7% of its receipts.

enforcement policy with respect to previous MUR's and 11 C.F.R. §103.3(b)(2). Yet 11 C.F.R. §103.3(b)(2) does not establish the arbitrary 30 day cut-off announced in footnote 3 (GC Analysis, p. 7) and it is not clearly applicable to a joint contribution by husband and wife. If the Commission intends to treat these attributions as new contributions it will have to amend its reporting regulations to deal with the new requirement. If it intends to apply 30 days as the cut-off date under 11 C.F.R. §103.3(b)(2), that regulation must also be amended because it now only speaks in terms of a "reasonable time."

Further, the failure to obtain an attribution letter or refund the contribution within a "reasonable time" does not render the original contribution excessive. It may state a violation of the Commissions regulations for handling illegal-appearing contributions, but it does not render the contribution itself illegal. For example, if a committee received a check from "Laborer's Local No. 8" and failed to inquire as to its acceptability, there might be a violation of 11 C.F.R. §103.3(b), but if, after investigation by the Commission, it was determined that the check was drawn on a separate segregated fund of the union, there would be no §441b violation. Accordingly, even if it be determined that the Committee violated the Commission's regulations on the handling of

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illegal-appearing contributions, this does not automatically make the contributions so handled illegal.

The Committee maintains it did not violate 11 C.F.R. §103.3(b) in any event. As soon as the matter was brought to its attention it took steps to inquire into the true nature of the contributions. The excessive portion of those contributions for which attribution letters were not obtained were refunded within a reasonable time after the Committee learned of the problem.2/

The Committee has at all times sought to fully comply with law, but has had limited resources to do so. From the very beginning of the campaign much of the Committee's compliance resources have been devoted to satisfying the ever-changing requests of the Commission's auditors for documents and information. From the threshold audit, through the interim audit and the final audit report, up to the present time, personnel and resourses that could have been devoted

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2/ The GC Analysis states that as of "October 6, 1981, only 11 contributions had not been shown to have been corrected." GC Analysis, p. 7 No. 4. Attachment 2 appears to be more up to date since it shows all contributions were corrected by December 18, 1981. The Committee finds it disturbing that the Commission would take action on an analysis that was factually obsolete by the time of the Commission's vote on March 11, 1982. By not pointing out that all contributions had in fact been corrected almost three months prior to the Commission's vote the footnote leaves the erroneous and prejudicial impression that the Committee had still not corrected some of the contributions by the time of the Commission's vote.

to compliance have been diverted to cooperate as fully as possible with the Commission's audit requests. In such circumstances the Committee did the best it could in determining the acceptability of the funds it received.

We are left with only $26,775 in unattributed, possibly excessive contributions. We have since learned that $1,904 of the excessive contributions listed for Mr. Robert S. Evans was in fact expenses for entertainment at his home that were reported erroneously as a contribution in kind. Under 2 U.S.C. §431(8)(B)(ii) these expenses are exempted from the definition of conribution. This brings the total excessives down to $24,821.

As with the reporting and recordkeeping discrepancies discussed in Section I, here too the Commission should keep matters in perspective. The FEC Reports on Financial Activity show the Committee received contributions totalling $8,023,988. The $24,821 in true excessives is therefore only three-tenths of one percent of the Committee's total contribution activity. Accordingly, we are involved in an enforcement proceeding because the Committee's contributions were only 99.7% correct. (Even with the attributed contributions and the Evans expenses included, the Committee's contributions would still be 99.1% correct.)

Given the size of the Committee's financial activity, the Committee should be deemed to be in substantial compli-

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ance with the Act. All excessive contributions that were not attributed have either been refunded to the contributor or donated to charity. The Committee has done everything it reasonably can do to comply with the Act. It is inevitable in a campaign handling millions of dollars, often with part-time and volunteer personnel, that errors will occur. In such circumstrances a committee that achieves over 99% accuracy, and then takes all steps necessary to rectify such errors that occurred, should not be penalized.

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CONCLUSION

With both these alleged violations the Committee did everything it could to correct the violations once discovered. 100% accuracy is impossible in a campaign, but over 99% accuracy is an achievement the Committee can be proud of given its limited resources for compliance and the demands made thereon by the Commission. The Commission should recognize these factors in its review of this matter. For all practical purposes no material information was denied the public nor did the Committee profit from these inadvertent errors. Because the Committee has brought itself into compliance with the Act, and was in substantial compliance to begin with, the proper resolution of this matter is for the Commission to close the file and take no further action.

Respectfully submitted,

William C. Oldaker
Treasurer

12 P5:30

BEFORE THE FEDERAL ELECTION COMMISSION

April 9, 1982

IN THE MATTER OF KENNEDY FOR PRESIDENT COMMITTEE	MUR 1393

REPLY OF KENNEDY FOR PRESIDENT COMMITTEE TO GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS REGARDING UNREPORTED RECEIPTS AND EXCESSIVE CONTRIBUTIONS

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8304101900

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sive review of our records that would be necessary to prove a negative.

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Even, assuming arguendo that the Committee did not timely report these contributions, the Commission should

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consider, in reviewing this alleged discrepancy two factors, First, the Act provides that:

> When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act or Chapter 95 or 96 of Title 26.

2 U.S.C. §432(h)(2)(i). 11 C.F.R. §102.9(d) provides that the best efforts test is satisfied by one written request for the missing documentation. See also H.R. Rep. NO. 422, 96th Cong. 1st Sess., 14 (1979). Here, the Committee has made every reasonable attempt to comply. The Commission accordingly should hold that the best efforts test has been satisfied and the Committee is in compliance with the Act.

The Commission should also consider this matter in its proper perspective. According to the Commission's Reports on financial Activity 1979-1980, Final Report, Presidential Pre-Nomination Campaigns, the Kennedy for President Committee had total receipts of $16,736,948. The inclusion of the unreported $17,500 would raise this total to $16,754,448. We are therefore concerned with failure to report and adequately document one tenth of one percent of the Committee's total receipts. Certainly a Committee that has accurately reported 99.9% of its receipts should be considered to be in substantial compliance with the Act and to have met the best

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efforts test.[1/]

The Committee believes reasonableness should govern the Commission's review of this matter. 99.9% accuracy is plainly adequate compliance with the Act. We dare say 99.9% accuracy is better than even most on-going major businesses achieve in their accounts.

II. EXCESSIVE CONTRIBUTIONS

The General Counsel's Analysis identifies some $75,092 in "excessive" contributions received by the Committee. GC Analysis, p.7. Yet Attachment 2 to the GC Analysis shows that the Committee obtained attribution letters for $48,367 of this total.

By definition an attribution relates back to the date of the original contribution, otherwise it would be a meaningless exercise. The statement signed by the contributor certifies that it was intended to be a contribution by both spouses when made. The contribution by the spouse is reported on amendments as of the date on which the original contribution was made. The General Counsel appears to adopt the novel legal theory that the attribution results in a new contribution by the spouse to whom it is attributed. As authority for this proposition it cites to the Commission's

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1/ Even if the original $52,602.79 figure is used, the Committee would still hyave accurately reported 99.7% of its receipts.

enforcement policy with respect to previous MUR's and 11 C.F.R. §103.3(b)(2). Yet 11 C.F.R. §103.3(b)(2) does not establish the arbitrary 30 day cut-off announced in footnote 3 (GC Analysis, p. 7) and it is not clearly applicable to a joint contribution by husband and wife. If the Commission intends to treat these attributions as new contributions it will have to amend its reporting regulations to deal with the new requirement. If it intends to apply 30 days as the cut-off date under 11 C.F.R. §103.3(b)(2), that regulation must also be amended because it now only speaks in terms of a "reasonable time."

Further, the failure to obtain an attribution letter or refund the contribution within a "reasonable time" does not render the original contribution excessive. It may state a violation of the Commissions regulations for handling illegal-appearing contributions, but it does not render the contribution itself illegal. For example, if a committee received a check from "Laborer's Local No. 8" and failed to inquire as to its acceptability, there might be a violation of 11 C.F.R. §103.3(b), but if, after investigation by the Commission, it was determined that the check was drawn on a separate segregated fund of the union, there would be no §441b violation. Accordingly, even if it be determined that the Committee violated the Commission's regulations on the handling of

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illegal-appearing contributions, this does not automatically make the contributions so handled illegal.

The Committee maintains it did not violate 11 C.F.R. §103.3(b) in any event. As soon as the matter was brought to its attention it took steps to inquire into the true nature of the contributions. The excessive portion of those contributions for which attribution letters were not obtained were refunded within a reasonable time after the Committee learned of the problem.2/

The Committee has at all times sought to fully comply with law, but has had limited resources to do so. From the very beginning of the campaign much of the Committee's complaince resources have been devoted to satisfying the ever-changing requests of the Commission's auditors for documents and information. From the threshold audit, through the interim audit and the final audit report, up to the present time, personnel and resourses that could have been devoted

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2/ The GC Analysis states that as of "October 6, 1981, only 11 contributions had not been shown to have been corrected." GC Analysis, p. 7 No. 4. Attachment 2 appears to be more up to date since it shows all contributions were corrected by December 18, 1981. The Committee finds it disturbing that the Commission would take action on an analysis that was factually obsolete by the time of the Commission's vote on March 11, 1982. By not pointing out that all contributions had in fact been corrected almost three months prior to the Commission's vote the footnote leaves the erroneous and prejudicial impression that the Committee had still not corrected some of the contributions by the time of the Commission's vote.

to compliance have been diverted to cooperate as fully as possible with the Commission's audit requests. In such circumstances the Committee did the best it could in determining the acceptability of the funds it received.

We are left with only $26,775 in unattributed, possibly excessive contributions. We have since learned that $1,904 of the excessive contributions listed for Mr. Robert S. Evans was in fact expenses for entertainment at his home that were reported erroneously as a contribution in kind. Under 2 U.S.C. §431(8)(B)(ii) these expenses are exempted from the definition of conribution. This brings the total excessives down to $24,821.

As with the reporting and recordkeeping discrepancies discussed in Section I, here too the Commission should keep matters in perspective. The FEC Reports on Financial Activity show the Committee received contributions totalling $8,023,988. The $24,821 in true excessives is therefore only three-tenths of one percent of the Committee's total contribution activity. Accordingly, we are involved in an enforcement proceeding because the Committee's contributions were only 99.7% correct. (Even with the attributed contributions and the Evans expenses included, the Committee's contributions would still be 99.1% correct.)

Given the size of the Committee's financial activity, the Committee should be deemed to be in substantial compli-

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ance with the Act. All excessive contributions that were not attributed have either been refunded to the contributor or donated to charity. The Committee has done everything it reasonably can do to comply with the Act. It is inevitable in a campaign handling millions of dollars, often with part-time and volunteer personnel, that errors will occur. In such circumstrances a committee that achieves over 99% accuracy, and then takes all steps necessary to rectify such errors that occurred, should not be penalized.

CONCLUSION

With both these alleged violations the Committee did everything it could to correct the violations once discovered. 100% accuracy is impossible in a campaign, but over 99% accuracy is an achievement the Committee can be proud of given its limited resources for compliance and the demands made thereon by the Commission. The Commission should recognize these factors in its review of this matter. For all practical purposes no material information was denied the public nor did the Committee profit from these inadvertent errors. Because the Committee has brought itself into compliance with the Act, and was in substantial compliance to begin with, the proper resolution of this matter is for the Commission to close the file and take no further action.

Respectfully submitted,

William C. Oldaker
Treasurer

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Acc#7550

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE

FROM: MARJORIE W. EMMONS mwe

DATE: APRIL 15, 1982

SUBJECT: ATTACHED LETTER RE. MUR 1393

82 APR 16 A8:59

Chairman Reiche has asked us to forward to you for appropriate action the attached letter he has received from Roy Niedermayer, Esq. of Melrod, Redman & Gartlan, attorneys for respondent, District of Columbia National Bank, Washington, D. C. in MUR 1393.

Attachment as noted

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MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

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1801 K STREET, N.W.
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STEPHEN D. KAHN
PHILIP A. GORELICK
MICHAEL D. GOLDEN
DOROTHY BELLERS
JOEL Z. SILVER
ROY NIEDERMAYER
PHILIP M. HOROWITZ
DAVID F. BANTLEON
ALLAN J. WEINER
HOWARD S. JATLOW
NEIL I. LEVY
ROBERTA F. COLTON

STEVEN M. GLAZER
J. JONATHAN SCHRAUB
ROBERT J. FREDA
WM. DANIEL SULLIVAN
STANTON J. LEVINSON
ROBERT F. ADAMS
HOWARD N. SOLODKY
DANIEL M. LITT
JAMES S. FEIGENBAUM
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E. SUE SPRAGUE
JAMES W. KAYWELL
JOAN LUND ALTMAN
CAROLINE E. BLAKELY
STEVEN A. TEITELBAUM
ANDREW G. WACHTEL
DOUGLAS B. MISHKIN

WRITER'S DIRECT DIAL NUMBER
(202) 822-5364

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 APR 15 P2:49

April 8, 1982

Mr. Frank P. Reiche, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

ATTN: Nancy B. Nathan, Esq.

Re: MUR 1393; District of Columbia National Bank, Washington, Respondent

Dear Chairman Reiche:

This letter constitutes the response and statement of District of Columbia National Bank, Washington to your letter of March 12, 1982, the attached questions and the General Counsel's Factual and Legal analysis supporting the Commission's reason-to-believe finding. In this letter, District of Columbia National Bank (the "Bank") will endeavor to provide the factual background to the questioned $240,000, March 7, 1980 loan (the "Loan") to the Kennedy for President Committee (the "Committee") and our analysis showing the Loan to be exempt under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C.A. §431(8)(B)(vii), (the "Act") and 11 C.F.R. §100.7(1)(C)(11).

Factual Background.

In the spring of 1980, the Committee approached the Bank with a request for the Loan for use as working capital in the campaign. At the time the Committee requested the

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Loan, the Committee suggested that 300 Jamie Wyeth lithographic prints (the "Collateral") would be offered as collateral security to assure ultimate repayment of the Loan in addition to the Committee's normal cash flow obtained through other campaign sources. In particular, the proffered Collateral was identified as:

> 300 Serially Numbered Wyeth
> Kennedy '80 lithograph art prints
> titled "To Sail Against the Wind"

Following its usual and customary procedures, the request was reviewed by a bank officer and presented to the Bank's loan committee for discussion and action. When the Loan was considered for approval, the Bank had available to it as sources for repayment both a primary source (i.e., ongoing cash generated by campaign fund raising including prospective matching funds) and a secondary source (i.e., the Collateral). Based on these dual sources, the Loan was approved by the Bank. The Loan itself had these basic terms:

a. The principal amount was to be $240,000.

b. The interest rate was to float at a rate of one (1) percentage point above the prime rate.

c. Payment in full was to be on demand or, if demand was not made, $90,000 was to be paid on or before April 18, 1981, with the balance due in full on or before May 9, 1981. Additionally, periodic payments of principal were required.

d. There were to be Collateral security for the Loan as evidenced by an executed security agreement.

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The Loan was accepted by the Committee and the Committee executed a written promissory note[1/] and security agreement. Copies of the security agreement and addendum are attached as Exhibits A and B, respectively.

At or about the time of consideration of the Loan application of the Committee, the Bank had been supplied with (1) an appraisal of the Collateral and (2) a letter verification of the existence and location of the Collateral and acknowledgement of the Bank's security interest. These documents, along with the cover letter of the Committee, are attached as Exhibits C-E.

The appraisal indicated a fair market value of the Collateral between $255,000 and $300,000, more than sufficient security for the Loan under standard underwriting criteria. The verification letter gave the Bank assurance of the physical existence of the Collateral, its storage location, the identity of the company with possession and, significantly, confirmation of both the description and the Bank's security interest. Presented with this information, the Bank, under its usual and customary commercial loan standards, felt secure of repayment even should the Committee's cash flow prove inadequate as the primary source of repayment. After making the Loan, the Bank then filed a financing statement (Exhibit F) to perfect its security interest in the Collateral.

1/ The Bank no longer has a copy of the promissory note. When the loan was paid in full, the original note was returned to the Committee marked "Paid in Full". The Bank's normal business practice is not to keep copies of paid notes. The Bank is endeavoring to obtain a copy of the promissory note and will supplement its response with a copy of the promissory note when and if obtained. In any case, the basic terms are as set forth above and arederived from the Bank's other records.

Between March 7, 1980 and June 27, 1980, the Committee made a series of curtailment payments on the following dates and in the following amounts:

April 7, 1980	$ 5,000
April 16, 1980	20,000
April 23, 1980	10,000
April 25, 1980	10,000
May 16, 1980	12,137.78 ($5,000 principal; $7,137.78 interest)
May 27, 1980	10,000
May 30, 1980	20,000
June 5, 1980	5,000
June 24, 1980	2,750
June 27, 1980	13,130.21 ($9,393.60 principal; $3,736.61 interest)

On several occasions when the Committee made a payment, it requested and obtained the Bank's partial release of specific Wyeth prints identified by number from among the Collateral. Examples of the Committee's letters authorizing a debit to their account and the Bank's partial release of its security interest in the specified print are attached hereto as Exhibits G - N.

While these periodic payments were being made, the Committee voluntarily requested the Bank to supplement the Collateral for the Loan by the addition of further art work (the "Additional Collateral") identified as:

C. J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00

Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

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Under the Bank's loan standards, the value of the Collateral originally supplied by the Committee, projections of campaign funds plus the regular curtailment of the principal Loan amount were more than adequate security. By late June, 1980, the principal balance had been reduced to $142,856.40, while the Collateral's value remained in the $170,000 - $200,000 range, even after the partial release of approximately 100 prints. The Bank therefore had no need for added collateral and neither requested nor required the Additional Collateral for the Loan. The impetus for the addition of further collateral came voluntarily from the Committee for reasons known to it and was not instigated by any loan requirement of the Bank. Simply in order to accommodate their customer's wishes, the Bank accepted the Additional Collateral, amended the security agreement by supplementing it with an addendum (see Exhibit B), recorded a further financing statement for the Additional Collateral (Exhibit O) and perfected its interest. Because the Bank felt adequately assured of repayment, it did not duplicate the verification procedures utilized with regard to the Collateral and obtained no appraisal or verification letter for these additional prints.

At the time the Additional Collateral was offered, the Bank can recall no discussion between the Bank and the Committee concerning the current existence of the reproductions, reproduction rights, or costs associated with reproduction. At no subsequent time was there any such discussion because (i) the Additional Collateral was superfluous to the Bank's original loan decision, (ii) the Committee made regular curtailments of the Loan, and (iii) the Bank felt secure about repayment based on the Collateral and the regularity of the payments. At no time was the Bank informed by any representative of the Committee that any of the Additional Collateral did not exist and no inquiry was made by the Bank of the Committee as to the existence for the reasons previously stated.

The Bank's sound credit judgment was amply vindicated when the Loan was paid in full and the obligation discharged on December 31, 1980, over three months before absolutely required.

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Exemption Under the Act and the Regulations.

There has been no violation of the Act because the Loan to the Committee was simply not a "contribution"; it was exempt under the criteria of 11 C.F.R. §100.7(b)(11).

1. Compliance with Banking Laws and Regulations.

The Loan was clearly made pursuant to the applicable banking laws and regulations applying to the Bank as a federally chartered depository institution. The Bank's loans are subject to periodic scrutiny by examiners from the Comptroller of the Currency. The Comptroller's examiners conduct regular examinations of the Bank's loans for compliance with applicable law and commercial reasonableness. During the life of the Loan, the Comptroller conducted an examination, in which the Loan was reviewed, and the examiners found no irregularities or violations of the banking laws.

2. Made in the Ordinary Course of Business.

Similarly, there was nothing extraordinary about the terms or the Loan underwriting criteria applied in granting the Loan in comparison to other commercial loans. The Loan bore a market rate for secured loans of this magnitude and category, with the rate floating at one (1) percentage point above the prime rate. Further, the Loan and the security arrangements were evidenced by written instruments, both of which provided a specific final due date of May 9, 1981 if payment were not demanded sooner. In fact, the Committee itself made periodic payments not only amortizing the outstanding balance but keeping interest current.

Finally, the collateral security for the Loan was sufficient to assure payment in full under any circumstances and regardless of the Committee's cash flow or campaign fortunes. In accepting the Collateral, the Bank had in its possession verification of the existence and location of the Collateral as well as its fair market value appraised by

an expert. Because the Bank itself is not equipped to maintain physical possession of such delicate Collateral in its own vault, it was its customary practice to permit such unique Collateral to remain with the depositary and rely on a perfected U.C.C. security interest. Indeed, the Bank obtained specific written assurance that the Collateral would not be released except upon the Bank's written authorization. In each instance when a partial release was requested, the Bank released specified prints only equivalent in value to the payments made.

The Additional Collateral added to the security agreement was totally unnecessary. It was not requested by the Bank, but was voluntarily offered by the Committee. The Bank accepted the Additional Collateral to accommodate the Committee's request. In making its loan underwriting decision, however, it never considered the value of this Additional Collateral. Nor were any of the terms of the Loan modified because of this Additional Collateral. Not relying on the Additional Collateral, the Bank took it, but it did not independently evaluate it or verify it as it had done with the Collateral.

Conclusion.

For the foregoing reasons, the Bank believes that the Loan was clearly not a contribution, and was a sound loan decision arrived at by the application of the same commercial underwriting criteria uniformly applied to loan requests from other borrowers seeking secured loans of this magnitude. On behalf of the Bank, I have attached to our letter as exhibits those documents which are pertinent to your inquiry and are responsive to your five questions.

Because we are convinced that the Loan was neither deficiently collateralized nor a contribution under the Act,

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MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION

we are pleased to respond to any further inquiries you may have concerning this matter which would help to clarify it or resolve this matter expeditiously.

Sincerely yours,

Roy Wiedermayer

Roy Wiedermayer

Enclosures

RN/nmn

City of Washington)
) To wit:
District of Columbia)

On this 14th day of April, 1982, personally appeared before me Thomas S. Condit, who identified himself to me as the President of District of Columbia National Bank, Washington and made oath in due form of law that he is authorized to make this affidavit on behalf of the Bank and the affidavit is based on his personal knowledge and the business records of the Bank; he further stated that based on the foregoing records and his knowledge, the contents of this letter are true and accurate.

Sandra A. Neal
Notary Public

[Notarial Seal]

My Commission Expires: Oct. 31, 1986

8304100207

77—Security Agreement in the nature of a chattel mortgage—Uniform Commercial Code; Ind. or Corp. 6-75

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SECURITY AGREEMENT
(Chattel Mortgage)

THIS AGREEMENT, made the 7th day of March 1980 under the laws of the ~~State~~ District of Columbia

BETWEEN Kennedy for President Committee

herein called the Debtor

whose business address is (if none, write "none") 1250 22nd Street, N.W., Washington, D. C. 20037

and whose residence address is ---

and District of Columbia National Bank herein called the Secured Party

whose address is 1801 K Street, N.W., Washington, D. C. 20006

WITNESSETH:

To secure the payment of an indebtedness in the amount of $ 240,000.00 with interest, payable as follows on demand, or if demand is not made, $90,000.00 on or before April 18, 1980, with the balance due in full on or before May 9, 1980.

as evidenced by a note or notes of even date herewith, and also to secure any other indebtedness or liability of the Debtor to the Secured Party direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, including all future advances or loans which may be made at the option of the Secured Party, (all hereinafter called the "obligations") Debtor hereby grants and conveys to the Secured Party a security interest in, and mortgages to the Secured Party,

(a) the property described in the Schedule herein which the Debtor represents will be used primarily

☐ for personal, family or household purposes

☐ in farming operations

☒ in business or other use

(b) all property, goods and chattels of the same classes as those scheduled, acquired by the Debtor subsequent to the execution of this agreement and prior to its termination

(c) all proceeds thereof, if any,

(d) all increases, substitutions, replacements, additions and accessions thereto

(the foregoing (a), (b), (c) and (d) hereinafter called the collateral).

1. DEBTOR WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

PAYMENT 1a To pay and perform all of the obligations secured by this agreement according to their terms.

DEFEND TITLE 1b To defend the title to the collateral against all persons and against all claims and demands whatsoever, which collateral, except for the security interest granted hereby, is lawfully owned by the Debtor and is now free and clear of any and all liens, security interests, claims, charges, encumbrances, taxes and assessments except as may be set forth in the schedule.

ASSURANCE OF TITLE 1c On demand of the secured party to do the following: furnish further assurance of title, execute any written agreement or do any other acts necessary to effectuate the purposes and provisions of this agreement, execute any instrument or statement required by law or otherwise in order to perfect, continue or terminate the security interest of the Secured Party in the collateral and pay all costs of filing in connection therewith.

POSSESSION 1d To retain possession of the collateral during the existence of this agreement and not to sell, exchange, assign, loan, deliver, lease, mortgage or otherwise dispose of same without the written consent of the Secured Party.

LOCATION 1e To keep the collateral at the location specified in the schedule and not to remove same (except in the usual course of business for temporary periods) without the prior written consent of the Secured Party.

LIENS 1f To keep the collateral free and clear of all liens, charges, encumbrances, taxes and assessments.

TAXES 1g To pay, when due, all taxes, assessments and license fees relating to the collateral.

REPAIRS 1h To keep the collateral, at Debtor's own cost and expense, in good repair and condition and not to misuse, abuse, waste or allow to deteriorate except for normal wear and tear and to make same available for inspection by the Secured Party at all reasonable times.

INSURANCE 1i To keep the collateral insured against loss by fire (including extended coverage), theft and other hazards as the Secured Party may require and to obtain collision insurance if applicable. Policies shall be in such form and amounts and with such companies as the Secured Party may designate. Policies shall be obtained from responsible insurors authorized to do business in this state. Certificates of insurance or policies, payable to the respective parties as their interest may appear, shall be deposited with the Secured Party who is authorized, but under no duty, to obtain such insurance upon failure of the Debtor to do so. Debtor shall give immediate written notice to the Secured Party and to insurors of loss or damage to the collateral and shall promptly file proofs of loss with insurors. Debtor hereby appoints the Secured Party the attorney for the Debtor in obtaining, adjusting and cancelling any such insurance and endorsing settlement drafts and hereby assigns to the Secured Party all sums which may become payable under such insurance, including return premiums and dividends, as additional security for the indebtedness.

EXHIBIT A

LOAN — USE OF PROCEEDS

1j If this agreement is security for a loan to be used to pay a part or all of the purchase price of the collateral: to use the proceeds of the loan to pay the purchase price, filing fees and insurance premiums. The Secured Party however, may pay the proceeds directly to the seller of the collateral.

CHANGE OF ADDRESS

1k To immediately notify the Secured Party in writing of any change in or discontinuance of Debtor's place or places of business and/or residence.

AFFIXED TO REALTY

1l That if the collateral has been attached to or is to be attached to real estate, a description of the real estate and the name and address of the record owner is set forth in the schedule herein; if the said collateral is attached to real estate prior to the perfection of the security interest granted hereby, Debtor will on demand of the Secured Party furnish the latter with a disclaimer or disclaimers, signed by all persons having an interest in the real estate, of any interest in the collateral which is prior to Secured Party's interest.

2. GENERAL PROVISIONS:

NOTES

2a Notes, if any, executed in connection with this agreement, are separate instruments and may be negotiated by Secured Party without releasing Debtor, the collateral, or any guarantor or co-maker. Debtor consents to any extension of time of payment. If there be more than one Debtor, guarantor or co-maker of this agreement or of notes secured hereby, the obligation of all shall be primary, joint and several.

NON-WAIVER

2b Waiver of or acquiescence in any default by the Debtor, or failure of the Secured Party to insist upon strict performance by the Debtor of any warranties or agreements in this security agreement, shall not constitute a waiver of any subsequent or other default or failure.

NOTICES

2c Notices to either party shall be in writing and shall be delivered personally or by mail addressed to the party at the address herein set forth or otherwise designated in writing.

LAW APPLICABLE

2d The Uniform Commercial Code shall govern the rights, duties and remedies of the parties and any provisions herein declared invalid under any law shall not invalidate any other provision or this agreement.

DEFAULT

2e The following shall constitute a default by Debtor:

non-payment

Failure to pay the principal or any installment of principal or of interest on the indebtedness or any notes when due.

violation

Failure by Debtor to comply with or perform any provision of this agreement.

misrepresentation

False or misleading representations or warranties made or given by Debtor in connection with this agreement.

levy

Subjection of the collateral to levy of execution or other judicial process.

insolvency

Commencement of any insolvency proceeding by or against the Debtor or of any guarantor of or surety for the Debtor's obligations.

death

Death of the Debtor or of any Guarantor of or surety for the Debtor's obligations.

impairment of security

Any reduction in the value of the collateral or any act of the Debtor which imperils the prospect of full performance or satisfaction of the Debtor's obligations herein.

REMEDIES ON DEFAULT

acceleration

2f Upon any default of the Debtor and at the option of the Secured Party, the obligations secured by this agreement shall immediately become due and payable in full without notice or demand and the Secured Party shall have all the rights, remedies and privileges with respect to repossession, retention and sale of the collateral and disposition of the proceeds as are accorded to a Secured Party by the applicable sections of the Uniform Commercial Code respecting "Default", in effect as of the date of this Security Agreement.

attorneys' fees etc.

Upon any default, the Secured Party's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising, and selling the collateral shall be chargeable to the Debtor.

deficiency

The Debtor shall remain liable for any deficiency resulting from a sale of the collateral and shall pay any such deficiency forthwith on demand.

monies advanced

If the Debtor shall default in the performance of any of the provisions of this agreement on the Debtor's part to be performed, Secured Party may perform same for the Debtor's account and any monies expended in so doing shall be chargeable with interest to the Debtor and added to the indebtedness secured hereby.

seizure

In conjunction with, addition to or substitution for those rights, Secured Party, at his discretion, may: (1) enter upon Debtor's premises peaceably by Secured Party's own means or with legal process and take possession of the collateral, or render it unusable, or dispose of the collateral on the Debtor's premises and the Debtor agrees not to resist or interfere; (2) require Debtor to assemble the collateral and make it available to the Secured Party at a place to be designated by the Secured Party, reasonably convenient to both parties (Debtor agrees that the Secured Party's address as set forth above is a place reasonably convenient for such assembling); (3) unless the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Secured Party will give Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is to be made. The requirements of reasonable notice will be met if such notice is mailed, postage prepaid, to the address of the Debtor shown above, at least three days before the time of sale or disposition.

assembling collateral

notice of sale

2g Secured Party may assign this agreement and if assigned the assignee shall be entitled, upon notifying the Debtor, to performance of all of Debtor's obligations and agreements hereunder and the assignee shall be entitled to all of the rights and remedies of the Secured Party hereunder. Debtor will assert no claims or defenses Debtor may have against the Secured Party against the assignee.

FINANCING STATEMENT

2h The Secured Party is hereby authorized to file a Financing Statement.

CAPTIONS

2i The Captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision thereof.

The terms, warranties and agreements herein contained shall bind and inure to the benefit of the respective parties hereto, and their respective legal representatives, successors and assigns.

The gender and number used in this agreement are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

This agreement may not be changed orally.

IN WITNESS WHEREOF, the Parties have respectively signed and sealed these presents the day and year first above written.

KENNEDY FOR PRESIDENT COMMITTEE

By: N E Smith

SCHEDULE

Describe items of collateral, the address where each item will be located and describe any prior liens, etc., and the amounts due thereon. If items are crops or goods affixed or to be affixed to real estate describe the real estate and state the name and address of the owner of record thereof.

Items	*Location, etc.*
300 Serially Numbered Wyeth Kennedy '80 lithograph art prints titled "To Sail Against the Wind"	Circle Fine Art 345 Park Avenue South New York, New York 10010

The chief place of business of the Debtor, if other than stated in this agreement, is:

3304041021 1

WAIVER BY LANDLORD AND/OR OTHERS

The undersigned, being the owner, mortgagee, landlord and/or lessor of the Debtor's premises, and knowing that the Secured Party relies hereon, does hereby waive, relinquish and release to the Secured Party or any holder of the security agreement all right of levy or distraint for rent and all other claims and demands of every kind which the undersigned has or may have against the collateral, this waiver to continue until termination of the security agreement.

WITNESS the hand and seal of the undersigned this day of 19 .

.....

.....

Security Agreement
(Chattel Mortgage)

to

Dated, 19

To perfect lien, file UCC 1 (see UCC §9-401)
N. Y.: CONSUMER GOODS OR FARM CONNECTED COLLATERAL:
—resident debtor: with filing officer in county of debtor's residence.
—non resident debtor: Dept. of state: if debtor has a place of business in only one county in N. Y., also with filing officer of such county.
—crops: Dept. of state and also with filing officer in county where land on which crops are grown, lies.
FIXTURES attached to realty: in county where land lies.
ALL OTHER CASES: Dept. of state: if debtor has a place of business in only one county in N. Y., also with filing officer in such county.
filing officer: in N.Y.C., the City Register of the county; elsewhere in state, the county clerk.

N. J.: CONSUMER GOODS OR FARM CONNECTED COLLATERAL:
—with clerk of county of debtor's residence.
—if non-resident debtor, in county where goods are kept.
—crops: in county where land lies.
FIXTURES attached to realty: with register of county where land lies or with county clerk if no register.
ALL OTHER COLLATERAL: with secretary of state.

CONN.: FIXTURES attached to realty: with clerk of town or city where land lies.
ALL OTHER COLLATERAL: with secretary of state.

GUARANTEE

The undersigned guarantees prompt and full performance and payment according to the tenor of the within agreement, to the holder hereof, and, in the event of default, authorizes any holder hereof to proceed against the undersigned, for the full amount due including reasonable attorneys' fees, and hereby waives presentment, demand, protest, notice of protest, notice of dishonor and any and all other notices or demand of whatever character to which the undersigned might otherwise be entitled. The undersigned further consents to any extension granted by any holder and waives notice thereof. If more than one guarantor, obligation of each shall be joint and several.

WITNESS the hand and seal of the undersigned this day of 19 .

.....(L.S.)

Residence.....

Business Address.....

Firm Name.....

3 0 4 0 4 1 0 2 1

Effective date: July 29, 1980

ADDENDUM
Kennedy for President Committee

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00. The following art work will be held as additional security on the mentioned loan:

C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Said security will be stored at:
88 Grand Street, New York, New York
attn: Mr. John Nichols, Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

8[illegible] 0 4 0 4 1 0 2 1

SECURITY AGREEMENT dated March 7, 1980, between DISTRICT OF COLUMBIA NATIONAL BANK, a District of Columbia banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

300 serially numbered (1 through 300) Jamie Wyeth Kennedy '80 Lithograph art prints each signed by Jamie Wyeth.

2. Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The Collateral will be stored at the offices of Dr. Ronald Parker at Circle Fine Art, 345 Park Avenue South, 2nd Floor, New York, NY 10010, and released, in whole or in part by the custodian, Joseph E. Hakim, Suite 3021, 200 Park Avenue, New York, New York, for transfer to a contributor only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this Agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancellation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of Circle Fine Art, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (b) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower shall fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with the Agreement (e) Borrower

hereby authorizes the bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

By _____

Stephen E. Smith, Chairman
1250 22nd Street, N.W.
Washington, D.C. 20037

DISTRICT OF COLUMBIA NATIONAL BANK

By _____

1801 K Street, N.W.
Washington, D.C.

Effective Date: July 29, 1980

KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00.

Said Security Agreement will be modified as follows:

Paragraph 1, Definitions; section (d): The following art work will be held as additional security on the mentioned loan:

1. C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2. Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Paragraph #3, Use of Collateral:

The additional collateral will be stored at:

88 Grand Street
New York, New York

Attn: Mr. John Nichols
Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

3040410217

Effective date: July 29, 1980

ADDENDUM
Kennedy for President Committee

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00. The following art work will be held as additional security on the mentioned loan:

C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Said security will be stored at:
88 Grand Street, New York, New York
attn: Mr. John Nichols, Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

EXHIBIT B

8 0 4 0 4 1 0 2 1 8

Effective Date: July 29, 1980

KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00.

Said Security Agreement will be modified as follows:

Paragraph 1, Definitions; section (d): The following art work will be held as additional security on the mentioned loan:

1. C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2. Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Paragraph #3, Use of Collateral:

The additional collateral will be stored at:

88 Grand Street
New York, New York

Attn: Mr. John Nichols
Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

8 0 4 0 4 1 0 2 1 9

KENNEDY FOR PRESIDENT

March 7, 1980

District of Columbia National Bank
1801 K Street, NW
Washington, DC

Attention: Thomas Condit, President

Dear Sir:

This is to inform you that in connection with the loan made by your bank to the Kennedy for President Committee pursuant to an agreement of March 7, 1980, the Committee pledges as collateral 300 serially numbered (1 through 300) Wyeth Kennedy '80 lithograph art prints each signed and numbered by Jamie Wyeth, titled by the artist, "To Sail Against the Wind." The lithograph stone used to produce these prints has been destroyed and these are the only Wyeth Kennedy lithographs produced.

The Collateral will be stored at the offices of Circle Fine Art, 345 Park Avenue South, New York, New York 10010, and released in whole or in part for transfer to a contributor only upon written release from the bank. Notice for release of the lithographs will be sent to Joseph Hakim, an agent of the Committee, at 200 Park Avenue, New York, New York 10017.

It is agreed that if there are no sales within one (1) month from the above date, the campaign agrees to curtail the loan by $100,000. Furthermore, it is agreed that should sales of the Wyeth lithograph occur slower than anticipated the Committee will use best efforts to retire the loan from other income. The average weekly intake of the Committee is approximately $225,000.

Enclosed is a copy of the appraisal from Stephen Lion, a member of the Appraisers Association of America. This appraisal was made on March 6, 1980.

Very truly yours,

Stephen E. Smith
Chairman

Enclosure

1250 22ND STREET N.W. WASHINGTON D.C. 20037 TELEPHONE: (202) 861-6000

A copy of our report is filed with the Federal Election Commission
and is available for purchase from the Federal Election Commission, Washington, D.C.

EXHIBIT C

8 0 4 0 4 1 0 2 2 0

Stephan Lion Art & Design Consultant
LION ARTS, INC.
201 East 66th Street New York, N.Y. 10021
(212) 288-4655

March 6, 1980

Mr. William Oldaker
Counsel
Kennedy For President Committee
1250 22nd Street N.W.
Washington D.C. 20037

A P P R A I S A L

This is to certify that I, Stephan Lion of the firm of Lion Arts, Inc., located at 201 East 66th Street New York, New York 10021, telephone number (212) 288-4655, am a member of the Appraisers Association of America, Inc. and a qualified appraiser of the article listed below; that I have carefully examined said article at the request of Mr. Joseph Hakim of Joseph P. Kennedy Enterprises, Suite 3021, 200 Park Avenue, New York, New York 10017, and in my judgment the current value is as follows:

<u>One original signed and numbered four color lithograph (unframed) by Jamie Wyeth "Ted Kennedy",</u> 26 1/2" x 37", part of an edition of 300 with 60 artist's proofs ---------- $ 850 to $ 1,000

Stephan Lion
Member of the Appraisers Association of America, Inc.

EXHIBIT D

8 0 4 0 4 1 0 2 2 1

200 PARK AVENUE
NEW YORK, N.Y. 10017

March 7, 1960

District of Columbia National Bank
1801 K Street, N.W.
Washington, D.C.

Attention of Thomas Condit, President

Dear Sir:

In connection with a loan being made by you to the Kennedy for President Committee (the "Committee"), pursuant to a Letter Agreement of even date between the Committee and you secured by a Security Agreement of even date, a copy of which is in my possession:

(1) as agent of the Committee I have possession of the Collateral described in the Security Agreement:

(a) 300 serially numbered (1 through 300) Wyeth Kennedy '80 lithograph art prints each signed by Jamie Wyeth;

(2) the Collateral will be stored at the offices of Circle Fine Art, 345 Park Avenue South, New York, New York, and released in whole or in part, for transfer to a contribution only upon the presentation of a written release from the Bank.

Very truly yours,

Joseph Hakim

Joseph E. Hakim

EXHIBIT E

8004041022

MAR 25 9 13 AM '80

FINANCING STATEMENT

For Filing Officer Use
File No.
Date &
Hour

Check below if goods are or are to become fixtures.

☐ TO BE RECORDED IN LAND RECORDS

This Financing Statement is presented to a filing officer for filing pursuant to the Uniform Commercial Code.
Maturity date (if any)

Name(s) of Debtor(s) or assignor(s) (Last Name First)	No.	Street	City	State
Kennedy for President Committee	1250	22nd Street, N.W.,	Washington,	D.C. 20037

Name of Secured Party or assignee	No.	Street	City	State
District of Columbia National Bank,	Washington,	1801 K Street,	N.W.,	Wash., D. C.

1. This financing statement covers the following types (or items) of property: (Lists or descriptions may be on separate sheets firmly attached hereto.) (Describe)

300 Serially Numbered Wyeth Kennedy '80 lithograph art prints titled "To Sail Against the Wind", as more particularly described in a Security Agreement dated March 7, 1980.

RETURN TO:

(If affixed to realty—state value of each article)

CHECK ☒ THE LINES WHICH APPLY

2. ☐ If collateral is crops: The above described crops are growing or will be grown on: (Furnish general description of real estate and name of record owner.)

3. ☐ If collateral is goods which are or will become fixtures: The above described goods are fixed or will be affixed to: (If affixed to realty—state value of each article.) (Furnish general description of real estate and name of record owner.) If blocks system is maintained, state house number and street, if there be any, or block reference.

4. ☒ Proceeds of collateral are also covered: ☐ Products of collateral are also covered:

5. (This section applicable in Maryland only.) STRIKE OUT INAPPLICABLE WORDING
The underlying secured transaction(s) being publicized by this Financing Statement *is is not* subject to the Recordation Tax imposed by Article 81, §§ 277, 278 annotated Code of Maryland, as amended. If subject, the principal amount of the debt is

Debtor(s) or assignor(s)

KENNEDY FOR PRESIDENT COMMITTEE

BY: Stephen Smith

Stephen Smith
(Type or print name under signature)

DISTRICT OF COLUMBIA NATIONAL BANK, WASH. (Seal)
(Corporate, Trade or Firm Name)

BY: Thomas S. Condit
Signature of *Secured Party* or Assignee

Thomas S. Condit, President &CEO
(Owner, Partner or Officer and Title)
(Signatures must be in ink)

EXHIBIT F

3 0 4 0 4 1 0 2 2 3

Mr. Joseph Hakim
Suite 3021
200 Park Avenue
New York, New York 10017

Dear Mr. Hakim:

In accordance with the terms of the Security Agreement dated March 7, 1980, between District of Columbia National Bank and Kennedy for President Committee, this is to authorize a partial release of collateral, as follows:

Print numbers, as follows:

#6

#7

#8

#9

#100

DISTRICT OF COLUMBIA NATIONAL BANK

By: Barbara N. Greenwald
ASSISTANT VICE PRESIDENT

Date: April 7, 1980

EXHIBIT G

8 0 4 0 4 1 0 2 2

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

District of Columbia National Bank
1801 K Street, N.W.
Washington, D.C. 20006

Attn: Barbara Greenwald

This is to authorize you to debit our account #264-093-7 in the amount of $ 10,000.00 for the purpose of reducing our outstanding loan balance. In accordance with the terms of our Security Agreement dated March 7, 1980, we would appreciate your executing and forwarding to Mr. Hakim the enclosed partial release of collateral.

KENNEDY FOR PRESIDENT COMMITTEE

By: Carolyn A Reed

Date: 25 April 1980

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission Washington, D.C. 20463

EXHIBIT H

8 0 4 0 4 1 0 2 2 5

Mr. Joseph Hakim
Suite 3021
200 Park Avenue
New York, New York 10017

Dear Mr. Hakim:

In accordance with the terms of the Security Agreement dated March 7, 1980, between District of Columbia National Bank and Kennedy for President Committee, this is to authorize a partial release of collateral, as follows:

Print numbers, as follows:

#101
#102
#103
#104
#105
#106
#107
#108
#109
#110

KENNEDY FOR PRESIDENT COMMITTEE

By: Carolyn A Reed

DISTRICT OF COLUMBIA NATIONAL BANK

By: Barbara A. Gearnald
ASSISTANT VICE-PRESIDENT

Date: April 25, 1980

EXHIBIT 1

8 0 4 0 4 1 0 2 2 6

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

District of Columbia National Bank
1801 K Street, N.W.
Washington, D.C. 20006

Attn: Barbara Greenwald

This is to authorize you to debit our account #264-093-7 in the amount of $ 5,000.00 for the purpose of reducing our outstanding loan balance. In accordance with the terms of our Security Agreement dated March 7, 1980, we would appreciate your executing and forwarding to Mr. Hakim the enclosed partial release of collateral.

KENNEDY FOR PRESIDENT COMMITTEE

By: Carolyn A. Reed

Date: May 16, 1980

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

EXHIBIT J

8 0 0 4 0 4 1 0 2 2 7

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

District of Columbia National Bank
1801 K Street, N.W.
Washington, D.C. 20006

Attn: Barbara Greenwald

This is to authorize you to debit our account #264-093-7 in the amount of $ 5,000.00 for the purpose of reducing our outstanding loan balance. In accordance with the terms of our Security Agreement dated March 7, 1980, we would appreciate your executing and forwarding to Mr. Hakim the enclosed partial release of collateral.

KENNEDY FOR PRESIDENT COMMITTEE

By: Philip Hakim

Date: May 30, 1980

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

EXHIBIT K

8 0 4 0 4 1 0 2 2 8

Mr. Joseph Hakim
Suite 3021
230 Park Avenue
New York, New York 10017

Dear Mr. Hakim:

In accordance with the terms of the Security Agreement dated March 7, 1980, between District of Columbia National Bank and Kennedy for President Committee, this is to authorize a partial release of collateral, as follows:

Print Numbers 116
117
118
119
22

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

DISTRICT OF COLUMBIA NATIONAL BANK

By: _____
Assistant Vice-President

Date: June 5, 1980

EXHIBIT L

8 0 4 0 4 1 0 2 2 9

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

District of Columbia National Bank
1801 K Street, N.W.
Washington, D.C. 20006

Attn: Barbara Greenwald

This is to authorize you to debit our account #264-093-7 in the amount of $8,000.00 for the purpose of reducing our outstanding loan balance. In accordance with the terms of our Security Agreement dated March 7, 1980, we would appreciate your executing and forwarding to Mr. Hakim the enclosed partial release of collateral.

KENNEDY FOR PRESIDENT COMMITTEE

By: [signature]

June 26, 1980

Enclosure

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

EXHIBIT M

8 0 4 0 4 1 0 2 5 9

Kennedy '80

1250 22nd St. N.W.
Washington, D.C. 20037
202-857-6000

June 26, 1980

Mr. Joseph Hakim
Suite 3021
200 Park Avenue
New York, New York 10017

Dear Mr. Hakim:

In accordance with the terms of the Security Agreement dated March 7, 1980, between District of Columbia National Bank and Kennedy for President Committee, this is to authorize a partial release of collateral, as follows:

Print Numbers 24
40
120
121
122
123
124
125

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

DISTRICT OF COLUMBIA NATIONAL BANK

By: _____

cc: John Nichols
Twichell-Nichols Printmakers
75 Grand Street
New York, New York 10013

A copy of this report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

EXHIBIT N

8 0 4 0 4 1 0 2 5

006009

Washington Law Reporter Form 1000
1625 Eye St., N.W., Washington, D.C. 20006

AUG 4 8 45 AM '80

FINANCING STATEMENT

For Filing Officer Use
File No.
Date &
Hour

Check below if goods are or are to become fixtures.

☐ TO BE RECORDED IN LAND RECORDS

This Financing Statement is presented to a filing officer for filing pursuant to the Uniform Commercial Code.
Maturity date (if any)

Name(s) of Debtor(s) or assignor(s) (Last Name First)	No.	Street	City	State
KENNEDY FOR PRESIDENT COMMITTEE	1250	22nd Street, N.W.,	Washington,	D.C. 20037

Name of Secured Party or assignee	No.	Street	City	State
DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON	1801	"K" Street, N.W.,	Washington,	D.C. 20006

1. This financing statement covers the following types (or items) of property: (Lists or descriptions may be on separate sheets firmly attached hereto.) (Describe)

Art work as follows:

C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged appraised at $350.00 for a total value of $59,500.00.

Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00, for a total value of $94,500.00; 270 pledged.

RETURN TO: Barbara N. Greenwald, Assistant Vice-President
District of Columbia National Bank, Washington
1801 "K" Street, N.W., Ste. 200
Washington, D.C. 20006

(If affixed to realty—state value of each article)

CHECK ☒ THE LINES WHICH APPLY

2. ☐ If collateral is crops: The above described crops are growing or will be grown on: (Furnish general description of real estate and name of record owner.)

3. ☐ If collateral is goods which are or will become fixtures: The above described goods are fixed or will be affixed to: (If affixed to realty—state value of each article.) (Furnish general description of real estate and name of record owner.) If blocks system is maintained, state house number and street, if there be any, or block reference.

4. XXX Proceeds of collateral are also covered: ☐ Products of collateral are also covered:

5. (This section applicable in Maryland only.) STRIKE OUT INAPPLICABLE WORDING
The underlying secured transaction(s) being publicized by this Financing Statement *is* / *is not* subject to the Recordation Tax imposed by Article 81, §§ 277, 278 annotated Code of Maryland, as amended. If subject, the principal amount of the debt is

Debtor(s) or assignor(s)
KENNEDY FOR PRESIDENT COMMITTEE
By: Alan Rath

DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON
By: Barbara N. Greenwald (Seal)
(Corporate, Trade or Firm Name)
Barbara N. Greenwald, Ass't. Vice-Pres.
Signature of *Secured Party* or Assignee

(Type or print name under signature)

(Owner, Partner or Officer and Title)
(Signatures must be in ink)

EXHIBIT O

0 4 0 4 1 0 2 3 2

FIRST CLASS MAIL

MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 1100 K
1801 K STREET, N.W.
WASHINGTON, D.C. 20006

TO: Mr. Frank P. Reiche, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C.

ATTN: Nancy B. Nathan, Esq.

Ccc# 7503

BEFORE THE FEDERAL ELECTION COMMISSION

April 8, 1982

IN THE MATTER OF	)	
	)	MUR 1393
KENNEDY FOR PRESIDENT COMMITTEE	)	
	)	

REPLY OF KENNEDY FOR PRESIDENT COMMITTEE TO GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS REGARDING BANK LOANS

8304011023

8 PM 12:00

The Commission's apparent concern over the legality of certain loans by Chemical Bank of New York, D.C. National Bank, and Mark Twain National Bank (St. Louis) is based on a misunderstanding of the facts surrounding the creation of the artwork and the negotiation of the loans as well as an inaccurate construction of relevant law. The General Counsel's Analysis of these loans raises issues that involve the law of secured transactions, copyright law, and federal election campaign law. To understand these legal issues requires that the Commission first fully understand the facts.

A. The Facts.

The artwork that is the subject matter of this enforcement action does not consist of "reproductions" as the General Counsel's Analysis maintains. Instead it is entirely made up of original works of art prepared through the efforts of artists who volunteered their services to the Committee. With the exception of the single oil painting by Richard Anuszkiewicz pledged to Chemical Bank, the works consist of serigraphs and lithographs. With the latter two types of art, the artist creates the design. The original work is produced through a silkscreen process (in the case of serigraphs) or from stone etchings (in the case of lithographs). Accordingly, it is entirely inaccurate to call these works "reproductions." They are, in fact, distinct original works of art issued in a series of multiple originals. They are the Committee's property because

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they were created at the Committee's expense using the volunteered creative services of the artist, not because the artist donated them to the Committee (indeed this would be a prohibited contribution if the work's fair market value exceeded $1,000).

It does appear that with each of these loans 2 series out of the artwork collateral pledged had not been finally pulled by the print shop at the time the loan papers were signed. (See the Committee's Response to the Commission's First Questions, Appendix A hereto.) This fact was not known to the banks because the Committee officers who negotiated the loans believed in good faith that they had been pulled. (As will be discussed in the legal analysis, however, the final pulling or printing of these works of art which were pledged as collateral is immaterial to the validity of the bank's security interest in it as long as the Committee had rights in the collateral. See pp. 14-16, infra.) There was no conscious attempt to mislead the banks nor any dereliction by the banks in securing their loans. It was simply due to a mistaken belief on the part of the Committee's officers that what was supposed to have been done in fact was done. In sum, there is less here than meets the eye.

The General Counsel's Analysis ignores the sole issue that the Commission must address in reviewing these loans: were the loans made in accordance with applicable banking laws and regulations and in the ordinary course of business? See 2

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U.S.C. §431(8)(B)(vii), 11 C.F.R. §100.7(b)(11). The only legitimate purpose of the Commission's inquiry is to determine whether the banks made a prohibited contribution. For this purpose the fact that a portion of the collateral was nonexistent is irrelevant unless that fact was known to the banks when the loans were made. (Even then, the question would still remain whether the non-existence of a small portion of the collateral would so materially alter the basis of the loans as to make them outside the ordinary course of business.) When viewed from the perspective of the banks, these loans were clearly in the ordinary course of business because:

(1) Even without the missing collateral they were fully secured;

(2) They all bore commercially reasonable rates of interest (all were above prime rate);

(3) All the loans were made in accordance with applicable banking laws and regulations;

(4) All were subject to a due date;

(5) Neither the bank officers nor the Committee officials who negotiated the loans knew part of the artwork had not been printed.

Accordingly, there is no hint of an attempt by any of the banks involved in these loans to make a contribution to the Kennedy for President Committee by making loans on a preferential basis or that they did not reasonably expect to be repaid. (And, in fact, the loans were fully repaid with interest.)

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1. Chemical Bank Loans.

The loans identified in the General Counsel's Analysis as having been made by Chemical Bank on April 18, 1980, and May 2, 1980, in fact were made up of a series of five loans aggregating $750,000. As more fully set out in our response to Question 1 of Appendix A, the artwork was only secondary collateral for these loans because the bank was primarily looking toward the Committee's federal matching fund payments for satisfaction of the Committee's debts. To secure the bank, the Committee assigned its future matching payments to the bank and insured Senator Kennedy's life with Lloyd's of London.

The General Counsel's Analysis identifies three works of art as not having been in the Committee's possession at the time they were pledged as collateral. It bases this identification on the statements of Miss Joanne Rosskam to Commission auditors on November 7, 1981. The three works in question are an original single-edition acrylic on canvas by Richard Anuszkiewicz, and two series of original lithographs by Nassos Daphnis ("SSK II 80") and Nicholas Krushenick ("Par Avion").

Miss Rosskam did not make the statements the auditors claim she made. She did not state the Anuskiewicz was not in the Committee's possession when pledged. See Affidavit of Joanne Rosskam, Appendix B. The Anuskiewicz in fact was in the Committee's possession and was kept at the business office of the

Committee's Chairman. The Daphnis and Krushenick works in question were not printed at the time they were pledged.1/ The Committee's officers who negotiated the loan believed they had been printed and the loan was negotiated on that assumption. It was not until the Summer of 1981, in connection with the Commission's audit, that the Committee Treasurer discovered that through an oversight they had not been printed.

Even so, the failure to print these works (which have since been printed) is of little importance. It did not affect the validity of the security agreement (see pp. 14-16, infra.) and represented a tiny portion of the total collateral pledged. The General Counsel's Analysis gives a misleading impression of the extent and impact of the Committee's oversight. The $750,000 in loans received from Chemical Bank was secured by, in addition to the assignment of matching funds, 4,721 pieces of art with an aggregate appraised value of $2,034,350. Of this total the unprinted Daphnis and Krushenick works comprised only 335 pieces with an appraised value of $124,250, or 6% of the total collateral pledged. Considering the fact that the artwork was only secondary collateral in the first

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1/ Here again, Miss Rosskam's statement is misquoted. She did not tell the auditors the works had never been printed, as the GC Analysis states (at p.5,6). She in fact told the auditors the works were in the process of being printed. See Appendix B. If the Commission is to initiate enforcement actions based on unsworn oral hearsay, it should at least ensure the statements were not misrepresented.

place, the Committee's failure to print 6% of the collateral was plainly inadvertent and had no substantial effect on the bank's risk.

2. D.C. National Bank Loans.

The General Counsel's Analysis only mentions the Yao and Rosenblum works as collateral for the $240,000 D.C. National Bank loan. This was merely voluntary additional collateral pledged effective July 29, 1980, to further secure the original March 7, 1980, loan. Neither the text of the General Counsel's Analysis nor Attachment 1 (Item 3) thereto mention the original collateral for the loan, which was a complete series of 300 Jamie Wyeth lithographs with an appraised value of $240,000. Accordingly, the loan was fully collateralized even without the Yao and Rosenblums. The Yao and Rosenblum works were pledged because fundraising by the Committee was less than anticipated and the Committee wanted to ensure that D.C. National Bank would have priority over other creditors to more than enough artwork to satisfy the debt if the Committee were forced into default. It would be ironic indeed (an a lesson to future committees) if the Commission were to hold that the Committee somehow violated the Act by trying to make the bank more secure.

3. Mark Twain National Bank Loan.

The General Counsel's treatment of the Mark Twain National Bank's two $10,000 loans to the Committee is more puzzling. We simply do not know why the April 6, 1980, loan is

listed in Attachment 1 since no mention of it is made in the text of the GC Analysis. In any event, the loan was secured by 40 Rauschenberg lithographs appraised at $48,000, plainly adequate collateral for a $10,000 loan. The second $10,000 loan, made on May 28, 1980, was secured by 40 pieces of art work by Nesbitt and Levine with an appraised value of $16,000 in addition to the Yao and Rosenblum works. Accordingly, even without the Yao and Rosenblum works, the loan was fully secured. Futhermore, a secured creditor has the right to determine application of payments to maximize his security, so that, in effect, the entire body of $54,000 in printed collateral may be considered as securing the total $20,000 in loans. See U.S. v. Pollack, 370 F.2d 79 (2d Cir. 1966).

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SUMMARY

It must be remembered that all these loans were in fact repaid with commercially reasonably interest. In such circumstances the question of adequate collateralization becomes rather academic. These were not "sweetheart" arrangements. They were commercially reasonable, and profitable, transactions entered into by the banks in the ordinary course of their business. In each case, even without the unprinted collateral, the bank was fully secured. If the Commission intends to bring enforcement actions on as shaky grounds as presented by the

General Counsel in this matter, no sensible banker will lc money to a federal candidate again.

B. The Law

1. Under The FECA There Can Be No §441b Violation Unless The Loans Were Outside The Ordinary Course of Business

Whatever the circumstances that led to the premature pledging of some of the collateral, there can be no violation of §441b unless the loans were made outside the ordinary course of business. See 2 U.S.C. §431(8)(B)(vii). In order for there to be a violation of §441b by the Committee, there must be a concomitant violation by the banks. If the transactions, based on the facts known to the banks, were within the ordinary course of business, there is no violation. This is true even if in fact, unknown to the banks, some of the collateral was not yet in existence.

All that occurred in this case was a good faith mistake on the part of the Committee's officers who negotiated the loans. The mistake was understandable in that it concerned such a small portion of the thousands of pieces of art created by the Committee. The banks were totally unaware that some of the artwork was not printed. Accordingly, there could not be a §441b violation unless the terms of the loans as agreed to by the banks were outside the ordinary course of business. For this purpose, the existence or non-existence of the collateral is irrelevant

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because the transaction must be viewed entirely from the perspective of the banks.

The General Counsel's Analysis focuses on the existence or non-existence of a small portion of the collateral as the dispositive factor in determining whether the loans violated 2 U.S.C. §441b. Without a shred of evidence that the banks knew of the Committee's oversight, and after the loans have been fully repaid with above-prime interest, the Commission subjects three reputable banks and this Committee to a full-blown enforcement investigation acting solely on unsworn oral hearsay. Rather than indulge in esoteric discussions over "reproduction rights," the Commission should read the Federal Election Campaign Act's standards for determining whether a loan by a bank to a candidate is legal:

> ... made in accordance with applicable law and in the ordinary course of business, but such loan ---
>
> (I) ...
>
> (II) shall be made on a basis which assures repayment, evidenced by a written instrument, and subject to a due date or amortization schedule; and
>
> (III) shall bear the usual and customary interest rate of the lending institution;

2 U.S.C. §431(8)(B)(vii). This is the standard by which these loans are to be measured.

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No challenge is made to the interest rate charged. Nor does the General Counsel's Analysis dispute the validity of the written instrument, and the loans were, in fact, subject to a due date. All that remains is whether they were "made on a basis which assures repayment."

All of these loans were sound. The Chemical Bank loans were primarily secured by the Committee's expectancy of matching funds and only secondarily by the artwork (only 6% of which was not printed). The use of expected matching funds as collateral was expressly sanctioned by the Commission in MUR 1195, involving an earlier Chemical Bank loan to the Kennedy for President Committee. In that matter the General Counsel stated:

> Complainant alleges, however, that the [expected matching funds] was not sufficient security because almost $800,000 of the principal of the Bank loan was paid to the Committee before it was certified by the Commission as eligible to receive matching funds. Thus, essentially the Complainant asserts that a campaign loan must be secured by, at minimum, a future interest, and that to provide a loan secured by a future expectancy results in a loan made out of "the ordinary course of business"....
>
> . . . President Carter's campaign committee obtained a bank loan in 1976 collateralized by matching fund payments at a time when that committee was not certified by the Commission to receive matching funds; and the Baker Committee obtained a $75,000 loan from a Tennessee bank on September 11, 1979, also collateralized by matching funds, although the Baker Committee was not certified as eligible to receive such funds until November 13, 1979. . . . This is a further indication that it is within the customary practice of lending institutions to make loans to

> political committees secured by the expectancy of matching fund payments. In this instance the Bank took additional steps (i.e. the certificate of the Committee treasurer, the insurance policies on the Senator, the Committee warrants not to violate the Act) to protect this future expectancy, and thus make it a reasonable expectation, as well.

MUR 1195, First General Counsel's Report, at 6-7 (Adopted June 4, 1980). Futhermore, in the present case, there was printed artwork worth $1,910,100 securing $750,000 in obligations. In MUR 1195, however, the Commission approved loans of $200,000 by Chemical Bank secured by $300,000 worth of Warhol prints (a much lower collateral-obligation ratio) stating:

> The final allegation of the Complainant concerns the loan payments of $100,000 on February 11, 1980 and March 11, 1980 to the Committee, for which the Committee pledged the additional security of 1500 Andy Warhol art prints of Senator Kennedy. The Complainant alleged that if the value of those prints is in excess of $1000 the Committee accepted an excessive contribution from Mr. Warhol; and if the value of the prints is $1000 or less, then the loan payments of $200,000 were insufficiently collateralized.
>
> As noted in the recitation of facts above, the 1500 prints made by the Committee from a work of art created by Mr. Warhol were valued at $300,000. See n. 3, supra. Thus, it seems clear that they were sufficient collateral for the additional $200,000 in loan payments to the Committee.

Id., at 7.

The General Counsel's Analysis alleges that the D.C. National Bank loan somehow violated the Act because at a

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later date the Committee pledged additional collateral that had not been printed. Presumably, if the Committee had not attempted to increase the bank's security no question would now be raised. The plain fact is that even without the supplemental collateral the loan was fully secured by the 300 Wyeth prints originally pledged. Similarly, the Mark Twain National Bank loans were more than fully secured by the Rauschenberg prints, as well as the Nesbitts and Levines that the Commission has not questioned.

The Commission's present concern over fractional differences in collateral becomes an exercise in bureaucratic "nit picking" when one considers some of the bank loans that the Commission has approved in the past. In MUR 216/239 the Commission approved $125,000 in loans to a Senate candidate on a personal note with no collateral. There the General Counsel's Report stated:

> As an initial matter it would seem that the presence or absence of security from the candidate might well be a factor under the FECA in assessing the merits of a loan. ... Parts of the legislative history, noted above, emphasize security as a factor of importance. Without more, however, the words of the Act do not seem to establish anything nearly so specific as a requirement for security, especially in light of the underlying purpose of the amendment to remove ordinary bank loans from the definition of contribution.

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MUR 216/239, General Counsel's Report, at 29 (Adopted June 15, 1977). In MUR 515, the Commission did not even question an unsecured $30,000 loan on a note with no due date or repayment schedule made to a House candidate.

Viewed in this light, the loans were clearly within the ordinary course of business. They were all above prime rate, they were more than fully secured, and they were in fact repaid according to their terms.

No misrepresentation occurred on the part of the Committee because the officers who negotiated the loans fully believed all the collateral pledged existed.

The ownership of copyright is irrelevant so long as the banks believed the Committee had title to the collateral. Unless the Commission can show the banks made the loans with full knowledge that certain collateral was not printed there is no possible §441b violation, copyright or no copyright. This is the fundamental flaw in the General Counsel's Analysis. It proceeds on the assumption that if the Commission decides at a later date that the law or the facts were not as represented to the bank by the Committee there may be a violation of §441b. Such an approach turns the transaction on its head because it is the banks who are accused of making a prohibited contribution, not the Committee.

There is no evidence before the Commission that the banks knew the facts to be other than as stated in the loan

documents. All there is is a small oversight on the Committee's part as to a portion of the collateral, which oversight had virtually no effect on the banks' risk. Since the banks were unaware of the oversight, as were the Committee's officers until the FEC audit, no possible violation of §441b exists.

2. The Banks Had Valid and Enforceable Security Interests

The GC Analysis says "If the rights [of reproduction] were not held, and even if they were but the prints had not yet been reproduced [sic], the loans could be deemed contributions by the banks...." GC Analysis at p.4. The "reproduction rights" are irrelevant because we are dealing with original works of art produced by the Committee. See pp. 1-2, supra. The General Counsel appears to suggest that if the works had not yet been printed, there was no valid collateralization of the loan. This position reflects a fundamental misunderstanding of the law of secured transactions.

Secured transactions are governed by Article 9 of the Uniform Commercial Code (in force in Missouri (Mo. Ann. Stat. §§440.9101, et. seq.), New York (McKinney's U.C.C. §§9-101, et. seq.) and the District of Columbia (D.C. Code §§28:9-101, et. seq.)). In order to create a valid security interest, it is not necessary that the debtor have title to the collateral, or that the collateral be in existence, at the time the loan is made and the security agreement signed. See U.C.C. §9-203(1)(c). An enforceable security interest is created where:

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(1) the collateral is in the possession of the secured party [i.e., the bank], or the debtor has signed a security agreement;

(2) value has been given; and

(3) the debtor has rights in the collateral

U.C.C. §9-203(1). A security interest attaches as soon as these three elements are satisfied, regardless of their order of occurence. 4 R. Anderson, Uniform Commercial Code, §9-204:4, at 175 (1971 E. Supp.). Accordingly, a valid security agreement may be entered into, and quite commonly is, before the debtor has acquired title to the collateral. For example, a debtor may pledge as collateral business equipment and supplies he has ordered and intends to pay for with the proceeds of the loan even though he does not have title to the collateral, or crops that have been planted but have not yet been harvested. The concept of "rights in the collateral" does not imply ownership but any interest in the property that would enable the debtor to pledge it, including the mere permission of the true owner to pledge it or even in certain circumstances that the true owner is estopped from objecting to its being pledged. See, e.g., In re Pubs, Inc., 518 F.2d 432 (7th Cir. 1980).

Accordingly, the existence of the collateral does not affect the validity of the security agreement but only the time at which the security interest attaches. Furthermore, the

secured party, in the event of default, succeeds to the debtor's rights in the collateral. For example, if the Committee had not printed any of the art, in the event of default the bank would be able to either require the Committee to print it or exercise the Committee's production rights by printing the unprinted work and defraying its expenses out of the proceeds of its sale of the collateral.

The existence or non-existence of a portion of the collateral therefore does not have the significance under the U.C.C. that the General Counsel's Analysis implies. The banks would have been in a marginally better situation if all the artwork had, in fact, been printed. But in the case of a default the fact that a small portion of the artwork was not printed would have given the banks the same interest that the Committee had, that is, to cause the printshop to pull the pieces of art.

3. Ownership of the Copyright to the Artwork is in the Committee

The General Counsel's Statement says, "There is a question whether the Committee obtained express agreement from the contibuting artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satsify the requirements of §431(8)(vii)(II)." GC Analysis, p.4. This is wrong. We are not dealing with reproductions of artwork donated by artists. Such a donation of artwork would violate the Act if the fair market value were over

$1,000. We are dealing with the creation of original works of art at the expense of the Committee by artists who volunteered their services to the Committee. The distinction is critical not only for election law purposes but also for copyright purposes. If the artists had merely donated pre-existing works of art, or works created at their own expense and without involvement of the Committee, copyright to the art work would remain in the artist because the physical transfer of a work of art does not of itself transfer ownership of the copyright. See 17 U.S.C. §202. But when a work is created at the insistence and expense of another, subject to that other person's control, and with materials supplied by the other, it is a "work made for hire" under the copyright laws and ownership of the copyright vests in the employer, not the creator. 17 U.S.C. §201(b).

The 1909 Copyright Act codified the "works for hire" doctrine recognized by the Supreme Court in Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903). The 1976 Revision, that took effect on January 1, 1978, carried this provision over with minor modification. 17 U.S.C. §§101, 201(b). The 1976 Act defines a work made for hire as "a work prepared by an employee within the scope of his employment." 17 U.S.C. §101. The required employer - employee relationship is not defined by the Act, but has been clearly delineated by the courts. The absence of compensation does not take a work out of the "works for hire" category. 1 M. Nimmer, Copyright,

§5.03[B][1][a], at 5-12 (1978). Indeed the nature and amount, or the absence of, compensation has been held to be of little importance in determining whether a work is a "work made for hire." See Epoch Producing Corp. v. Killiam Shows, Inc., 522 F.2d 737 (2d Cir. 1975), cert. denied, 424 U.S. 955 (1976); Scherr v. Universal Match Corp., 417 F.2d 497 (2d Cir. 1969), cert. denied, 397 U.S. 936 (1970). Instead, the crucial element is whether the work was created at the employer's insistence and expense or, in other words, whether the motivating factor in producing the work was the employer who induced its creation. Siegle v. National Periodical Publication, 508 F.2d 909 (2d Cir. 1974); Nimmer, supra, at p. 5-13. Another important factor is whether the employer had the right to direct and supervise the manner in which the work was being performed. Picture Music, Inc. v. Bourne, 457 F.2d 1213 (2d Cir.), cert. denied, 409 U.S. 997 (1972). The actual exercise of such right is not controlling. Copyright vests in the employer who has no intention of overseeing the detailed activity of the employee. Yardley v. Houghton Mifflin Co., 108 F.2d 28 (2d Cir. 1939), cert. denied, 309 U.S. 686 (1940). Therefore, retention of creative control by the employee does not defeat application of the "works for hire" doctrine. Murray v. Gelderman, 566 F.2d 1307 (5th Cir. 1978).

The works pledged as collateral for the loans in this matter were plainly "works for hire" under the above

principles. The Committee provided the artist's materials and determined when and where the serigraphs and lithographs would be produced. The Committee had the right to direct and supervise the work of both the artist and the printers. Obviously, the artist had the right to refuse to perform but if he did so the artwork would have been produced at his own expense (or the expense of some other party) and not the Committee's. The situation is directly analogous to the classic copyright case of Lawrence v. Dana, 15 F. Cas. 26 (C.C.D.Mass. 1869) (No. 8,136). In that case the complainant donated his services to a law professor's widow to produce annotations to two new editions of the professor's Elements of International Law. Subsequently, the widow conveyed back to the complainant the copyright of the donated annotations. Then a new edition was published with annotations by Richard Henry Dana, Jr., that allegedly pirated the complainant's notes in the earlier editions. The respondents attempted to void the contract (arguing that the copyright was lost through lack of notice) on the basis that as the complainant was already owner of the copyright, the widow had nothing to convey. The court rejected this, stating:

> Although the services were gratuitious, the contributions of the complainant became the property of the proprietor of the book, as the work was done, just as effectually as they would if the complainant had been paid daily an agreed price for his labor. ...[T]he court is of the opinion that none of the authorities cited by the respondents to show that a written assignment from the complainant to Mrs. Wheaton was necessary

> have any proper application to the question under consideration; because the complainant never acquired any right to demand a copyright in his contributions to those two editions, but the contibutions, as they were made and composed or put in form, became vested in the proprietor. ...

15 F. Cas., at 51.

In order to remove any doubt as to ownership of the copyrights, the Committee is registering its copyrights in the pledged works with the Copyright Office. Copies of the certificates of registration will be provided to the Commission when issued. The Committee notes that such registration certificates will be prima facie evidence of the ownership and validity of the copyright. 17 U.S.C. §209; Novelty Textile Mills v. Joan Fabrics Corp., 558 F.2d 1090, 1092 n.1 (2d Cir. 1977); 1 M. Nimmer, Copyright, §141.1 (1978).

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CONCLUSION

The Commission has initiated an enforcement action on the basis of unsworn oral hearsay where there is no reason to believe a violation has occurred, let alone probable cause. If the Commission had confined itself to the election campaign law this matter would never have been initiated in the first place. The only election law issue is whether these loans were prohibited contributions by the banks. As it is clear they were not, whatever minor irregularities occurred with the preparation of a small portion of the artwork are simply irrelevant.

Respectfully submitted,

William C. Oldaker
Treasurer

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APPENDIX A

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	
	)	MUR 1393
KENNEDY FOR PRESIDENT COMMITTEE	)	

RESPONSE TO COMMISSION'S FIRST QUESTIONS

1. For each of the five loans listed above, relate the information given bank officials by the Committee's representatives, before the loan documents were signed, in describing the collateral pledged.

(a) Chemical Bank of New York Loans

The Chemical Bank loans listed in the Commission's questions were in fact a series of five loans for which artwork was used as collateral. The loans were as follows:

		Collateral
4/18/80	$210,000	Artwork (Loan I) & Matching Funds
5/5/80	$200,000	Artwork (Loan II) & Matching Funds
5/13/80	$165,000	Artwork (Loan III) & Matching Funds
5/20/80	$100,000	Artwork (Loan IV) & Matching Funds
5/23/80	$ 75,000	Artwork (Loan IV) & Matching Funds

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The roman numerals refer to the division of collateral as pledged by successive amendments to the Security Agreements. (Exhibit A.) Two Security Agreements were executed, one on April 18, 1980, for the initial $210,000 loan (Exhibit B), and one on May 2, 1980, that merged the April 18, 1980, loan collateral with the May 2, 1980, loan collateral. (Exhibit C.) The May 2, 1980, Security Agreement was then amended on May 9, 1980, by the addition of a supplemental schedule of collateral for the May 13, 1980, loan (Exhibit D) and on May 23, 1980, by the addition of a Supplemental Schedule for the May 20 and 23, 1980, loans (Exhibit E). The notes signed by the Committee for each loan are attached as Exhibits F through J. It should be noted that the division of the collateral was a bit arbitrary since the five loans were merged into a single body of collateral securing the entire $750,000 in loans made.

The Security Agreements only reflect the artwork portion of the transactions. The bank had much more valuable intangible collateral under the terms of the loan agreements signed on April 18, 1980; May 2, 1980; and May 9, 1980. (Exhibits K through M.) Under those agreements the loan was secured not just by the artwork but also by an insurance policy on the life of Senator Kennedy with Lloyd's of London and an assignment of future federal matching payments which totaled approximately $4.13 million for the campaign. It was, in fact,

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the federal matching payments that the bank was looking towards for payment of the loans and that is why the life insurance policy was required as part of the loan agreement.

The Committee's officers honestly believed all the artwork pledged at each stage had been printed. Chemical Bank retained an art appraiser, Paul Zerler, who visited the artists, interviewed each of them, and appraised the art pledged. (Exhibits N through R.) Mr. Zerler's letters are prima facie evidence that the artists had in fact at least completed the artistic work for all the art pledged at each stage. The failure to note that some works may not have been printed when pledged is likely due to the fact that it is the artistic creation element (that had been completed) which is the most crucial factor in the value of the artwork, not the physical printing of the final lithographs and serigraphs.

In sum, the Committee officers described the artwork as pledged in the various security agreements and supplemental schedules thereto. They had no reason to suspect a few pieces had not been printed. The artistic creation had been completed as reflected by Mr. Zerler's letters. Negotiations on both sides proceeded on the good faith assumption that all the work had been printed. The appraiser gave his appraisal to the bank and no questions were raised both because the crucial artistic aspect had been completed and because the banks in fact were principally looking toward the Committee's expected matching payments for satisfaction of the loans.

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(b) D.C. National Bank Loan.

The D.C. National Bank loan of $240,000 made on March 7, 1980, was secured by pledging 300 Jamie Wyeth litographs titled "To Sail Against the Wind" with an appraised value of $240,000. The Committee pledged additional collateral effective July 29, 1980, in the form of part of two series of serigraphs by C.J. Yao and Jay Rosenblum. See Exhibits S, T.

The Committee officers who negotiated the loans did not know at the time that the Yao and Rosenblum works had not been printed. They had been appraised by Mr. Zerler in connection with the earlier Chemical Bank loans and the Committee officers had no reason to suspect they had not been printed. The collateral was described to the banks as reflected in the Supplements to the Note and Security Agreement.

(c) Mark Twain National Bank Loans.

Two loans were obtained from the Mark Twain National Bank for $10,000 each on April 14, 1980, and May 23, 1980. See Exhibits U and V. The collateral was described to the bank as reflected in the Trust Receipts. The Committee officers believed all of these works had been printed and had no reason to suspect that any portion had not been printed. Negotiations were completed with the bank on that basis.

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2. For each of the art work series pledged for the five loans in question, please state when reproductions were made, how many were made, and the costs of reproduction.

No reproductions were pledged as collateral for any loans. The works pledged for the loans in question were original works of art produced (with the exception of the Anuskiewicz) in limited edition series.

The Committee did not keep a record of the date on which each work was printed because there was no requirement to do so. We do know that the Anuskiewicz work was in the Committee's possesion prior to the date on which it was pledged and we understand that Miss Rosskam so informed the Commission's auditors. Miss Rosskam's affidavit will be furnished at a later date. Through the FEC audit we discovered that as of Summer 1981 the following pledged works had not been printed:

Daphnis	"SSK II 80"
Krushenick	"Par Avion"
Yao	Unititled
Rosenblaum	"Solo"

(These works have since been printed.)

The number and costs of production of each series pledged is as follows:

ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(1) Chemical Bank Loan I (Security Agreement 4/18/80)				
Aach	"Split Infinity"	300	285	$3,000
Anuszkiewicz	Untitled	1	1	$3,000
Bolotowski	"Red White & Blue	150	135	$2,250
Daphnis	"SSK-80"	235	220	$1,992

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	ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(1)	Chemical Bank Loan I (continued)				
	Kruschenik	Untitled	300	285	$3,000
	May	"Tranquility	100	85	$3,000
	Nesbitt	"Iris"	200	185	$3,500
	Oppenheim	"Diamond Cutters Wedding"	200	185	$3,500
	Prentice	Untitled	300	285	$3,000
	Rosenblum	"Sail" (States 1,2, & 3)	300	255	$3,000
	Saff	"Trophy for John"	125	10	$2,935
(2)	Chemical Bank Loan II (Security Agreement 5/2/80)				
	Levine	"States of Consciousness"	300	285	$3,685
	Smith	Untitled	250	235	$4,000
	Sonfist	"Views of America"	300	285	$3,000
	Stanley	"Boston Baked Beans"	200	185	$3,500
	Hart	Untitled	300	285	$3,000
	Koursaros	"Karmi"	300	285	$3,000
(3)	Chemical Bank Loan III (Security Agreement 5/9/80)				
	Serra	Untitled	200	185	$8,500
	Morris	Untitled	300	285	$3,500
	Rauschenberg	Untitled-Photographs	200	185	$4,150
	Youngerman	"Swirl"	200	185	$3,750
(4)	Chemical Bank Loan IV (Security Agreement 5/23/80)				
	Mangold	"Rectangle With-in three Rectangles	200	190	$3,000
	Daphnis	"SSK II-80"	70	70	$ 508
	Krushnick	"Par Avion"	275	265	$3,000
(5)	D.C. National Bank Loan				
	Wyeth	"To Sail Against The Wind"	300	300	$3,500
	Yao	Untitled	200	170	$7,500
	Rosenblum	"Solo"	300	270	$4,000

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	ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(6)	Mark Twain National Bank Loan I (4/14/80)				
	Rauschenberg	"After Homage to Picasso"	45	40	Unavailable[1/]
(7)	Mark Twain National Bank Loan II (5/23/80)				
	Nesbitt	"Tulip"	200	20	$3,500
	Rosenblum	"Solo"	300	20	$4,000
	Yao	Untitled	200	20	$7,500
	Levine	"Tired Earth"	275	20	$3,860

3. For each of the art work series pledged for the five loans in question, on what dates did the Committee learn that the donated works had not been reproduced [sic]?

The current Committee Treasurer and the Chairman did not learn that some of the artwork had not been printed until Summer 1981 when the Committee's artwork records were reviewed in connection with the Commission's audit. We have no way of determining what the previous Treasurer knew since she is no longer connected with the Committee but have no reason to doubt she believed the pledged artwork had been printed.

4. Please state what information concerning the number of reproductions existing, the reproduction rights to each of the works pledged, and the costs associated with reproduction, was given to the banks listed above by the Committee before and after the loan documents were signed and state when the information was given.

No information concerning reproduction rights was given because the Committee pledged original works of art. The

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1/ Cost of this item will be provided when the Committee has located the applicable record.

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collateral was as described in the Security Agreement. The Committee warranted that it had a clear title to the collateral in the loan documents.

5. For each of the loans listed above, on what dates did Committee representatives inform officials of the banks involved that prints of the pledged works did not exist?

The Committee Treasurer did not learn that some of the works had not been printed until Summer 1981, after the loans had been repaid. It therefore was pointless to inform the banks of this fact.

I swear that the foregoing responses are true, complete and accurate to the best of my knowledge.

William C. Oldaker,
Treasurer

83040410253

CITY OF WASHINGTON)
) S.S.
DISTRICT OF COLUMBIA)

I, Mary Dougherty, a Notary Public in and for the District of Columbia, duly commissioned and authorized to administer oaths, hereby certify that this day there appeared before me William C. Oldaker, to me personally known, who swore the foregoing responses were true, complete and accurate to the best of his knowledge.

Mary Dougherty
Mary Dougherty
Notary Public

Date: April 1, 1982

My commission expires: November 30, 1986

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LOAN I

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Herb Aach	Color serigraph edition "Split Infinity"	285	$250	$ 71,250
2) Richard Anuszkiewicz	Acrylic on canvas four to five colors untitled	1	$9,000	9,000
3) Ilya Bolotowsky	Color lithograph "Red, White & Blue"	135	$450	60,750
4) Nassos Daphnis	Color serigraph "SSK-80)	220	$350	77,000
5) Nicholas Kruschenik	Color serigraph Untitled	285	$350	99,750
6) Seong Moy	Color serigraph "Tranquility"	85	$300	25,500
7) Lowell Nesbitt	Black & White serigraph "Grey Iris-80"	185	$400	74,000
8) Dennis Oppenheim	Blueprint serigraph "Diamond Cutter's Wedding"	185	$450	83,250
9) David Prentice	Color serigraph Untitled	285	$225	64,125
10) Jay Rosenblum	Color serigraph "State 1"	85	$350)	
11) Jay Rosenblum	Color serigraph "State 2"	85	$350)	89,250
12) Jay Rosenblum	Color serigraph "State 3"	85	$350)	
13) Donald Saff	Hand colored etching	110		

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LOAN II

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Les Levine	Color serigraph "States of Consciousness"	285	350	$ 99,750
2) Leon Polk Smith	Color serigraph Untitled	235	500	117,500
3) Alan Sonfist	Color lithograph "Views of America"	285	350	99,750
4) Bob Stanley	Color serigraphs "Boston Baked Beans"	85	300	25,500
5) Bob Stanley	Deluxe color serigraph "Boston Baked Beans"	100	400	40,000
6) Gordon Hart	Color serigraph Untitled	285	300	85,500
7) Harry Koursaros	Color Serigraph "Karmi"	285	375	106,875
				$574,875

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LOAN III

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Richard Serra	Serigraph untitled 40 x 53	185	$750	$138,750
2) Robert Morris	Lithograph untitled 22 x 30	285	$500	142,500
3) Robert Rauschenberg	Photograph untitled	185	$800	148,000
4) Jack Youngerman	Serigraph "Swirl" 30 x 32	185	$500	92,500
				$521,750

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LOAN IV

ARTIST.	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE,	TOTAL AMOUNT PLEDGED
1) Robert Mangold	Color serigraph "Rectangle Within Three Rectangles"	190	$550	$104,500
2) Nassos Daphnis	Color serigraph "SSK II 80"	70	450	31,500
3) Nicholas Krushenick	Color serigraph "Par Avion"	265	350	92,750
				$228,750

SECURITY AGREEMENT dated April 18, 1980, between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

(1) 185 serially numbered (16 through 200) Split Infinity color serigraphs each signed by Herb Aach;

(2) one acrylic on canvas four to five colors untitled signed by Richard Anuszkiewicz;

(3) 135 serially numbered (16 through 150) Red, White and Blue color lithographs each signed by Ilya Bolotowsky;

(4) 285 serially numbered (16 through 300) SSK-80 color serigraphs each signed by Nassos Daphnis;

(5) 185 serially numbered (16 through 200) untitled color serigraphs each signed by Nicholas Kruschenik;

(6) 85 serially numbered (16 through 100) Tranquility color serigraphs each signed by Seong Moy;

(7) 185 serially numbered (16 through 200) Grey Iris-80 black and white serigraphs each signed by Lowell Nesbitt;

(8) 135 serially numbered (16 through 200) Diamond Cutter's Wedding blueprint serigraphs each signed by Dennis Oppenheim;

(9) 135 serially numbered (16 through 200) untitled color serigraphs each signed by David Prentice;

(10) 85 serially numbered (16 through 100) State 1 color serigraphs each signed by Jay Rosenblum;

(11) 85 serially numbered (16 through 100) State 2 color serigraphs each signed by Jay Rosenblum;

(12) 85 serially numbered (16 through 100) State 3 color serigraphs each signed by Jay Rosenblum; and

EXHIBIT B

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(13) 110 serially numbered (16 through 125) Trophy for John hand colored etchings each signed by Donald Saff.

(2) Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The custodian shall be Joseph E. Hakim. The Collateral will be stored at the offices of the custodian in Suite 3021, 200 Park Avenue, New York, New York, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue

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of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with this Agreement. (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not

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be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A Read

1250 22nd Street, N.W.
Washington, DC 20037

CHEMICAL BANK,

by

140 Broadway
New York, NY 10015

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AMENDMENT AND RESTATEMENT dated as of May 2, 1980, of the SECURITY AGREEMENT dated April 18, 1980, (such amended and restated Security Agreement, called the "Security Agreement"), between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

WHEREAS the Bank and the Borrower are parties to Letter Agreements dated April 18, 1980, and May 2, 1980, (the "Letter Agreements") pursuant to which the Bank shall make demand loans to the Borrower, subject to the terms and conditions of said Letter Agreements, in an aggregate principal amount not to exceed $750,000, and the Bank and the Borrower are also parties to certain other Letter Agreements dated November 15, 1979, February 11, 1980, and March 14, 1980, pursuant to which the Bank has made loans to the Borrower;

WHEREAS the Bank was unwilling to make such loans unless the Borrower executed and delivered this Security Agreement;

WHEREAS the obligation of the Bank to make further loans under the Letter Agreement is subject to, among other things, the condition precedent that the Borrower shall grant to the Bank, a security interest in additional collateral securing all indebtedness of the Borrower to the Bank;

WHEREAS the Borrower has requested that the Bank amend and restate the Security Agreement dated April 18, 1980, in order to correct certain errors in the list of Collateral therein, and to provide for the addition of new Collateral;

NOW, THEREFORE, the Bank and Borrower hereby agree as follows:

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the property listed on Schedule A hereto and property listed on Supplemental Schedules which shall, from time to time be added to this Amended and Restated Security Agreement in consideration of the Bank making additional loans to the Borrower.

EXHIBIT C

2. Security Interest. As security for the payment of all loans now or in the future made under the Letter Agreements and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collater will be used primarily as a premium for contributions to Borrower. The custodian shall be John Nichols. The Collateral will be stored at the offices of the custodian at Twichell-Nichols Printmakers, 75 Grand Street, New York, NY 10013, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling or canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings or held by virtue of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral

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suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Assignments. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collatera. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees disbursements incurred or expended by the Bank, in connection with this Agreement, (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

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7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereby the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____

Carolyn A. Reed,
Treasurer
1250 22nd Street, N.W.
Washington, DC 20037

CHEMICAL BANK,

by _____

Robert P. Conway,
Vice President
140 Broadway
New York, NY 10015

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Schedule A

(1) 285 serially numbered (16 through 300) "Split Infinity" color serigraphs each signed by Herb Aach;

(2) one acrylic on canvas four to five colors untitled signed by Richard Anuszkiewicz;

(3) 135 serially numbered (16 through 15) "Red, White, and Blue" color lithographs each signed by Ilya Bolotowsky;

(4) 220 serially numbered (16 through 235) "SSK-80" color serigraphs each signed by Nassos Daphnis;

(5) 285 serially numbered (16 through 300) untitled color serigraphs each signed by Nicholas Kruschenik;

(6) 85 serially numbered (16 through 100) "Tranquility" color serigraphs each signed by Seong Moy;

(7) 185 serially numbered (16 through 200) "Grey Iris-80" black and white serigraphs each signed by Lowell Nesbitt;

(8) 185 serially numbered (16 through 200) "Diamond Cutter's Wedding" blueprint serigraphs each signed by Dennis Oppenheim;

(9) 285 serially numbered (16 through 300) untitled color serigraphs each signed by David Prentice;

(10) 85 serially numbered (16 through 100) "State 1" color serigraphs each signed by Jay Rosenblum;

(11) 85 serially numbered (16 through 100) "State 2" color serigraphs each signed by Jay Rosenblum;

(12) 85 serially numbered (16 through 100) "State 3" color serigraphs each signed by Jay Rosenblum; and

(13) 110 serially numbered (16 through 125) "Trophy for John" hand colored etchings each signed by Donald Saff.

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Supplemental Schedule added as of
May 2, 1980, to the Security Agreement
dated April 18, 1980, as amended and restated as
of May 2, 1980, between CHEMICAL BANK
and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 285 serially numbered (16 through 300) "States of Consciousness" color serigraphs each signed by Les Levine;

(2) 235 serially numbered (16 through 250) untitled color serigraphs each signed by Leon Polk Smith;

(3) 285 serially numbered (16 through 300) "Views of America" color lithographs each signed by Alan Sonfist;

(4) 85 serially numbered (16 through 100) "Boston Baked Beans" color serigraphs each signed by Bob Stanley;

(5) 100 serially numbered (1 through 100) "Boston Baked Beans" delux color serigraphs each signed by Bob Stanley;

(6) 285 serially numbered (16 through 300) "Karmi" color serigraphs each signed by Harry Koursaros; and

(7) 285 serially numbered (16 through 300) untitled color serigraphs each signed by Gordon Hart.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK,

by _____
Robert Conway, Vice President

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Supplemental Schedule added as of
May 9, 1980, to the Security Agreement
dated April 18, 1980, as amended and restated as
of May 9, 1980, between CHEMICAL BANK
and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 185 serially numbered (16 through 200) untitled serigraphs each signed by Richard Serra;

(2) 285 serially numbered (16 through 300) untitled lithographs each signed by Robert Morris;

(3) 185 serially numbered (16 through 200) untitled photographs each signed by Robert Rauschenberg; and

(4) 185 serially numbered (16 through 200) "Swirl" serigraphs each signed by Jack Youngerman.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK,

by _____
Robert Conway, Vice President

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EXHIBIT D

Supplemental Schedule added as of
May 23, 1980, to the Security Agreement
dated April 18, 1980, as amended and restated
as of May 23, 1980, between CHEMICAL BANK
and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 190 serially numbered (11 through 200) "Rectangle Within Three Rectangles" serigraphs each signed by Robert Mangold;

(2) 70 serially numbered (6 through 75) "SSK II 80" serigraphs each signed by Nassos Daphnis; and

(3) 265 serially numbered (11 through 275) "Par Avion" serigraphs each signed by Nicholas Krushenick.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK

by _____
Robert Conway, Vice President

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EXHIBIT E

$ 210,000.00

April 18, 1980
New York, New York

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, NY 10015, in lawful money of the United States Two Hundred and Ten Thousand Dollars ($210,000) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A Pevy
Treasurer

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EXHIBIT F

EXHIBIT A

$200,000.00

May 2, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States Two Hundred Thousand Dollars ($200,000.00) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest to change as of the opening of business on the day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A. Pugh
Treasurer

3304102330

EXHIBIT G

Pursuant to the Letter Agreement dated November 15, 1979, between you and the undersigned, you have obtained policies insuring without any condition the life of Senator Edward M. Kennedy and insuring in the event of any permanent disability which prevents Senator Edward M. Kennedy from effectively pursuing the nomination for presidential candidate, each in the amount of $1,150,000. The undersigned has been designated as beneficiary thereof up to such amount as is required to pay in full the aggregate principal amount of the Prior Loans of $199,074 and any accrued interest thereon. Such policies contain endorsements to the effect that they may not be canceled or terminated or the beneficiary changed without the prior written consent of the undersigned. You hereby agree that the undersigned's interest in such policies insuring Senator Edward M. Kennedy shall be increased to the extent of any accrued interest on and unpaid principal amount of the Note and all other obligations of the Committee to the undersigned under this Letter Agreement; it being understood that the undersigned will consent to the cancelation of the policies upon payment in full of the principal of and interest on the Prior Loans and the Note, and the undersigned will further agree to periodic reductions in the amount of coverage as the principal of such loans is reduced.

In order to induce the undersigned to make this loan, you hereby represent and warrant to the undersigned that (a) you are a political committee duly established and in compliance with 2 U.S.C. Sec. 433 and that you will comply with 2 U.S.C. Sec. 434 and that all contributions solicited by you shall be in compliance with 2 U.S.C. Sec. 441a; (b) no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary to the valid execution, delivery or performance by you of this Letter Agreement, the note or the Security Agreement; and (c) you have incurred no unusual forward or long-term commitments or claims which are substantial in amount in relation to your projected receipts from contributions and from the Secretary of Treasury under 26 U.S.C. Sec. 9037.

This Letter Agreement shall be governed by and construed under the laws of the State of New York and is not subject to amendment, waiver or modification unless the same shall be in writing.

You shall pay all costs and expenses in connection with this Letter Agreement and the loan.

9304102

CHEMICAL BANK
140 Broadway
New York, N. Y. 10015

April 18, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of William C. Oldaker

Dear Sirs:

You have requested the undersigned to lend to your Committee $210,000.00 to be evidenced by your Committee's promissory note payable to the order of the undersigned and to be substantially in the form attached hereto as Exhibit A (hereinafter called "the Note"). It is understood that such loan shall be payable on demand and shall bear interest at 1/2 of 1% per annum above the rate from time to time in effect of the undersigned for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest rate to change as of the opening of business on any day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year and shall be paid on the first of each month commencing May 1, 1980, until payment in full of the principal of such loan. The loan is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest on the loan, and then to the unpaid principal amount of the loan.

In consideration of the undersigned's agreement to make such loan, you hereby agree, by your execution hereof, to execute a Security Agreement of even date securing this loan and all prior loans (hereinafter called the "Prior Loans") made pursuant to Letter Agreements dated November 15, 1979, February 11, and March 14, 1980, between the undersigned and your Committee. In connection therewith, you agree to deposit all moneys received for contributions relating to the Collateral (as that term is defined in such Security Agreement) in an account maintained with the undersigned designated for that purpose until payment in full of the principal and interest on such loan. You also hereby authorize the undersigned to charge such account for payments of principal and interest on such loans.

3304102347

EXHIBIT K

$75,000

May 23, 1980
New York, New York

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, New York 10015, in lawful money of the United States SEVENTY FIVE THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Treasurer

EXHIBIT J

7

$100,000

May 20, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States ONE HUNDRED THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE

by _____
Treasurer

8304102 3

EXHIBIT I

dated 5-9-80

90196

4

$165,000

May 13, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE

by _____
Treasurer

8304102237

EXHIBIT H

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

by _____

Accepted and agreed to this
18th day of April 1980.

Carolyn A Reed

8304041023E

CHEMICAL BANK
140 Broadway
New York, N. Y. 10015

May 2, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 22037

Attention of William C. Oldaker, Esq.

Dear Sirs:

You have requested the undersigned make loans (collectively the "Loans" and each a "Loan"), to your Committee from the date hereof in an aggregate principal amount equal to the lesser of (i) $540,000 and (ii) an amount equal to (x) 33-1/3% of the appraised value of the Collateral (as that term is defined in the Security Agreement dated April 18, 1980 (the "Security Agreement")), between your Committee and the undersigned as determined in the reasonable judgment of the undersigned minus (y) the original principal amount of the loan (the "April Loan") made by the undersigned to your Committee pursuant to the Letter Agreement dated April 18, 1980 (the "April Agreement"), between the undersigned and your Committee. Each loan shall be evidenced by a promissory note duly executed on behalf of your Committee payable to the order of the undersigned and to be substantially in the form attached hereto as Exhibit A (collectively, the "Notes" and each a "Note"). It is understood that such loans shall be payable on demand and shall bear interest at 1/2 of 1% per annum above the rate from time to time in effect of the undersigned for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest rate to change as of the opening of business on any day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year and shall be paid on the first of each month commencing June 1, 1980, until payment in full of the principal of such loan. The loan is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest on the loan, and then to the unpaid principal amount of the loan.

8304102380

EXHIBIT L

In consideration of the undersigned's agreement to make the Loans, you hereby agree to deposit all moneys received for contributions relating to the Collateral in an account maintained with the undersigned pursuant to the April Agreement, until payment in full of principal of and interest on the Loans, the April Loan and all prior loans (the "Prior Loans"), made by the undersigned to your Committee pursuant to Letter Agreements dated November 15, 1979, February 11, 1980, and March 14, 1980. You also hereby authorize the undersigned to charge such account for payments of principal of and interest on such loans. All payments from contributions or other proceeds relating to the Collateral described in the Security Agreement, shall be applied first to the pro rata payment of principal of and interest on the Loans and the April Loan, and second to the payment or principal of and interest on the Prior Loans. All matching fund payments previously assigned to the undersigned pursuant to Letter Agreements dated November 15, 1979, and March 14, 1980, and all payments from contributions or other proceeds relating to collateral described in a Security Agreement dated February 11, 1980, shall be applied first to the payment of principal of and interest on loans made on the Prior Loans and second to the pro rata payment of principal of and interest on the Loans and the April Loan.

In further consideration of the undersigned's agreement to make the Loans, you hereby agree by your execution hereof, that as security for the repayment of the Loans and the April Loan that you hereby assign, transfer and set over to the undersigned such payments as you are entitled pursuant to 26 U.S.C. Sec. 9033 to receive from the Secretary of the Treasury under 26 U.S.C. Sec. 9037 and to at the same time of each receipt thereof, an amount equal to (i) in the case of such payments received on or after June 15, 1980, an amount equal to 33-1/3% (or, if demand has been made, 100%) and (ii) in the case of such payments received on or after August 15, 1980, an amount equal to 80% (or if demand has been made, 100%) of such payment from the Secretary of the Treasury until payment in full of the principal of and interest on the Loans and the April Loans in connection therewith, you hereby represent and warrant to us that you have instructed the Secretary of the Treasury to make such payments directly to your account at the National Savings and Trust Company, Washington, D.C. and have irrevocably instructed that Company, upon receipt of such payments to your account, to transfer out of such

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amount the aforesaid percentage thereof to the undersigned by wire transfer of Federal Reserve funds, such transfer to be made to Chemical Bank, 140 Broadway, New York, N.Y. 10005, Attention of R.P. Conway, Vice President.

Pursuant to the Letter Agreement dated November 15, 1979, between you and the undersigned, you have obtained policies insuring without any condition the life of Senator Edward M. Kennedy and insuring in the event of any permanent disability which prevents Senator Edward M. Kennedy from effectively pursuing the nomination for presidential candidate, each in the amount of $1,150,000. The undersigned has been designated as beneficiary thereof up to such amount as is required to pay in full the aggregate principal amount of the Prior Loans of $ and any accrued interest thereon. Such policies contain endorsements to the effect that they may not be canceled or terminated or the beneficiary changed without the prior written consent of the undersigned. You hereby agree that the undersigned's interest in such policies insuring Senator Edward M. Kennedy shall be increased to the extent of any accrued interest on and unpaid principal amount of the Note and all other obligations of the Committee to the undersigned under this Letter Agreement; it being understood that the undersigned will consent to the cancelation of the policies upon payment in full of the principal of and interest on the Prior Loans and the Note, and the undersigned will further agree to periodic reductions in the amount of coverage as the principal of such loans is reduced.

In order to induce the undersigned to make this loan, you hereby represent and warrant to the undersigned that (a) you are a political committee duly established and in compliance with 2 U.S.C. Sec. 433 and that you will comply with 2 U.S.C. Sec. 434 and that all contributions solicited by you shall be in compliance with 2 U.S.C. Sec. 441a; (b) no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary to the valid execution, delivery or performance by you of this Letter Agreement, the Note or the Security Agreement; and (c) you have incurred no unusual forward or long-term commitments or claims which are substantial in amount in relation to your projected receipts from contributions and from the Secretary of Treasury under 26 U.S.C. Sec. 9037.

This Letter Agreement shall be governed by and construed under the laws of the State of New York and is not

8304102 21

subject to amendment, waiver or modification unless the same shall be in writing.

You shall pay all costs and expenses in connection with this Letter Agreement and the loan.

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

by

Accepted and agreed to this

day of May, 1980.

8304041022

EXHIBIT A

$200,000.00

May 2, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States Two Hundred Thousand Dollars ($200,000.00) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest to change as of the opening of business on the day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A. Pugh
Treasurer

8304102 3

Chemical Bank
140 Broadway
New York, New York 10016

May 9, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of William C. Oldaker, Esquire

Dear Sirs:

Reference is made to the Letter Agreements dated April 18, 1980, and May 2, 1980, (collectively, the "Letter Agreements") both between your Committee and the undersigned. So that the Letter Agreements more accurately reflect the agreement between your Committee and the undersigned, your Committee and the undersigned hereby agree to amend both of the Letter Agreements by:

(i) the deletion of the words "on demand" in the third sentence of each of the Letter Agreements; and

(ii) the substitution therefore of the phrase "on December 31, 1980, or such earlier date on which the undersigned shall demand payment,".

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

By _____

Accepted and agreed to this
day of May 1980,

KENNEDY FOR PRESIDENT COMMITTEE,

by _____

EXHIBIT M

8304102 9

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Joseph Kosuth
James Rosenquist

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT N

8304041027

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $240,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Joseph Kosuth	Lithograph edition of 300 Untitled	300	90,000
James Rosenquist	Lithograph edition of 200 Untitled	750	150,000
			$240,000

Respectfully submitted,

PAUL ZERLER

3304102

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-956-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Les Levine	Bob Stanley
Gary Rich	Gordon Hart
Leon Polk Smith	Harry Koursaros
Alan Sonfist	

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT O

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judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $667,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Les Levine	Serigraph edition of 300 "State of Consciousness" 25 x 38	$ 350	$105,000
Gary Rich	Serigraph edition of 300 "Naive Artist"	250	75,000
Leon Polk Smith	Color serigraph edition of 250 Untitled 30 x 41	500	125,000
Alan Sonfist	Hand colored lithograph edition of 300 Untitled 30 x 40	350	105,000
Bob Stanley	Serigraph 1 Standard edition of 100	300	30,000
	1 Deluxe edition of 100 "Boston Beans" 32 x 40	400	40,000
Gordon Hart	Color serigraph edition of 250 Untitled 30 x 42	300	75,000
Harry Koursaros	Serigraph edition of 300 "Karmi" 24 x 38 1/8	375	112,500
			$667,500

Respectfully submitted,

PAUL ZERLER

8304110298

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Robert Morris
Robert Rauschenberg
Richard Serra
Jack Youngerman

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. M services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT P

8304110295

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $520,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Robert Morris	Lithograph edition of 300 Untitled 22 x 30	$ 500	$150,000
Robert Rauschenberg	Two editions of photographs 100 each Untitled	600	120,000
Richard Serra	Serigraph edition of 200 untitled 40 x 53	750	150,000
Jack Youngerman	Serigraph edition of 200 Swirl 30 x 32	500	100,000
			$520,000

Respectfully submitted,

PAUL ZERLER

8304103

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Herb Aach	Lowell Nesbitt
Richard Anuszkiewicz	Dennis Oppenheim
Ilya Bolotowsky	David Prentice
Nassos Daphnis	Jay Rosenblum
Nicholas Kruschnik	Donald Saff
Seong Moy	

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT Q

3304110301

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $714,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Herb Aach	Color serigraph edition of ~~200~~ 300 "Split Infinity" 30 x 42	$ 250	$ 50,000
Richard Anuszkiewicz	Acrylic on canvas 4 to 5 colors untitled 48 x 48	9,000	9,000
Ilya Bolotowsky	Color lithograph edition of 150 "Red White Blue" 12 x 24	450	67,500
Nassos Daphnis	Color serigraph edition of ~~300~~ 135 "SSR-80" 30 x 42	350	105,000
Nicholas Kruschenik	Color serigraph edition of ~~200~~ 300 untitled 38 x 50	350	70,000
Seong Moy	Color serigraph edition of 100 "Tranquility" 22 x 30	300	30,000
Lowell Nesbitt	Black and white serigraph edition of 200 "Grey Iris-80" 30 x 41	400	80,000
Dennis Oppenheim	Blueprint serigraph edition 200 "Diamond Cutter's Wedding" 38 x 50	450	90,000

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David Prentice	Color serigraph edition of ~~200~~ 300 untitled	225	45,000	64,125
Jay Rosenblum	Color serigraph "State 1,2,3" three editions of ~~100~~ 85 20 x 41	350	105,000	~~99,750~~ 89,250
Donald Saff	Hand colored etching edition of 125 "Trophy for John" 17 x 14	500	62,500	35000
		GRAND TOTAL:	$714,000	708,875

Respectfully submitted,

PAUL ZERLER

8304410303

PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

May 23, 1980

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Jay Rosenblum	Nicholas Kruschenick
Nassos Daphnis	Ching Jang Yao
David Prentice	Charles Earley
Lowell Nesbitt	Peter Lobello
Ilya Bolowtowsky	Les Levine
	Robert Rauschenberg

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT R

8304103

We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $1,081,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Jay Rosenblum	Lithograph 3 editions of 100 19 x 38 "Solo"	$ 350	$105,000
Nassos Daphnis	Lithograph edition of 75 26 x 42 "SSR II 80"	450	33,750
David Prentice	Lithograph edition of 275 24 x 34 1/2 Untitled	225	61,875
Lowell Nesbitt	Lithograph edition of 200 24 x 35 "Tulip"	400	80,000
Ilya Bolowtowsky	Lithograph edition of 200 15 x 25 1/2 "Scarlet Vertical Elipse"	450	90,000
Nicholas Kruschenick	Serigraph edition of 275 30 x 42 "Par Avion"	350	86,250
Ching Jang Yao	Lithograph edition of 200 24 x 36 Untitled	350	70,000
Charles Earley	Silkscreen edition of 200 30 x 40 "Cyclone"	275	50,000

8304103

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Peter Lobello	Lithograph edition of 285 43 x 29 "7 Tiered Spill"	275	$ 78,375
Robert Mangold	4 editions of 50 22 1/2 x 30 "Rectangle Within Three Rectangles"	550	110,000
Les Levine	Serigraph edition of 275 "Tired Earth"	350	86,250
Robert Rauschenberg	Serigraph edition of 100(signed) edition of 400(unsigned) 27 1/2 x 40 Untitled	1,500 200	150,000 80,000
			$1,081,500

Respectfully submitted,

PAUL ZERLER

8304410306

of the terms of this Note.

DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON

COLLATERAL NOTE-TIME

LOAN NO. 27815

Washington, D.C. March 7th, 19 80

Loan Amount ---Two Hundred Forty-Thousand and 00/00---------- Dollars ($ 240,000.00------

--------On Demand*---------- after the above date, for value received, the undersigned jointly and severally promise to pay to the order of DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, at its banking house in Washington, D.C., the loan amount set forth above, with interest on the unpaid balance thereof accruing at the rate of --See Reverse of Note**---- percent ---------- per annum from the date hereof until the loan amount is paid in full, in immediately available funds, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount. Interest hereon shall be computed on a 360-day or 365-day basis, in Bank's sole discretion.

Interest hereon shall be payable At Maturity.

And to secure the payment of this note – and of any other present or future liability of any nature whatsoever of any of the undersigned to the holder, whether absolute or contingent, direct or indirect, due or not due, secured or unsecured, joint, several or joint and several (hereafter "any other liability") – the undersigned hereby transfer, assign, pledge and deliver to the holder the following described property and any additions thereto or substitutions or exchanges therefor and any dividends, distributions, coupons, interest, rights and accruals thereon, together with the proceeds thereof, to wit:

300 Serially Numbered Wyeth Kennedy '80 lithograph art prints titled "To Sail Against the Wind", as more particularly described in a Security Agreement dated March 7, 1980.

The undersigned jointly and severally (1) hereby agree to any modifications of any of the terms or conditions hereof and/or to any renewal or extension of time of payment or performance of any of the terms or conditions of this note; that it shall not be necessary for the holder to resort to legal remedies against any of the undersigned before proceeding against any other of the undersigned; and that no release of one or more of the undersigned whether by operation of law or by any act of the holder shall release any other of the undersigned; (2) do hereby waive notice of any election, acceptance, demand, protest, notice of protest and notice of default, presentment for payment, diligence in collection, and waive, to the extent permitted by law, all benefit of valuation, appraisement, and all exemptions under the laws of the District of Columbia and/or any other State or territory of the United States, and (3) agree, if this note is placed in the hands of an attorney for collection, to pay, in addition to all other sums of money due, all cost of collection and reasonable attorneys' fees.

All rights and remedies of the holder hereunder are cumulative and not alternative. Indulgence by the holder with respect to any of the terms and conditions herein contained or the failure of the holder to exercise any of its rights hereunder shall not constitute a waive thereof, and the undersigned shall remain liable for the strict performance of all of their undertakings until this note shall be fully paid in accordance with its terms.

"Undersigned" as used herein shall include all makers, endorsers, sureties, guarantors or other persons executing this note whether on the face or on the reverse hereof.

This instrument shall be interpreted in accordance with the laws of the District of Columbia.

*on demand, or if demand is not made, $30,000 on or before April 18, 1980, with the balance due in full on or before May 9, 1980.

Kennedy For President Committee — BY: [signature] (Seal)
(Name of Borrower – typed) (Signature and Title if Borrower is not Individual)

(Name of Borrower – typed) Stephen Smith (Seal)
(Signature and Title if Borrower is not Individual)

1250 22nd Street, N.W. (Seal)
(Street) (Signature and Title if Borrower is not Individual)

[illegible] PAID (Seal)
(City & State) (Zip code) (Signature and Title if Borrower is not Individual)

[illegible] DEC 8 1980 (Seal)
(Account Number) (Signature and Title if Borrower is not Individual)

D. C. [illegible]
[illegible]

(Commercial Only)

BANK USE ONLY – Not part of the terms of this note.

Principal	$	
Interest	$	
Total Due	$	
Date Due		[illegible]
O.D.		N
O.A.	$	N
P.P.		Dft
D.L.S.		
V.I.	$	

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The undersigned as endorser(s) jointly and severally hereby guarantee payment, waive presentment, demand, protest and notice of dishonor of the within note and waive the benefits of his and their homestead exemptions as to the obligations hereof. The undersigned also acknowledges that they have read and agreed to be bound by the terms and conditions on the face of this note.

_____(Seal)

_____(Seal)

_____(Seal)

_____(Seal)

(continued from the face of the Note of Kennedy for President Committee to the order of District of Columbia National Bank, Washington)

**interest accruing on the unpaid balance thereof at a rate equal to One percent (1%) per annum in excess of the published Prime rate of Citibank, New York, New York. Changes in the interest rate applicable to the unpaid balance of this Note shall become effective on the same day as the said Citibank announces a change in said Prime rate. Said interest shall accrue at said rate from the date hereof until the loan amount is paid in full, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount.

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KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Promissory Note dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, in the original principal amount of $240,000.00. The following art work will be held as additional security on the mentioned loan:

1) C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2) Jay Rosenblum: #1-100 "Solo" 25X11 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

8320411031C

SECURITY AGREEMENT dated March 7, 1980, between DISTRICT OF COLUMBIA NATIONAL BANK, a District of Columbia banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

300 serially numbered (1 through 300) Jamie Wyeth Kennedy '80 Lithograph art prints each signed by Jamie Wyeth.

2. Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The Collateral will be stored at the offices of Dr. Ronald Parker at Circle Fine Art, 345 Park Avenue South, 2nd Floor, New York, NY 10010, and released, in whole or in part by the custodian, Joseph E. Hakim, Suite 3021, 200 Park Avenue, New York, New York, for transfer to a contributor only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this Agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancellation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

EXHIBIT T

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5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of Circle Fine Art, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (b) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower shall fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with the Agreement (e) Borrower

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hereby authorizes the bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

By _____

Stephen E. Smith, Chairman
1250 22nd Street, N.W.
Washington, D.C. 20037

DISTRICT OF COLUMBIA NATIONAL BANK

By _____

1801 K Street, N.W.
Washington, D.C.

8304103-1

Effective Date: July 29, 19

KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00.

Said Security Agreement will be modified as follows:

Paragraph 1, Definitions; section (d): The following art work will be held as additional security on the mentioned loan:

1. C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2. Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Paragraph #3, Use of Collateral:

The additional collateral will be stored at:

88 Grand Street
New York, New York

Attn: Mr. John Nichols
Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: [signature]

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TRUST RECEIPT

FOR FEC

Mark Twain National Bank
Trust Receipt for Securities

April 14, 1980
Date

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities held by said bank as custodian or pledgee, to wit:

40 Rauschenberg Lithographs

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof or the securities received in exchange therefor, are to be safely kept in trust for said bank and returned to it at its office during banking hours on or before the ~~XXXX

NOTE (Variable Rate)

$ 10,000.00 Ladue, Missouri, April 14, 19 80

On demand, and if no demand is made, then on the 1 day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of Ten Thousand and No/100---------- ($10,000.00) Dollars, with interest thereon from date payable monthly beginning June 1, 1980 at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most credit-worthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less than -- per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) -- per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Kennedy for President Committee

Due October 1, 1980

BY: [signature]
Steve Smith, Chairman

BY: [signature]
Carolyn R. Reed, Treasurer

CL-01-A (4/76)

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TRUST RECEIPT

MARK TWAIN BANKS

Mark Twain National Bank
Trust Receipt for Securities

May 23, 1980

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities held by said bank as custodian or pledgee, to wit:

✓#181-200 Nesbitt Lithographs titled Tulip, 24 x 35
#81- 100 Rosenblum Lithographs titled Solo, 25 x 44
#181-200 C.J. Yao Lithographs untitled 29 x 41
#181-200 Levine Lithographs titled Tired Earth, 25 x 38

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof of the securities received in exchange therefore, are to be safely kept in trust for said bank [illegible] and returned to said Bank on demand.
Any monies collected by the undersigned as such agent upon or for said securities shall be immediately transmitted to said bank.

All responsibility for loss of said securities, by theft or otherwise, is assumed by the undersigned.

Kennedy for President Committee

By: _____

Steve Smith
Chairman

Carolyn R. Reed
Treasurer

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EXHIBIT V

NOTE (Variable Rate)

MARK TWAIN BANKS

$ 10,000.00 Ladue, Missouri, May 23, 19 80

On demand, and if no demand is made, then on the 1st day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of Ten Thousand and NO/100---------- ($10,000.00) Dollars, with interest thereon from date payable at maturity ~~xxxxxxxx~~ _____ at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most creditworthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less than ____ per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) ____ per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Due October 1, 1980 pd 11-7-80

1250 22nd St., N.W.
Washington, D.C. 20037 Just close

Kennedy for President Committee

By: _____
Steve Smith, Chairman

By: _____
Carolyn R. Read
MARK TWAIN NATIONAL BANK

01.A (4/76)

DISCLOSED

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APPENDIX B

AFFIDAVIT

I, Joanne Rosskam, being duly sworn, hereby state as follows:

(1) That during the summer and fall of 1981 I was employed, on a part-time basis, by the kennedy for President Committee to aid in general bookkeeping matters.

(2) that during that period of time, I was asked by the Committee's Counsel and Treasurer, William C. Oldaker, to extract the various information from the Committee's loan papers, which were currently in the hands of the Federal Election Commission auditors.

(3) While I was extracting the materials from Mr. Oldaker, Ms. Paschen asked me several questions regarding the documentation which I was examining.

(4) I indicated to Ms. Paschen that I was not employed by the Kennedy for President Committee during the campaign.

(5) I, at no time, indicated to Ms. Paschen that the original oil painting done by Richard Nauskiewicz, had never existed, or was not in the possession of the Kennedy for President Committee.

(6) I, in fact, indicated to Ms. Paschen that the Richard Anuskiewicz original painting had been in the possession of the Kennedy for President Committee, and subsequently had been sold.

(7) I never stated to Ms. Paschen, or any other person in the audit division that works of art had not been printed.

(8) I indicated to Ms. Paschen that several works of art had not been finally printed during the campaign, but were subsequently printed or were in the process of being printed.

I swear that the above statements are true, complete and accurate, to the best of my recollection.

Joanne Rosskam

City of New York)
) ss
State of New York)

Subscribed and sworn to me on this ____ day of April, 1981.

Notary Public

My Commission Expires: _____

APPROVED ORALLY, EXECUTED AFFIDAVIT WILL BE PROVIDED AS SOON AS POSSIBLE.

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GCC # 7466

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF	)	
	)	MUR 1393
KENNEDY FOR PRESIDENT COMMITTEE	)	

RESPONSE TO COMMISSION'S FIRST QUESTIONS

1. For each of the five loans listed above, relate the information given bank officials by the Committee's representatives, before the loan documents were signed, in describing the collateral pledged.

(a) Chemical Bank of New York Loans

The Chemical Bank loans listed in the Commission's questions were in fact a series of five loans for which artwork was used as collateral. The loans were as follows:

		Collateral
4/18/80	$210,000	Artwork (Loan I) & Matching Funds
5/5/80	$200,000	Artwork (Loan II) & Matching Funds
5/13/80	$165,000	Artwork (Loan III) & Matching Funds
5/20/80	$100,000	Artwork (Loan IV) & Matching Funds
5/23/80	$ 75,000	Artwork (Loan IV) & Matching Funds

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The roman numerals refer to the division of collateral as pledged by successive amendments to the Security Agreements. (Exhibit A.) Two Security Agreements were executed, one on April 18, 1980, for the initial $210,000 loan (Exhibit B), and one on May 2, 1980, that merged the April 18, 1980, loan collateral with the May 2, 1980, loan collateral. (Exhibit C.) The May 2, 1980, Security Agreement was then amended on May 9, 1980, by the addition of a supplemental schedule of collateral for the May 13, 1980, loan (Exhibit D) and on May 23, 1980, by the addition of a Supplemental Schedule for the May 20 and 23, 1980, loans (Exhibit E). The notes signed by the Committee for each loan are attached as Exhibits F through J. It should be noted that the division of the collateral was a bit arbitrary since the five loans were merged into a single body of collateral securing the entire $750,000 in loans made.

The Security Agreements only reflect the artwork portion of the transactions. The bank had much more valuable intangible collateral under the terms of the loan agreements signed on April 18, 1980; May 2, 1980; and May 9, 1980. (Exhibits K through M.) Under those agreements the loan was secured not just by the artwork but also by an insurance policy on the life of Senator Kennedy with Lloyd's of London and an assignment of future federal matching payments which totaled approximately $4.13 million for the campaign. It was, in fact,

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the federal matching payments that the bank was looking towards for payment of the loans and that is why the life insurance policy was required as part of the loan agreement.

The Committee's officers honestly believed all the artwork pledged at each stage had been printed. Chemical Bank retained an art appraiser, Paul Zerler, who visited the artists, interviewed each of them, and appraised the art pledged. (Exhibits N through R.) Mr. Zerler's letters are prima facie evidence that the artists had in fact at least completed the artistic work for all the art pledged at each stage. The failure to note that some works may not have been printed when pledged is likely due to the fact that it is the artistic creation element (that had been completed) which is the most crucial factor in the value of the artwork, not the physical printing of the final lithographs and serigraphs.

In sum, the Committee officers described the artwork as pledged in the various security agreements and supplemental schedules thereto. They had no reason to suspect a few pieces had not been printed. The artistic creation had been completed as reflected by Mr. Zerler's letters. Negotiations on both sides proceeded on the good faith assumption that all the work had been printed. The appraiser gave his appraisal to the bank and no questions were raised both because the crucial artistic aspect had been completed and because the banks in fact were principally looking toward the Committee's expected matching payments for satisfaction of the loans.

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(b) D.C. National Bank Loan.

The D.C. National Bank loan of $240,000 made on March 7, 1980, was secured by pledging 300 Jamie Wyeth litographs titled "To Sail Against the Wind" with an appraised value of $240,000. The Committee pledged additional collateral effective July 29, 1980, in the form of part of two series of serigraphs by C.J. Yao and Jay Rosenblum. See Exhibits S, T.

The Committee officers who negotiated the loans did not know at the time that the Yao and Rosenblum works had not been printed. They had been appraised by Mr. Zerler in connection with the earlier Chemical Bank loans and the Committee officers had no reason to suspect they had not been printed. The collateral was described to the banks as reflected in the Supplements to the Note and Security Agreement.

(c) Mark Twain National Bank Loans.

Two loans were obtained from the Mark Twain National Bank for $10,000 each on April 14, 1980, and May 23, 1980. See Exhibits U and V. The collateral was described to the bank as reflected in the Trust Receipts. The Committee officers believed all of these works had been printed and had no reason to suspect that any portion had not been printed. Negotiations were completed with the bank on that basis.

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2. <u>For each of the art work series pledged for the five loans in question, please state when reproductions were made, how many were made, and the costs of reproduction.</u>

No reproductions were pledged as collateral for any loans. The works pledged for the loans in question were original works of art produced (with the exception of the Anuskiewicz) in limited edition series.

The Committee did not keep a record of the date on which each work was printed because there was no requirement to do so. We do know that the Anuskiewicz work was in the Committee's possesion prior to the date on which it was pledged and we understand that Miss Rosskam so informed the Commission's auditors. Miss Rosskam's affidavit will be furnished at a later date. Through the FEC audit we discovered that as of Summer 1981 the following pledged works had not been printed:

Daphnis	"SSK II 80"
Krushenick	"Par Avion"
Yao	Unititled
Rosenblaum	"Solo"

(These works have since been printed.)

The number and costs of production of each series pledged is as follows:

ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(1) Chemical Bank Loan I (Security Agreement 4/18/80)				
Aach	"Split Infinity"	300	285	$3,000
Anuszkiewicz	Untitled	1	1	$3,000
Bolotowski	"Red White & Blue	150	135	$2,250
Daphnis	"SSK-80"	235	220	$1,992

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	ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(1)	Chemical Bank Loan I (continued)				
	Kruschenik	Untitled	300	285	$3,000
	May	"Tranquility	100	85	$3,000
	Nesbitt	"Iris"	200	185	$3,500
	Oppenheim	"Diamond Cutters Wedding"	200	185	$3,500
	Prentice	Untitled	300	285	$3,000
	Rosenblum	"Sail" (States 1,2, & 3)	300	255	$3,000
	Saff	"Trophy for John"	125	10	$2,935
(2)	Chemical Bank Loan II (Security Agreement 5/2/80)				
	Levine	"States of Consciousness"	300	285	$3,685
	Smith	Untitled	250	235	$4,000
	Sonfist	"Views of America"	300	285	$3,000
	Stanley	"Boston Baked Beans"	200	185	$3,500
	Hart	Untitled	300	285	$3,000
	Koursaros	"Karmi"	300	285	$3,000
(3)	Chemical Bank Loan III (Security Agreement 5/9/80)				
	Serra	Untitled	200	185	$8,500
	Morris	Untitled	300	285	$3,500
	Rauschenberg	Untitled-Photographs	200	185	$4,150
	Youngerman	"Swirl"	200	185	$3,750
(4)	Chemical Bank Loan IV (Security Agreement 5/23/80)				
	Mangold	"Rectangle With-in three Rectangles	200	190	$3,000
	Daphnis	"SSK II-80"	70	70	$ 508
	Krushnick	"Par Avion"	275	265	$3,000
(5)	D.C. National Bank Loan				
	Wyeth	"To Sail Against The Wind"	300	300	$3,500
	Yao	Untitled	200	170	$7,500
	Rosenblum	"Solo"	300	270	$4,000

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	ARTIST	TITLE	NUMBER PRINTED	NUMBER PLEDGED	COST
(6)	Mark Twain National Bank Loan I (4/14/80)				
	Rauschenberg	"After Homage to Picasso"	45	40	Unavailable[1/]
(7)	Mark Twain National Bank Loan II (5/23/80)				
	Nesbitt	"Tulip"	200	20	$3,500
	Rosenblum	"Solo"	300	20	$4,000
	Yao	Untitled	200	20	$7,500
	Levine	"Tired Earth"	275	20	$3,860

3. For each of the art work series pledged for the five loans in question, on what dates did the Committee learn that the donated works had not been reproduced [sic]?

The current Committee Treasurer and the Chairman did not learn that some of the artwork had not been printed until Summer 1981 when the Committee's artwork records were reviewed in connection with the Commission's audit. We have no way of determining what the previous Treasurer knew since she is no longer connected with the Committee but have no reason to doubt she believed the pledged artwork had been printed.

4. Please state what information concerning the number of reproductions existing, the reproduction rights to each of the works pledged, and the costs associated with reproduction, was given to the banks listed above by the Committee before and after the loan documents were signed and state when the information was given.

No information concerning reproduction rights was given because the Committee pledged original works of art. The

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1/ Cost of this item will be provided when the Committee has located the applicable record.

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collateral was as described in the Security Agreement. The Committee warranted that it had a clear title to the collateral in the loan documents.

5. For each of the loans listed above, on what dates did Committee representatives inform officials of the banks involved that prints of the pledged works did not exist?

The Committee Treasurer did not learn that some of the works had not been printed until Summer 1981, after the loans had been repaid. It therefore was pointless to inform the banks of this fact.

I swear that the foregoing responses are true, complete and accurate to the best of my knowledge.

William C. Oldaker,
Treasurer

83040105

CITY OF WASHINGTON)
) S.S.
DISTRICT OF COLUMBIA)

I, Mary Dougherty, a Notary Public in and for the District of Columbia, duly commissioned and authorized to administer oaths, hereby certify that this day there appeared before me William C. Oldaker, to me personally known, who swore the foregoing responses were true, complete and accurate to the best of his knowledge.

Mary Dougherty
Mary Dougherty
Notary Public

Date: April 1, 1982

My commission expires: November 30 1986

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LOAN I

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Herb Aach	Color serigraph edition "Split Infinity"	285	$250	$ 71,250
2) Richard Anuszkiewicz	Acrylic on canvas four to five colors untitled	1	$9,000	9,000
3) Ilya Bolotowsky	Color lithograph "Red, White & Blue"	135	$450	60,750
4) Nassos Daphnis	Color serigraph "SSK-80)	220	$350	77,000
5) Nicholas Kruschenik	Color serigraph Untitled	285	$350	99,750
6) Seong Moy	Color serigraph "Tranquility"	85	$300	25,500
7) Lowell Nesbitt	Black & White serigraph "Grey Iris-80"	185	$400	74,000
8) Dennis Oppenheim	Blueprint serigraph "Diamond Cutter's Wedding"	185	$450	83,250
9) David Prentice	Color serigraph Untitled	285	$225	64,125
10) Jay Rosenblum	Color serigraph "State 1"	85	$350)	
11) Jay Rosenblum	Color serigraph "State 2"	85	$350)	89,250
12) Jay Rosenblum	Color serigraph "State 3"	85	$350)	
13) Donald Saff	Hand colored etching "Trophy for John"	110	$500	55,000
				$708,875

EXHIBIT A

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LOAN II

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Les Levine	Color serigraph "States of Consciousness"	285	350	$ 99,750
2) Leon Polk Smith	Color serigraph Untitled	235	500	117,500
3) Alan Sonfist	Color lithograph "Views of America"	285	350	99,750
4) Bob Stanley	Color serigraphs "Boston Baked Beans"	85	300	25,500
5) Bob Stanley	Deluxe color serigraph "Boston Baked Beans"	100	400	40,000
6) Gordon Hart	Color serigraph Untitled	285	300	85,500
7) Harry Koursaros	Color Serigraph "Karmi"	285	375	106,875
				$574,875

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LOAN III

ARTIST	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE	TOTAL AMOUNT PLEDGED
1) Richard Serra	Serigraph untitled 40 x 53	185	$750	$138,750
2) Robert Morris	Lithograph untitled 22 x 30	285	$500	142,500
3) Robert Rauschenberg	Photograph untitled	185	$800	148,000
4) Jack Youngerman	Serigraph "Swirl" 30 x 32	185	$500	92,500
				$521,750

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LOAN IV

ARTIST.	DESCRIPTION	NUMBER PLEDGED	APPRAISED UNIT VALUE,	TOTAL AMOUNT PLEDGED
1) Robert Mangold	Color serigraph "Rectangle Within Three Rectangles"	190	$550	$104,500
2) Nassos Daphnis	Color serigraph "SSK II 80"	70	450	31,500
3) Nicholas Krushenick	Color serigraph "Par Avion"	265	350	92,750
				$228,750

SECURITY AGREEMENT dated April 18, 1980, between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

(1) 185 serially numbered (16 through 200) Split Infinity color serigraphs each signed by Herb Aach;

(2) one acrylic on canvas four to five colors untitled signed by Richard Anuszkiewicz;

(3) 135 serially numbered (16 through 150) Red, White and Blue color lithographs each signed by Ilya Bolotowsky;

(4) 285 serially numbered (16 through 300) SSK-80 color serigraphs each signed by Nassos Daphnis;

(5) 185 serially numbered (16 through 200) untitled color serigraphs each signed by Nicholas Kruschenik;

(6) 85 serially numbered (16 through 100) Tranquility color serigraphs each signed by Seong Moy;

(7) 185 serially numbered (16 through 200) Grey Iris-80 black and white serigraphs each signed by Lowell Nesbitt;

(8) 185 serially numbered (16 through 200) Diamond Cutter's Wedding blueprint serigraphs each signed by Dennis Oppenheim;

(9) 185 serially numbered (16 through 200) untitled color serigraphs each signed by David Prentice;

(10) 85 serially numbered (16 through 100) State 1 color serigraphs each signed by Jay Rosenblum;

(11) 85 serially numbered (16 through 100) State 2 color serigraphs each signed by Jay Rosenblum;

(12) 85 serially numbered (16 through 100) State 3 color serigraphs each signed by Jay Rosenblum; and

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(13) 110 serially numbered (16 through 125) Trophy for John hand colored etchings each signed by Donald Saff.

(2) Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The custodian shall be Joseph E. Hakim. The Collateral will be stored at the offices of the custodian in Suite 3021, 200 Park Avenue, New York, New York, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue

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of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with this Agreement. (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not

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be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A Read

1250 22nd Street, N.W.
Washington, DC 20037

CHEMICAL BANK,

by

140 Broadway
New York, NY 10015

8304041033337

AMENDMENT AND RESTATEMENT dated as of May 2, 1980, to the SECURITY AGREEMENT dated April 18, 1980, (such amended and restated Security Agreement, called the "Security Agreement"), between CHEMICAL BANK, a New York banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

WHEREAS the Bank and the Borrower are parties to Letter Agreements dated April 18, 1980, and May 2, 1980, (the "Letter Agreements") pursuant to which the Bank shall make demand loans to the Borrower, subject to the terms and conditions of said Letter Agreements, in an aggregate principal amount not to exceed $750,000, and the Bank and the Borrower are also parties to certain other Letter Agreements dated November 15, 1979, February 11, 1980, and March 14, 1980, pursuant to which the Bank has made loans to the Borrower;

WHEREAS the Bank was unwilling to make such loans unless the Borrower executed and delivered this Security Agreement;

WHEREAS the obligation of the Bank to make further loans under the Letter Agreement is subject to, among other things, the condition precedent that the Borrower shall grant to the Bank, a security interest in additional collateral securing all indebtedness of the Borrower to the Bank;

WHEREAS the Borrower has requested that the Bank amend and restate the Security Agreement dated April 18, 1980, in order to correct certain errors in the list of Collateral therein, and to provide for the addition of new Collateral;

NOW, THEREFORE, the Bank and Borrower hereby agree as follows:

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the property listed on Schedule A hereto and property listed on Supplemental Schedules which shall, from time to time be added to this Amended and Restated Security Agreement in consideration of the Bank making additional loans to the Borrower.

EXHIBIT C

2. Security Interest. As security for the payment of all loans now or in the future made under the Letter Agreements and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collater will be used primarily as a premium for contributions to Borrower. The custodian shall be John Nichols. The Collateral will be stored at the offices of the custodian at Twichell-Nichols Printmakers, 75 Grand Street, New York, NY 10013, or at such other place or places as the Bank shall approve in writing, and released, in whole or in part, by the custodian for transfer to a contributor or purchaser only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancelation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling or canceling such insurance.

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of the custodian or such other place or places as the Bank has approved in writing, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings or held by virtue of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (6) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower should fail to keep the Collateral

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suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Assignments. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collatera. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the Liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees disbursements incurred or expended by the Bank, in connection with this Agreement, (e) Borrower hereby authorizes the Bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

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7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereby the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed,
Treasurer
1250 22nd Street, N.W.
Washington, DC 20037

CHEMICAL BANK,

by _____
Robert P. Conway,
Vice President
140 Broadway
New York, NY 10015

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Schedule A

(1) 285 serially numbered (16 through 300) "Split Infinity" color serigraphs each signed by Herb Aach;

(2) one acrylic on canvas four to five colors untitled signed by Richard Anuszkiewicz;

(3) 135 serially numbered (16 through 15) "Red, White, and Blue" color lithographs each signed by Ilya Bolotowsky;

(4) 220 serially numbered (16 through 235) "SSK-80" color serigraphs each signed by Nassos Daphnis;

(5) 285 serially numbered (16 through 300) untitled color serigraphs each signed by Nicholas Kruschenik;

(6) 85 serially numbered (16 through 100) "Tranquility" color serigraphs each signed by Seong Moy;

(7) 185 serially numbered (16 through 200) "Grey Iris-80" black and white serigraphs each signed by Lowell Nesbitt;

(8) 185 serially numbered (16 through 200) "Diamond Cutter's Wedding" blueprint serigraphs each signed by Dennis Oppenheim;

(9) 285 serially numbered (16 through 300) untitled color serigraphs each signed by David Prentice;

(10) 85 serially numbered (16 through 100) "State 1" color serigraphs each signed by Jay Rosenblum;

(11) 85 serially numbered (16 through 100) "State 2" color serigraphs each signed by Jay Rosenblum;

(12) 85 serially numbered (16 through 100) "State 3" color serigraphs each signed by Jay Rosenblum; and

(13) 110 serially numbered (16 through 125) "Trophy for John" hand colored etchings each signed by Donald Saff.

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Supplemental Schedule added as of
May 2, 1980, to the Security Agreement
dated April 18, 1980, as amended and restated as
of May 2, 1980, between CHEMICAL BANK
and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 285 serially numbered (16 through 300) "States of Consciousness" color serigraphs each signed by Les Levine;

(2) 235 serially numbered (16 through 250) untitled color serigraphs each signed by Leon Polk Smith;

(3) 285 serially numbered (16 through 300) "Views of America" color lithographs each signed by Alan Sonfist;

(4) 85 serially numbered (16 through 100) "Boston Baked Beans" color serigraphs each signed by Bob Stanley;

(5) 100 serially numbered (1 through 100) "Boston Baked Beans" delux color serigraphs each signed by Bob Stanley;

(6) 285 serially numbered (16 through 300) "Karmi" color serigraphs each signed by Harry Koursaros; and

(7) 285 serially numbered (16 through 300) untitled color serigraphs each signed by Gordon Hart.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK,

by _____
Robert Conway, Vice President

8304103

Supplemental Schedule added as of
May 9, 1980, to the Security Agreement
dated April 18, 1980, as amended and restated as
of May 9, 1980, between CHEMICAL BANK
and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 185 serially numbered (16 through 200) untitled serigraphs each signed by Richard Serra;

(2) 285 serially numbered (16 through 300) untitled lithographs each signed by Robert Morris;

(3) 185 serially numbered (16 through 200) untitled photographs each signed by Robert Rauschenberg; and

(4) 185 serially numbered (16 through 200) "Swirl" serigraphs each signed by Jack Youngerman.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK,

by _____
Robert Conway, Vice President

EXHIBIT D

Supplemental Schedule added as of May 23, 1980, to the Security Agreement dated April 18, 1980, as amended and restated as of May 23, 1980, between CHEMICAL BANK and the KENNEDY FOR PRESIDENT COMMITTEE

(1) 190 serially numbered (11 through 200) "Rectangle Within Three Rectangles" serigraphs each signed by Robert Mangold;

(2) 70 serially numbered (6 through 75) "SSK II 80" serigraphs each signed by Nassos Daphnis; and

(3) 265 serially numbered (11 through 275) "Par Avion" serigraphs each signed by Nicholas Krushenick.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Carolyn A. Reed, Treasurer

CHEMICAL BANK

by _____
Robert Conway, Vice President

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EXHIBIT E

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$ 210,000.00

April 18, 1980
New York, New York

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, NY 10015, in lawful money of the United States Two Hundred and Ten Thousand Dollars ($210,000) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A Pevy
Treasurer

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EXHIBIT F

EXHIBIT A

$200,000.00

May 2, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States Two Hundred Thousand Dollars ($200,000.00) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest to change as of the opening of business on the day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A. Pugh
Treasurer

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EXHIBIT G

New page to Cirgel
dated 7-9-80

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$165,000

May 13, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE

by Carolyn A Pence Jpe
Treasurer

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EXHIBIT H

$100,000

May 20, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States ONE HUNDRED THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE

by _____
Treasurer

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EXHIBIT I

90194

$75,000

May 23, 1980
New York, New York

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, New York 10015, in lawful money of the United States SEVENTY FIVE THOUSAND DOLLARS and to pay interest thereon at the rate of one-half of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest to change as of the opening of business on the day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by _____
Treasurer

8304041033C

EXHIBIT J

CHEMICAL BANK
140 Broadway
New York, N. Y. 10015

April 18, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of William C. Oldaker

Dear Sirs:

You have requested the undersigned to lend to your Committee $210,000.00 to be evidenced by your Committee's promissory note payable to the order of the undersigned and to be substantially in the form attached hereto as Exhibit A (hereinafter called "the Note"). It is understood that such loan shall be payable on demand and shall bear interest at 1/2 of 1% per annum above the rate from time to time in effect of the undersigned for prime commercial loans of 90-day maturities (hereinafter called the "prime rate"), such interest rate to change as of the opening of business on any day on which the prime rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year and shall be paid on the first of each month commencing May 1, 1980, until payment in full of the principal of such loan. The loan is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest on the loan, and then to the unpaid principal amount of the loan.

In consideration of the undersigned's agreement to make such loan, you hereby agree, by your execution hereof, to execute a Security Agreement of even date securing this loan and all prior loans (hereinafter called the "Prior Loans") made pursuant to Letter Agreements dated November 15, 1979, February 11, and March 14, 1980, between the undersigned and your Committee. In connection therewith, you agree to deposit all moneys received for contributions relating to the Collateral (as that term is defined in such Security Agreement) in an account maintained with the undersigned designated for that purpose until payment in full of the principal and interest on such loan. You also hereby authorize the undersigned to charge such account for payments of principal and interest on such loans.

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EXHIBIT K

Pursuant to the Letter Agreement dated November 15, 1979, between you and the undersigned, you have obtained policies insuring without any condition the life of Senator Edward M. Kennedy and insuring in the event of any permanent disability which prevents Senator Edward M. Kennedy from effectively pursuing the nomination for presidential candidate, each in the amount of $1,150,000. The undersigned has been designated as beneficiary thereof up to such amount as is required to pay in full the aggregate principal amount of the Prior Loans of $199,074 and any accrued interest thereon. Such policies contain endorsements to the effect that they may not be canceled or terminated or the beneficiary changed without the prior written consent of the undersigned. You hereby agree that the undersigned's interest in such policies insuring Senator Edward M. Kennedy shall be increased to the extent of any accrued interest on and unpaid principal amount of the Note and all other obligations of the Committee to the undersigned under this Letter Agreement; it being understood that the undersigned will consent to the cancelation of the policies upon payment in full of the principal of and interest on the Prior Loans and the Note, and the undersigned will further agree to periodic reductions in the amount of coverage as the principal of such loans is reduced.

In order to induce the undersigned to make this loan, you hereby represent and warrant to the undersigned that (a) you are a political committee duly established and in compliance with 2 U.S.C. Sec. 433 and that you will comply with 2 U.S.C. Sec. 434 and that all contributions solicited by you shall be in compliance with 2 U.S.C. Sec. 441a; (b) no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary to the valid execution, delivery or performance by you of this Letter Agreement, the note or the Security Agreement; and (c) you have incurred no unusual forward or long-term commitments or claims which are substantial in amount in relation to your projected receipts from contributions and from the Secretary of Treasury under 26 U.S.C. Sec. 9037.

This Letter Agreement shall be governed by and construed under the laws of the State of New York and is not subject to amendment, waiver or modification unless the same shall be in writing.

You shall pay all costs and expenses in connection with this Letter Agreement and the loan.

8304103

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

by _____

Accepted and agreed to this
18th day of April 1980.

Carolyn A Reed

8304041033

CHEMICAL BANK
140 Broadway
New York, N. Y. 10015

May 2, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 22037

Attention of William C. Oldaker, Esq.

Dear Sirs:

You have requested the undersigned make loans (collectively the "Loans" and each a "Loan"), to your Committee from the date hereof in an aggregate principal amount equal to the lesser of (i) $540,000 and (ii) an amount equal to (x) 33-1/3% of the appraised value of the Collateral (as that term is defined in the Security Agreement dated April 18, 1980 (the "Security Agreement")), between your Committee and the undersigned as determined in the reasonable judgment of the undersigned minus (y) the original principal amount of the loan (the "April Loan") made by the undersigned to your Committee pursuant to the Letter Agreement dated April 18, 1980 (the "April Agreement"), between the undersigned and your Committee. Each loan shall be evidenced by a promissory note duly executed on behalf of your Committee payable to the order of the undersigned and to be substantially in the form attached hereto as Exhibit A (collectively, the "Notes" and each a "Note"). It is understood that such loans shall be payable on demand and shall bear interest at 1/2 of 1% per annum above the rate from time to time in effect of the undersigned for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest rate to change as of the opening of business on any day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year and shall be paid on the first of each month commencing June 1, 1980, until payment in full of the principal of such loan. The loan is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest on the loan, and then to the unpaid principal amount of the loan.

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EXHIBIT L

In consideration of the undersigned's agreement to make the Loans, you hereby agree to deposit all moneys received for contributions relating to the Collateral in an account maintained with the undersigned pursuant to the April Agreement, until payment in full of principal of and interest on the Loans, the April Loan and all prior loans (the "Prior Loans"), made by the undersigned to your Committee pursuant to Letter Agreements dated November 15, 1979, February 11, 1980, and March 14, 1980. You also hereby authorize the undersigned to charge such account for payments of principal of and interest on such loans. All payments from contributions or other proceeds relating to the Collateral described in the Security Agreement, shall be applied first to the pro rata payment of principal of and interest on the Loans and the April Loan, and second to the payment or principal of and interest on the Prior Loans. All matching fund payments previously assigned to the undersigned pursuant to Letter Agreements dated November 15, 1979, and March 14, 1980, and all payments from contributions or other proceeds relating to collateral described in a Security Agreement dated February 11, 1980, shall be applied first to the payment of principal of and interest on loans made on the Prior Loans and second to the pro rata payment of principal of and interest on the Loans and the April Loan.

In further consideration of the undersigned's agreement to make the Loans, you hereby agree by your execution hereof, that as security for the repayment of the Loans and the April Loan that you hereby assign, transfer and set over to the undersigned such payments as you are entitled pursuant to 26 U.S.C. Sec. 9033 to receive from the Secretary of the Treasury under 26 U.S.C. Sec. 9037 and to at the same time of each receipt thereof, an amount equal to (i) in the case of such payments received on or after June 15, 1980, an amount equal to 33-1/3% (or, if demand has been made, 100%) and (ii) in the case of such payments received on or after August 15, 1980, an amount equal to 80% (or if demand has been made, 100%) of such payment from the Secretary of the Treasury until payment in full of the principal of and interest on the Loans and the April Loans in connection therewith, you hereby represent and warrant to us that you have instructed the Secretary of the Treasury to make such payments directly to your account at the National Savings and Trust Company, Washington, D.C. and have irrevocably instructed that Company, upon receipt of such payments to your account, to transfer out of such

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amount the aforesaid percentage thereof to the undersigned by wire transfer of Federal Reserve funds, such transfer to be made to Chemical Bank, 140 Broadway, New York, N.Y. 10005, Attention of R.P. Conway, Vice President.

Pursuant to the Letter Agreement dated November 15, 1979, between you and the undersigned, you have obtained policies insuring without any condition the life of Senator Edward M. Kennedy and insuring in the event of any permanent disability which prevents Senator Edward M. Kennedy from effectively pursuing the nomination for presidential candidate, each in the amount of $1,150,000. The undersigned has been designated as beneficiary thereof up to such amount as is required to pay in full the aggregate principal amount of the Prior Loans of $ and any accrued interest thereon. Such policies contain endorsements to the effect that they may not be canceled or terminated or the beneficiary changed without the prior written consent of the undersigned. You hereby agree that the undersigned's interest in such policies insuring Senator Edward M. Kennedy shall be increased to the extent of any accrued interest on and unpaid principal amount of the Note and all other obligations of the Committee to the undersigned under this Letter Agreement; it being understood that the undersigned will consent to the cancelation of the policies upon payment in full of the principal of and interest on the Prior Loans and the Note, and the undersigned will further agree to periodic reductions in the amount of coverage as the principal of such loans is reduced.

In order to induce the undersigned to make this loan, you hereby represent and warrant to the undersigned that (a) you are a political committee duly established and in compliance with 2 U.S.C. Sec. 433 and that you will comply with 2 U.S.C. Sec. 434 and that all contributions solicited by you shall be in compliance with 2 U.S.C. Sec. 441a; (b) no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality is or will be necessary to the valid execution, delivery or performance by you of this Letter Agreement, the Note or the Security Agreement; and (c) you have incurred no unusual forward or long-term commitments or claims which are substantial in amount in relation to your projected receipts from contributions and from the Secretary of Treasury under 26 U.S.C. Sec. 9037.

This Letter Agreement shall be governed by and construed under the laws of the State of New York and is not

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subject to amendment, waiver or modification unless the same shall be in writing.

You shall pay all costs and expenses in connection with this Letter Agreement and the loan.

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

by _____

Accepted and agreed to this

day of May, 1980.

_____

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EXHIBIT A

$200,000.00

May 2, 1980
New York, N.Y.

UPON DEMAND, KENNEDY FOR PRESIDENT COMMITTEE DOES HEREBY PROMISE to pay to the order of Chemical Bank, a New York banking corporation, at its principal office at 140 Broadway, New York, N.Y. 10015, in lawful money of the United States Two Hundred Thousand Dollars ($200,000.00) and to pay interest thereon at the rate of 1/2 of 1% per annum above the rate from time to time in effect at Chemical Bank for prime commercial loans of 90-day maturities (hereinafter called the "Prime Rate"), such interest to change as of the opening of business on the day on which the Prime Rate shall change. Interest shall be computed on the basis of the actual number of days elapsed over a 360-day year.

This Note is issued pursuant to a Letter Agreement of even date between Chemical Bank and the undersigned and is subject to prepayment, such prepayment to be applied first to accrued and unpaid interest hereon, and then to the unpaid principal amount hereof, all as more fully specified in said Letter Agreement.

KENNEDY FOR PRESIDENT COMMITTEE,

by Carolyn A. Pace
Treasurer

8304041038

Chemical Bank
140 Broadway
New York, New York 10016

May 9, 1980

Kennedy for President Committee
1250 22nd Street, N.W.
Washington, D.C. 20037

Attention of William C. Oldaker, Esquire

Dear Sirs:

Reference is made to the Letter Agreements dated April 18, 1980, and May 2, 1980, (collectively, the "Letter Agreements") both between your Committee and the undersigned. So that the Letter Agreements more accurately reflect the agreement between your Committee and the undersigned, your Committee and the undersigned hereby agree to amend both of the Letter Agreements by:

(i) the deletion of the words "on demand" in the third sentence of each of the Letter Agreements; and

(ii) the substitution therefore of the phrase "on December 31, 1980, or such earlier date on which the undersigned shall demand payment,".

If the foregoing is agreeable to you, please so indicate by signing the enclosed copy of this letter.

Very truly yours,

CHEMICAL BANK,

By _____

Accepted and agreed to this
day of May 1980,

KENNEDY FOR PRESIDENT COMMITTEE,

by _____

EXHIBIT M

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-956-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Joseph Kosuth
James Rosenquist

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT N

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We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $240,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Joseph Kosuth	Lithograph edition of 300 Untitled	300	90,000
James Rosenquist	Lithograph edition of 200 Untitled	750	150,000
			$240,000

Respectfully submitted,

PAUL ZERLER

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-956-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Les Levine	Bob Stanley
Gary Rich	Gordon Hart
Leon Polk Smith	Harry Koursaros
Alan Sonfist	

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT O

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We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $667,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Les Levine	Serigraph edition of 300 "State of Consciousness" 25 x 38	$ 350	$105,000
Gary Rich	Serigraph edition of 300 "Naive Artist"	250	75,000
Leon Polk Smith	Color serigraph edition of 250 Untitled 30 x 41	500	125,000
Alan Sonfist	Hand colored lithograph edition of 300 Untitled 30 x 40	350	105,000
Bob Stanley	Serigraph 1 Standard edition of 100 1 Deluxe edition of 100 "Boston Beans" 32 x 40	 300 400	30,000 40,000
Gordon Hart	Color serigraph edition of 250 Untitled 30 x 42	300	75,000
Harry Koursaros	Serigraph edition of 300 "Karmi" 24 x 38 1/8	375	112,500
			$667,500

Respectfully submitted,

PAUL ZERLER

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Robert Morris
Robert Rauschenberg
Richard Serra
Jack Youngerman

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT P

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We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $520,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Robert Morris	Lithograph edition of 300 Untitled 22 x 30	$ 500	$150,000
Robert Rauschenberg	Two editions of photographs 100 each Untitled	600	120,000
Richard Serra	Serigraph edition of 200 untitled 40 x 53	750	150,000
Jack Youngerman	Serigraph edition of 200 Swirl 30 x 32	500	100,000
			$520,000

Respectfully submitted,

PAUL ZERLER

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

April 15, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Herb Aach	Lowell Nesbitt
Richard Anuszkiewicz	Dennis Oppenheim
Ilya Bolotowsky	David Prentice
Nassos Daphnis	Jay Rosenblum
Nicholas Kruschnik	Donald Saff
Seong Moy	

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT Q

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We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $714,000.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Herb Aach	Color serigraph edition of ~~200~~ 300 "Split Infinity" 30 x 42	$ 250	$ 50,000
Richard Anuszkiewicz	Acrylic on canvas 4 to 5 colors untitled 48 x 48	9,000	9,000
Ilya Bolotowsky	Color lithograph edition of 150 "Red White Blue" 12 x 24	450	67,500
Nassos Daphnis	Color serigraph edition of ~~300~~ 235 "SSR-80" 30 x 42	350	105,000
Nicholas Kruschenik	Color serigraph edition of ~~200~~ 300 untitled 38 x 50	350	70,000
Seong Moy	Color serigraph edition of 100 "Tranquility" 22 x 30	300	30,000
Lowell Nesbitt	Black and white serigraph edition of 200 "Grey Iris-80" 30 x 41	400	80,000
Dennis Oppenheim	Blueprint serigraph edition 200 "Diamond Cutter's Wedding" 38 x 50	450	90,000

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David Prentice	Color serigraph edition of ~~200~~ 300 untitled	225	45,000	64,125
Jay Rosenblum	Color serigraph "State 1,2,3" three editions of ~~100~~ 85 20 x 41	350	105,000	~~99,750~~ 89,250
Donald Saff	Hand colored etching edition of 125 "Trophy for John" 17 x 14	500	62,500	53000
		GRAND TOTAL:	$714,000	703,875

Respectfully submitted,

PAUL ZERLER

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PAUL ZERLER
Appraiser of Fine Art
to the Insurance Industry

310 MADISON AVENUE
NEW YORK, N. Y. 10017
212-986-3410

May 23, 1980

Mr. Robert Conway
Vice President
Chemical Bank
140 Broadway
New York, NY 10005

Re: Kennedy for President Art Work

Dear Sir:

We have been retained to render our opinion with respect to the value of the Works of Art created by the following listed artists:

Jay Rosenblum	Nicholas Kruschenick
Nassos Daphnis	Ching Jang Yao
David Prentice	Charles Earley
Lowell Nesbitt	Peter Lobello
Ilya Bolowtowsky	Les Levine
	Robert Rauschenberg

My background as an Art Appraiser spans a period of over twenty years. I have served the Insurance Industry as an Art Appraiser primarily concerned with the authentication of Art and Art Objects. My services are also retained for the purpose of establishing fair market values and replacement values so that insurance carriers may properly insure the art. Other areas of my experience include Estate Appraisal work for many prestigious law firms and evaluations of estates for banking institutions. The nature of my profession, dealing primarily with insurance companies and banks, requires a very conservative evaluation.

I provide art consultation and/or appraisals to the following institutions, among others:

Aetna Life & Casualty Company, New York, New York
Hartford Isurance Company, New York, New York
Insurance Company of North America, White Plains, New York
Rhone Mediterranee Insurance Company, Rome, Italy
General Adjustment Bureau, New York, New York
Chase Manhattan Bank, International Division, New York, New York
National Bank of Florida, Miami, Florida
Marshall Robinson, c/o Ford Foundation, New York, New York
Associated Press, New York, New York
Beekman Family Foundation, New York, New York

EXHIBIT R

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We have visited each of the artists, interviewed them, and judiciously appraised the art reflected hereon. The values which we have established for said works is wholly consistent with the artists' reputation and comparable works currently selling in leading galleries throughout the United States and abroad.

The total estimated sound value for the accompanying works of art is $1,081,500.

ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Jay Rosenblum	Lithograph 3 editions of 100 19 x 38 "Solo"	$ 350	$105,000
Nassos Daphnis	Lithograph edition of 75 26 x 42 "SSR II 80"	450	33,750
David Prentice	Lithograph edition of 275 24 x 34 1/2 Untitled	225	61,875
Lowell Nesbitt	Lithograph edition of 200 24 x 35 "Tulip"	400	80,000
Ilya Bolowtowsky	Lithograph edition of 200 15 x 25 1/2 "Scarlet Vertical Elipse"	450	90,000
Nicholas Kruschenick	Serigraph edition of 275 30 x 42 "Par Avion"	350	86,250
Ching Jang Yao	Lithograph edition of 200 24 x 36 Untitled	350	70,000
Charles Earley	Silkscreen edition of 200 30 x 40 "Cyclone"	275	50,000

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ARTIST	DESCRIPTION	ESTIMATED UNIT RETAIL SELLING PRICE	TOTAL
Peter Lobello	Lithograph edition of 285 43 x 29 "7 Tiered Spill"	275	$ 78,375
Robert Mangold	4 editions of 50 22 1/2 x 30 "Rectangle Within Three Rectangles"	550	110,000
Les Levine	Serigraph edition of 275 "Tired Earth"	350	86,250
Robert Rauschenberg	Serigraph edition of 100(signed) edition of 400(unsigned) 27 1/2 x 40 Untitled	1,500 200	150,000 80,000
			$1,081,500

Respectfully submitted,

PAUL ZERLER

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tsc/

of the terms of this note.

DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON

COLLATERAL NOTE-TIME

LOAN NO. 27815

Washington, D.C. March 7th, 19 80

Loan Amount ---Two Hundred Forty-Thousand and 00/00---------- Dollars ($ 240,000.00-----

--------On Demand*---------- after the above date, for value received, the undersigned jointly and severally promise to pay to the order of DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, at its banking house in Washington, D.C., the loan amount set forth above, with interest on the unpaid balance thereof accruing at the rate of ---See Reverse of Note**---- percent (----------%) per annum from the date hereof until the loan amount is paid in full, in immediately available funds, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount. Interest hereon shall be computed on a 360-day or 365-day basis, in Bank's sole discretion.

Interest hereon shall be payable At Maturity.

And to secure the payment of this note – and of any other present or future liability of any nature whatsoever of any of the undersigned to the holder, whether absolute or contingent, direct or indirect, due or not due, secured or unsecured, joint, several or joint and several (hereafter "any other liability") – the undersigned hereby transfer, assign, pledge and deliver to the holder the following described property and any additions thereto or substitutions or exchanges therefor and any dividends, distributions, coupons, interest, rights and accruals thereon, together with the proceeds thereof, to wit:

300 Serially Numbered Wyeth Kennedy '80 lithograph art prints titled "To Sail Against the Wind", as more particularly described in a Security Agreement dated March 7, 1980.

(hereinafter "security"), free of all other liens and encumbrances, with authority to the holder to use, transfer, and hypothecate the security.

Upon the full payment of this note in accordance with its terms the holder may return to the undersigned or any of them an equal quantity of the said security and not the specific security deposited. The holder is hereby expressly empowered at any time or times hereafter and without notice to anyone to surrender or release all or part of the security to the undersigned, or any of them, and to receive, collect, compromise, renew, extend, substitute, exchange, or otherwise deal with, or to refrain from exercising any of the aforesaid powers in respect to, the security without liability of any kind of the holder and without in any manner releasing the obligations of any of the undersigned to the holder.

Whenever this note or any other liability matures, whether by acceleration in accordance with the terms hereof or otherwise, the holder may thereupon and at any time or times thereafter sell (and the holder is hereby given full and irrevocable power and authority to sell), assign and deliver the security or any part thereof at any brokers' board or at public or private sale, without notice, advertisement, or demand of any kind to anyone and without prejudice to any other remedies afforded by this instrument or by law, and may apply the proceeds of sale, after deducting all costs and expenses thereof including attorneys' fees, to the payment of this note and of any other liability, returning the overplus, if any, to the undersigned or any of them, and the holder hereof may purchase any of the security at any such sale. The undersigned hereby agree to remain jointly and severally liable for, and to pay forthwith, any deficiency remaining unpaid after such application.

Whenever this note or any other liability matures, whether by acceleration in accordance with the terms hereof or otherwise, any and all credits, money, stocks, bonds or other security or property of any nature whatsoever on deposit with, or held by, or in the possession of the holder, or in transit to or from the holder by mail or carrier, as collateral or otherwise, to the credit of or for the account of any of the undersigned may, at the option of the holder and without notice to or consent by any of the undersigned, be applied forthwith to pay or secure payment on this note or any other liability. The rights of the holder shall not be affected by the fact that the holder may have other security for the amount due hereon or on any other liability.

Upon failure to pay any payment hereon in full when the same shall become due, or in the event the security shall depreciate in value so that it becomes in the opinion of the holder inadequate to secure payment of this note, or if the holder shall in good faith feel itself insecure or unsafe as a result of acts or events which bear upon the financial condition of the undersigned or the repayment of the loan amount, or in the event of the insolvency of, or the commission of any act of bankruptcy by, or death of, any of the undersigned, or the appointment of a receiver of any property of any of the undersigned by a bankruptcy court or other court of competent jurisdiction, the entire loan amount plus accrued interest thereon (less any payments theretofore made) and all other obligations of the undersigned to Bank, shall, at the option of the holder, thereupon mature and become immediately due and payable without notice to any of the undersigned of the exercise of said option. At any time, whether in case of decline in the market value of the security or any part thereof or otherwise, the holder may demand the transfer, assignment, pledge, and delivery of additional or substitute security of quality and amount satisfactory to the holder; and the failure of the undersigned so to deliver such additional or substitute security within 24 hours following receipt of actual notice of demand therefor by any of the undersigned, or within 2 business days following the mailing or telegraphing of such notice to any of the undersigned at the address listed below, shall cause this note and any other liability to mature and become immediately due and payable. In addition, failure to pay any payment hereon in full when the same shall become due shall entitle the holder to assess a late charge of $.05 per dollar of payment overdue, and this late charge shall be deemed to be compensation to the holder for the cost of handling overdue obligations and not a penalty.

EXHIBIT S

The undersigned jointly and severally (1) hereby agree to any modifications of any of the terms or conditions hereof and/or to any renewals or extensions of time of payment or performance of any of the terms or conditions of this note; that it shall not be necessary for the holder to resort to legal remedies against any of the undersigned before proceeding against any other of the undersigned; and that no release of one or more of the undersigned whether by operation of law or by any act of the holder shall release any other of the undersigned; (2) do hereby waive notice of any election, acceptance, demand, protest, notice of protest and notice of default, presentment for payment, diligence in collection, and waive, to the extent permitted by law, all benefit of valuation, appraisement, and all exemptions under the laws of the District of Columbia and/or any other State or territory of the United States, and (3) agree, if this note is placed in the hands of an attorney for collection, to pay, in addition to all other sums of money due, all cost of collection and reasonable attorneys' fees.

All rights and remedies of the holder hereunder are cumulative and not alternative. Indulgence by the holder with respect to any of the terms and conditions herein contained or the failure of the holder to exercise any of its rights hereunder shall not constitute a waive thereof, and the undersigned shall remain liable for the strict performance of all of their undertakings until this note shall be fully paid in accordance with its terms.

"Undersigned" as used herein shall include all makers, endorsers, sureties, guarantors or other persons executing this note whether on the face or on the reverse hereof.

This instrument shall be interpreted in accordance with the laws of the District of Columbia.

On demand, or if demand is not made, $100,000 on or before April 18, 1980, with the balance due in full on or before May 9, 1980.

Kennedy For President Committee
(Name of Borrower – typed)

BY: [signature] (Seal)
(Signature and Title if Borrower is not Individual)

Stephen Smith (Seal)
(Name of Borrower – typed)
(Signature and Title if Borrower is not Individual)

1250 22nd Street, N.W.
(Street)

[illegible]
Washington, D. C. 20037
(City & State) (Zip code)

[illegible]
(Account Number)

(Seal)
(Signature and Title if Borrower is not Individual)

(Seal)
(Signature and Title if Borrower is not Individual)

(Seal)
(Signature and Title if Borrower is not Individual)

PAID
DEC 8 1980
D. C. [illegible]
[illegible]

(Commercial Only)

BANK USE ONLY – Not part of the terms of this note.

Principal	$
Interest	$
Total Due	$
Date Due	Demand
O.D.	N
O.A.	$ N
P.P.	Dft
D.L.S.	
V.I.	$

8304 0

The undersigned as endorser(s) jointly and severally hereby guarantee payment, waive presentment, demand, protest and notice of dishonor of the within note and waive the benefits of his and their homestead exemptions as to the obligations hereof. The undersigned also acknowledges that they have read and agreed to be bound by the terms and conditions on the face of this note.

_____(Seal)

_____(Seal)

_____(Seal)

_____(Seal)

(continued from the face of the Note of Kennedy for President Committee to the order of District of Columbia National Bank, Washington)

**interest accruing on the unpaid balance thereof at a rate equal to One percent (1%) per annum in excess of the published Prime rate of Citibank, New York, New York. Changes in the interest rate applicable to the unpaid balance of this Note shall become effective on the same day as the said Citibank announces a change in said Prime rate. Said interest shall accrue at said rate from the date hereof until the loan amount is paid in full, provided that any payment hereunder shall be applied first to the payment of interest and the balance on account of the loan amount.

813040410037

Effective Date: July 29, 1980

KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Promissory Note dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, in the original principal amount of $240,000.00. The following art work will be held as additional security on the mentioned loan:

1) C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2) Jay Rosenblum: #1-100 "Solo" 25X11 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

KENNEDY FOR PRESIDENT COMMITTEE

By: _____

8304041037

SECURITY AGREEMENT dated March 7, 1980, between DISTRICT OF COLUMBIA NATIONAL BANK, a District of Columbia banking corporation (hereinafter called the Bank) and the KENNEDY FOR PRESIDENT COMMITTEE (hereinafter called the Borrower).

1. Definitions. (a) "Liability" or "Liabilities" includes all liabilities (primary, secondary, direct, contingent, sole, joint or several) due or to become due, or that may be hereafter contracted or acquired, of Borrower to Bank, (b) "Proceeds" means whatever is received when Collateral is sold, exchanged, leased, collected or otherwise disposed of and includes the account arising when the right to payment is earned under a contract, (c) "Security Interest" means a lien or other interest in Collateral which secures payment of a liability or performance of an obligation, (d) "Collateral" means the following described property in which the Bank has a Security Interest:

300 serially numbered (1 through 300) Jamie Wyeth Kennedy '80 Lithograph art prints each signed by Jamie Wyeth.

2. Security Interest. As security for the payment of all loans now or in the future made hereunder and all other liabilities of Borrower to Bank, Borrower hereby grants to Bank a Security Interest in the above-described Collateral and all and any Proceeds arising therefrom.

Borrower represents and warrants to the Bank that (a) the Collateral was especially prepared for the exclusive use of the Borrower and (b) Borrower is, and has been from the time of its preparation, the sole lawful owner of the Collateral, free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to the Bank and that no financing statement covering the Collateral, other than the Bank's, is on file in any public office.

3. Use of Collateral. The Collateral will be used primarily as a premium for contributions to Borrower. The Collateral will be stored at the offices of Dr. Ronald Parker at Circle Fine Art, 345 Park Avenue South, 2nd Floor, New York, NY 10010, and released, in whole or in part by the custodian, Joseph E. Hakim, Suite 3021, 200 Park Avenue, New York, New York, for transfer to a contributor only upon the presentation of a written release from the Bank.

4. Insurance. Borrower will have and maintain insurance on the Collateral until this Agreement is terminated against all expected risks to which it is exposed, including fire, theft and those which the Bank may designate, such insurance to be payable to Bank and Borrower as their interests may appear; all policies shall provide for ten (10) days' written minimum cancellation notice to the Bank. Bank may act as attorney for Borrower in obtaining, adjusting, settling and canceling such insurance.

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EXHIBIT T

5. Default. Default shall exist hereunder (1) if the Borrower shall fail to pay any amount of the Liabilities when due, (2) if the Borrower shall or shall attempt to (a) remove or allow removal of the Collateral from the offices of Circle Fine Art, without a written release of the Collateral, or any part thereof, from the Bank, (b) sell, encumber or otherwise dispose of the Collateral or any interest therein without a written release of the Collateral, or any part thereof, from the Bank, (c) conceal, hire out or let the Collateral, (d) misuse or abuse the Collateral, or (e) use or allow the use of the Collateral in connection with any undertaking prohibited by law, (3) if bankruptcy or insolvency proceedings shall be instituted by or against the Borrower, (4) if the Collateral shall be attached, levied upon, seized in any legal proceedings, or held by virtue of any lien or distress, (5) if the Borrower shall make any assignment for the benefit of creditors, (b) if the Borrower shall fail to pay promptly all taxes and assessments upon the Collateral or the use thereof, (7) if the Bank with reasonable cause determines that its interest in the Collateral be in jeopardy, or (8) if Borrower shall fail to keep the Collateral suitably insured. In the event of default or the breach of any undertaking of or conditions to be performed by the Borrower (1) all liabilities shall become immediately due and payable, and (2) the Borrower agrees upon demand to deliver the Collateral to the Bank, or the Bank may, with or without legal process, and with or without previous notice or demand for performance, enter any premises wherein the Collateral may be, and take possession of the same, together with anything therein; and the Bank may make disposition of the Collateral subject to any and all applicable provisions of the law. If the Collateral is sold at public sale, Bank may purchase the Collateral at such sale. The Bank, provided it has sent the statutory notice of default, may retain from the proceeds of such sale all reasonable costs incurred in the said taking and sale and also, all sums then owing by the Borrower, and any overplus of any such sale shall be paid to the Borrower.

6. General Agreements. (a) Borrower agrees to pay the costs of filing financing statements and of conducting searches in connection with this Agreement. (b) Borrower agrees to allow the Bank through any of its officers or agents, at all reasonable times, to examine or inspect any of the Collateral and to examine, inspect and make extracts from the Borrower's books and records relating to the Collateral. (c) Borrower will promptly pay when due all taxes and assessments upon the Collateral or for its use or operation or upon the proceeds thereof or upon this Agreement or upon any instrument or instruments evidencing the liabilities. (d) At its option, the Bank may discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, and may pay for the maintenance and preservation of the Collateral, and the Borrower agrees to reimburse the Bank on demand for any payment made or any expense incurred by the Bank pursuant to the foregoing authorization, including counsel fees and disbursements incurred or expended by the Bank in connection with the Agreement (e) Borrower

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hereby authorizes the bank to file the financing statement and any amendments thereto without the signature of Borrower. Such authorization is limited to the security interest granted by this Agreement. (f) The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Borrower unless such waiver is in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver thereof or of any other right. A waiver upon any one occasion shall not be construed as a bar or a waiver of any right or remedy on any future occasion. All of the rights and remedies of the Bank, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singly or concurrently.

7. Execution by Bank. This Agreement shall take effect immediately upon execution by the Borrower, and the execution hereof by the Bank shall not be required as a condition to the effectiveness of this Agreement. The provision for execution of this Agreement by the Bank is only for purposes of filing this Agreement as a Security Agreement under the Uniform Commercial Code, if execution hereof by the Bank is required for purposes of such filing.

KENNEDY FOR PRESIDENT COMMITTEE,

By _____
Stephen E. Smith, Chairman
1250 22nd Street, N.W.
Washington, D.C. 20037

DISTRICT OF COLUMBIA NATIONAL BANK

By _____

1801 K Street, N.W.
Washington, D.C.

8304103 7

Effective Date: July 29, 1980

KENNEDY FOR PRESIDENT COMMITTEE

Addendum to Security Agreement dated March 7, 1980, between KENNEDY FOR PRESIDENT COMMITTEE and DISTRICT OF COLUMBIA NATIONAL BANK, WASHINGTON, for a loan in the amount of $240,000.00.

Said Security Agreement will be modified as follows:

Paragraph 1, Definitions; section (d): The following art work will be held as additional security on the mentioned loan:

1. C.J. Yao: #11-180 untitled 25X41 serigraph; edition of 200, 170 pledged, appraised at $350.00 for a total value of $59,500.00.

2. Jay Rosenblum: #1-100 "Solo" 25X44 serigraph; #11-80; #1-100 edition of 300 (3 states of 100); appraised at $350.00 for a total value of $94,500.00; 270 pledged.

Paragraph #3, Use of Collateral:

The additional collateral will be stored at:

88 Grand Street
New York, New York

Attn: Mr. John Nichols
Print Maker

KENNEDY FOR PRESIDENT COMMITTEE

By: [signature]

8304110370

TRUST RECEIPT

FOR FEC

Mark Twain National Bank
Trust Receipt for Securities

April 14, 1980
Date

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities hold by said bank as custodian or pledgee, to wit:

40 Rauschenberg Lithographs

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof or the securities received in exchange therefor, are to be safely kept in trust for said bank and returned to it at its office during banking hours on or before the ~~XXXX

NOTE (Variable Rate)

$ 10,000.00 Ladue, Missouri, April 14, 19 80

On demand, and if no demand is made, then on the 1 day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of Ten Thousand and No/100---------- ($10,000.00) Dollars, with interest thereon from date payable monthly beginning June 1, 1980 at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most credit-worthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less then -- per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) -- per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Kennedy for President Committee

Due October 1, 1980

BY: [signature]
Steve Smith, Chairman

BY: [signature]
Carolyn R. Reed, Treasurer

CL-01-A (4/76)

8304041033

TRUST RECEIPT

MARK TWAIN BANKS

Mark Twain National Bank
Trust Receipt for Securities

May 23, 1980

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities held by said bank as custodian or pledgee, to wit:

#181-200 Nesbitt Lithographs titled Tulip, 24 x 35
#81- 100 Rosenblum Lithographs titled Solo, 25 x 44
#181-200 C.J. Yao Lithographs untitled 29 x 41
#181-200 Levine Lithographs titled Tired Earth, 25 x 38

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof of the securities received in exchange therefore, are to be safely kept in trust for said bank [illegible] and returned to said Bank on demand.
Any monies collected by the undersigned as such agent upon or for said securities shall be immediately transmitted to said bank.

All responsibility for loss of said securities, by theft or otherwise, is assumed by the undersigned.

Kennedy for President Committee

By: Carolyn R. Reed

Steve Smith
Chairman

Carolyn R. Reed
Treasurer

8304103332

CL-61

EXHIBIT V

NOTE (Variable Rate)

MARK TWAIN BANKS

$ 10,000.00 Ladue, Missouri, May 23, 19 80

On demand, and if no demand is made, then on the 1st day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of Ten Thousand and NO/100---------- ($10,000.00) Dollars, with interest thereon from date payable at maturity at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most creditworthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less than ---- per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) ---- per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Due October 1, 1980

1250 22nd St., N.W.
Washington, D.C. 20037

Kennedy for President Committee

By: Steve Smith, Chairman

By: Carolyn R. Read

MARK TWAIN NATIONAL BANK

CL-01-A (4/76)

8 3 0 4 0 1 1 0 2 3

RECEIVED
Gen # 7431
82 MAR 29 P 1:44

EVANS, SKLARZ & EARLY
COUNSELLORS AT LAW
261 BRADLEY STREET
P.O. BOX 2062
NEW HAVEN, CONNECTICUT 06521
(203) 772-4900

ROBERT S. EVANS
MARK G. SKLARZ
JAMES F. EARLY
FREDERIC M. KLEIN*
PAUL B. WHITMAN
ROBERT L. PEAT

*MEMBER OF FLORIDA BAR

March 24, 1982

82 MAR 29 P2:39

Federal Election Commission
Washington, D.C. 20463

Attn: Nancy Nathan, Attorney Re: MUR 1393

Dear Attorney Nathan:

This letter is in response to your correspondence to me dated March 12, 1982 regarding allegations of over-contributions to the Kennedy for President Campaign in 1980 made by me and my wife Joyce L. Evans.

Upon receipt of your letter, I telephoned you, and determined that the amount in question totalled $3,554.00 and that there appeared to have been an over payment of $2,054.00 based upon your records. When we both analyzed the information we found that $1,900.00 had been contributed by Joyce and I in cash contributions and $1,654.00 represented an exempt in kind contribution for a party for the Senator at our home on Saturday March 22, 1980.

For reasons unknown to me, the Kennedy Campaign in Washington did not attribute half of my cash contribution to my wife. Moreover, apparently between a local agent for fund raising and the Kennedy Campaign in Washington, D.C. the contribution for the party was not properly recorded in the records. I am enclosing a copy of my letter to Robin Krooqman the Kennedy Fund Raising Coordinator dated April 8, 1980 (a contempary memorandum) recording the expenditures for the party. I had assumed that she had forwarded this information to the Kennedy Campaign in Washington.

In closing, I thank you for your assistance in helping to clarify the issues. Moreover, I trust that this letter will serve to establish that Joyce and I made $1,900.00 in cash contributions and $1,654.00 in exempt in kind contribution for entertainment at our home on March 22, 1980.

Unless I hear further from you, I assume that this will conclude the matter.

Sincerely,

Robert S. Evans

RSE/em

8304410334

EVANS, EVANS, SKLARZ, FELDMAN & EARLY
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
261 BRADLEY STREET
P. O. BOX 1675
NEW HAVEN, CONNECTICUT 06507
(203) 772-4900

JACK H. EVANS
ROBERT S. EVANS
MARK G. SKLARZ
RICHARD C. FELDMAN
JAMES F. EARLY
FREDERIC H. KLEIN ◊
CATHLEEN MULLIGAN EDWARDS
GERARD F. ESPOSITO

◊ MEMBER OF FLORIDA BAR

OF COUNSEL
LOUIS EVANS

ALBERT E. EVANS (1930-1970)

April 8, 1980

Kennedy for President
189 Asylum Street
Hartford, Connecticut

Attention: Robin Kroogman

Re: Presidential Campaign for Senator
Edward M. Kennedy

Dear Robin:

The following will confirm certain matters concerning both the fund raiser on March 22, 1980 at my home and the personal contribution of Joyce and Robert Evans.

The fund raiser netted $3,043. Since that time, I have turned over to you another $125.00 and now have turned over to Marty Dunleavy another $100.00 as per copy of check, a total of $3,268.

Our personal contribution is as follows:

1.	Cash	$ 250.00
2.	Caterer - March 22, 1980	1,200.00
3.	Items not purchsed from the caterer such as paper goods, rental of dishes, liquor, food goods and other related matters	454.25
	TOTAL	$1,904.25

Sincerely,

RSE

Robert S. Evans

RSE/jm

Enclosure

8304410335

S. SKLARZ & EARLY
ELORS AT LAW
ADLEY STREET
OX
AVEN, CONNECTICUT 06521

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Federal Election Commission
Washington, D.C. 20463

Attn. Nancy Nathan, Attorney

07 MAR 29 P1:44

200984 ccc# 7407

MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 1100 K
1801 K STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE (202) 822-5300
CABLE: REDMEL
TELEX: 89-7414
TELECOPIER 833-2090

LEONARD S. MELROD
LIPMAN REDMAN
JOSEPH V. GARTLAN, JR.
JERRY H. HANOVIT
WARREN K. KAPLAN
STEPHEN D. KAHN
PHILIP A. GORELICK
MICHAEL D. GOLDEN
DOROTHY SELLERS
JOEL Z. SILVER
ROY NIEDERMAYER
PHILIP H. HOROWITZ
DAVID F. SANTLEON
ALLAN J. WEINER
HOWARD S. JATLOW
NEIL I. LEVY
ROBERTA F. COLTON

STEVEN M. GLAZER
J. JONATHAN SCHRAUB
ROBERT J. FREDA
WM. DANIEL SULLIVAN
STANTON J. LEVINSON
ROBERT F. ADAMS
HOWARD N. SOLODKY
DANIEL M. LITT
JAMES S. FEIGENBAUM
DENISE M. RECHTER
E. SUE SPRAGUE
JAMES W. KAYWELL
JOAN LUND ALTMAN
CAROLINE E. BLAKELY
STEVEN A. TEITELBAUM
ANDREW G. WACHTEL
DOUGLAS B. MISHKIN

WRITER'S DIRECT DIAL NUMBER
(202) 822-5363

3:54 pm

March 23, 1982

Nancy B. Nathan, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1393; District of Columbia National Bank

Dear Nancy:

My client, District of Columbia National Bank, has just supplied me with a copy of the Commission's letter of March 12, 1982 and request for some information. The officers responsible for the loan have been and are now out of the city, so that I am unable to supply you with the specific information requested at this time. I would appreciate a one-week extension of time in order to gather together the materials and supply the specific answers you require.

Today I spoke to Ken Gross, who indicated that this should not be a problem unless the Commission's time-table for resolution of the matter requires an earlier submission, in which case I will endeavor to comply.

Please let me know if there is any problem with this brief continuance.

Sincerely yours,

Roy

Roy Niedermayer

P.S. Gail says hello, and misses the changing table.

RN/nmn

8304041037

MELROD, REDMAN & GARTLAN
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 1100 K
801 K STREET, N.W.
WASHINGTON, D.C. 20006

83040-2

Nancy B. Nathan, Esq.
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 22, 1982

Gary W. Christian
Graham and James
1050 - 17th Street, N.W.
Washington, D.C. 20036

Re: MUR 1393

Dear Gary:

This letter acknowledges your letter of March 15, 1982, which requests a week extension of time to respond to the Commission's questions and to the reason to believe notice in the above matter. After consideration of your request, this Office grants your request to respond to the Commission's questions by April 1 and the reason to believe notice by April 6, 1982.

We will look forward to your responses.

Sincerely,

Charles N. Steele
General Counsel

BY: Kenneth A. Gross
Associate General Counsel

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200899

Gen# 744

D.C. National Bank ★★★

1801 K STREET, N.W. • WASHINGTON, D.C. 20006 • (202) 833-4500

March 22, 1982

Federal Election Commission
1325 K Street, NW
Washington, DC 20463

ATTENTION: Nancy B. Nathan, Esquire

RE: MUR1393

Dear Ms. Nathan:

Please be advised that the law firm of Melrod, Redman & Gartlan will represent District of Columbia National Bank with regard to the above matter. As our counsel, they are authorized to receive all notifications and communications from the Commission. Please direct all such correspondence to the law firm to Mr. Roy Niedermayer with copies to Mr. Thomas S. Condit, President, District of Columbia National Bank.

Sincerely,

Joseph B. Head
Vice President, Manager
Credit Administration

JBH/vrc

cc: Thomas S. Condit
Roy Niedermayer

2 MAR 23 P1:1

3304041039

D.C. National Bank ★★★

1801 K STREET N.W.
WASHINGTON, D.C. 20006

830404 003

Federal Election Commission
1325 K Street, NW
Washington, DC 20463

ATTENTION: Nancy B. Nathan, Esquire

MARK TWAIN BANKS
MARK TWAIN BANCSHARES, INC.
8820 Ladue Road
St. Louis, Missouri 63124
Telephone: 314-727-1000

Bcc # 7429

82 MAR 29 P2:26

82 MAR 26 P5:19

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY

March 22, 1982

Mr. Frank P. Reiche
Chairman
Federal Election Commission
Washington, D.C. 20463

RE: MUR 1393

Dear Chairman Reiche:

I am writing on behalf of Peter Benoist, President of Mark Twain National Bank, and the bank as its General Counsel, with regard to your letter to Mr. Benoist of March 12, 1982, which stated your Commission determined that there is reason to believe our bank violated the Federal Election Campaign Act of 1971.

Quite frankly, we are astounded. Such determination seems truly bizarre.

I will answer below all of the "First Questions" posed to us, but not in the exact order listed.

First and foremost let me state that to my knowledge, and I have investigated, we were never informed that any prints of the pledged works did not exist. Quite the contrary, we were informed the collateral did exist. Our first knowledge of apparent non-existence of a part of the pledged collateral came in your letter.

Next, the following is a description of the bank loans, pledged collateral, and correspondence regarding the two loans of $10,000.00 each made to the Kennedy for President Committee in 1980.

The first loan was dated April 14, 1980, No. 94805-0018, for $10,000.00, payable October 1, 1980. (Your "First Questions" list the date of April 6, 1980). See copy of note attached.

The second loan was dated May 23, 1980, No. 94805-00026, for same amount and same payable date. (Your "First Questions" list the date of May 28, 1980). See copy of note attached.

Concurrently with the first loan, we requested (copy of request attached) and received the following documents, copies of which are attached:

3304102322

(a) Appraisal of the Rauschenberg lithographs (Castelli Graphics appraised for $1,200.00 each).

(b) Campaign counsel's opinion that note and trust receipt proper; that the collateral is owned by the Committee; that "the collateral was especially prepared for the exclusive use of the Committee and its ownership and use does not violate the Federal election laws (2 U.S.C. Sections 431-455)."

(c) Counsel's Certification of officers of the Kennedy for President Committee.

(d) Executed Note, and the Trust Receipt for 40 Rauschenberg lithographs.

At this time the bank, after confirming with a leading St. Louis Art Gallery owner and appraiser as to the relative value of the Rauschenberg prints, believed it had collateral valued between 40-50 thousand dollars securing the $10,000.00 loan. Your letter does not dispute the "Rauschenberg loan."

Thereafter, on May 23, the second loan for $10,000.00 was made. Thus, the bank had $20,000.00 in loans secured by a 40-50 thousand dollar value in Rauschenberg prints. Nonetheless, the Campaign Committee collaterized this loan by the 20 Nesbitt prints, 20 Rosenbloom prints, 20 C.J. Yao prints, and 20 Levine prints. (Copies of trust receipts attached).

Accordingly, and as forcefully as a letter will permit me to state it, the "second batch" of prints collateral was never needed as additional collateral to the Rauschenberg prints to justify the $20,000.00 in loans. Thus, if in fact you are correct that certain prints in the "second batch" didn't exist, I can only state that "it doesn't matter."

Nonethdess, to go on, on May 30 and June 16, the Committee made reductions in the first loan of $3,000.00 each, requesting release of one (1) Rauschenberg print from collateral for each $1,000.00 reduction. (See copies attached).

Thus 34 Rauschenberg prints remained securing a total loan balance of $14,000.00--still more than double the loan balance in collateral value, without any regard to the "second batch" of prints.

On August 18, 1980, the bank received this $14,000.00 principal balance payment with request for release of collateral (copy attached).

Again, I am astounded, both personally and on behalf of the bank, over the claims made against the bank. While the artists of the second batch are not totally without reputation in the art world, I personally know of the reputation of Rauschenberg prints, the reputation of Castelli Graphics and the artists which it publishes,

and the reputation of the St. Louis appraiser to which the bank sought independent verification of the Rauschenberg print values. It is clear to me and the bank that the bank was always more than adequately and sufficiently collaterized for its loans. And, thus equally clear, that the bank did not violate the Federal Election Campaign Act.

However, at the same time, I am somewhat perplexed. Based upon your letter, I am wondering whether I now need to make a determination whether or not a borrower misrepresented facts to induce a federally insured financial institution to make a loan in a manner constituting a federal bank crime, and if so determined, that I am then required under federal banking law to turn your letter and such determination on our part over to the FBI and Comptroller of the Currency.

Nonetheless, I trust that the Commission, upon a review of the facts and the bank's actions in these regards, will notify me shortly that this matter is concluded.

Respectfully submitted,

Carl A. Wattenberg, Jr.
Vice President, Secretary and
General Counsel

CAW:sc
Encs.

cc: Mr. Peter Benoist, President

Subscribed and sworn to before me this 22ND day of March, 1982.

Dana L. Vouga
Notary Public

DANA L. VOUGA
NOTARY PUBLIC, STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXPIRES APRIL 20, 1985

830410039

NOTE (Variable Rate)

$ 10,000.00 — Ladue, Missouri, April 14, 19 80

On demand, and if no demand is made, then on the 1 day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of

Ten Thousand and No/100----------($10,000.00) Dollars, with interest thereon from date payable monthly beginning June 1, 1980 at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most credit-worthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less than -- per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) -- per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Kennedy for President Committee

Due October 1, 1980

BY: X
Steve Smith, Chairman

pd - 9.26.80
Int due

BY: Carolyn A. Reed
Carolyn R. Reed, Treasurer

CL-01-A (4/76)

94805/1-8

NOTE (Variable Rate)

MARK TWAIN BANKS

$ 10,000.00 Ladue, Missouri, May 23, 19 80

On demand, and if no demand is made, then on the 1st day of October, 19 80, the undersigned (and if more than one of them, each of them jointly and severally) promise to pay to the order of Mark Twain National Bank (the "Bank"), at its office in Ladue, Missouri, the sum of Ten Thousand and NO/100---------- ($10,000.00) Dollars, with interest thereon from date payable at maturity ~~monthly~~ at a per annum rate equal to 1/2 per cent in excess of the from time to time prime per annum rate of interest of the Bank for 90-day loans to its most creditworthy responsible commercial and industrial borrowers (herein called the "Prime Rate"), which interest rate shall change as and when such Prime Rate shall change, but not less than ---- per cent per annum, until the unpaid principal balance shall be due and payable (whether at maturity, on demand or otherwise) and thereafter at a rate equal to the greater of (i) 10% per annum or (ii) ---- per cent in excess of the Prime Rate in effect when such balance is due and payable; together with a delinquency charge of five per cent (5%) of each installment in default for ten or more days. Interest shall be calculated on the basis of a 360-day year and actual days. In the event any of the undersigned is an individual, the interest rate both before and after maturity or demand shall not exceed the highest rate of interest permitted by law. If this Note shall be placed in the hands of an attorney for collection, the undersigned further promise to pay all costs and expenses of collection, including ten per cent (10%) of the sum of the unpaid principal and all interest due thereon as reasonable attorneys' fees, whether or not litigation should be commenced in aid thereof. The undersigned and all endorsers, sureties, accommodation parties, guarantors and other parties hereto waive presentment for payment, demand for payment, protest and notice of every kind and nature in reference to this Note and agree that the holder, at holder's option, may extend, renew, or revise payment of this Note or receive partial payment thereon, release any party hereto, or exercise or release holder's rights with respect to all or part of the collateral, if any, securing this Note, and that such extension, renewal, revision, partial payment, release, or exercise shall not in any manner release any of them from the payment hereof or affect the liability of any party hereunder.

Additional terms:

Due October 1, 1980 pd. 8-21-80

1250 22nd St., N.W.
Washington, D.C. 20037 Int due

Kennedy for President Committee

By: _____
Steve Smith, Chairman

By: Carolyn A. Reed
Carolyn R. Reed

CL-01-A (4/76)

94805 2-6

MARK
TWAIN
BANKS
MARK TWAIN NATIONAL BANK
8322 Ladue Road
St. Louis, Missouri 63124
Telephone: 314-727-1000

New Credit File

April 14, 1980

Kennedy for President Committee
Mr. Steve Smith, Chairman
Ms. Carolyn R. Reed, Treasurer

Attached please find note for Ten Thousand Dollars ($10,000) and a Trust Receipt for forty (40) Rauschenberg Lithographs. Please execute these documents and return by Air Express along with an appraisal of the lithographs and a properly executed Borrowing Resolution authorizing the execution of the enclosed Ten Thousand Dollar note.

James F. O'Donnell pl

James F. O'Donnell
Vice President

8304041039 7

ASTELLI GRAPHICS 4 EAST 77 STREET NEW YORK 10021 288-3202

March 12, 1980

Miles L. Rubin
375 Park Avenue
New York, N.Y. 10022

For insurance purposes;

ROBERT RAUSCHENBERG: After Homage to Picasso, 1973-80
lithograph/monotype
30 x 22 inches
Ed. 45 Untitled Press $1200.00

Robert Monk
Graphics Director

830404103728

KENNEDY FOR PRESIDENT

April 15, 1980

Mark Twain National Bank
3322 LaRue Road
St. Louis, Missouri 63124

Attention of James F. O'Donnell, Vice President

Dear Sirs:

In connection with a loan being made by you to the Kennedy for President Committee (the "Committee"), pursuant to a Trust Receipt between the Committee and you and to be evidenced by a demand promissory note payable by the Committee to your order, I have reviewed such necessary documents and certificates as in my opinion are required in connection with the foregoing opinion and am pleased to confirm that it is my opinion that:

(1) the Committee has been duly and validly established and is on the date hereof in full compliance with 2 U.S.C. §433;

(2) a Treasurer of the Committee has been appointed in accordance with the requirements of 2 U.S.C. §432;

(3) a statement has been filed by the Committee with the Commission (as such term is defined in 2 U.S.C. §431);

(4) the Committee is, and has been from the time of its preparation, the sole lawful owner of the Collateral (as such term is defined in the Trust Receipt), free and clear of any liens and encumbrances, and has the right and power to pledge, sell, assign and transfer absolute title thereto to you and that no financing statement covering the collateral is on file in any public office; and

(5) the Collateral was especially prepared for the exclusive use of the Committee and its ownership and use does not violate the Federal election laws (2 U.S.C. §§431-455).

The Trust Receipt and the note have been duly authorized and executed on behalf of the Committee and constitute respectively legal, valid and binding obligations of the Committee.

Sincerely,

William C. Oldaker
Campaign Counsel

8304103?

1250 22ND STREET N.W. WASHINGTON D.C. 20037 TELEPHONE: (202) 861-6000

A copy of our report is filed with the Federal Election Commission
and is available for purchase from the Federal Election Commission, Washington, D.C.

CERTIFICATION OF OFFICERS

April 15, 1980

I, the undersigned, DO HEREBY CERTIFY to Mark Twain National Bank, St. Louis, Missouri, that the Present Officers of Kennedy for President Committee duly elected to hold office until their respective successors are chosen, and empowered to act for and on behalf of this Committee in any of its business with the said Bank within the authority prescribed in the resolutions heretofore certified to the said Bank, are

NAME	TITLE
Stephen E. Smith	Chairman
William C. Oldaker	Counsel
Carolyn A. Reed	Treasurer

In Witness Whereof, I have hereunto set my hand as Counsel and signed this 15th day of April, 1980.

William C. Oldaker, Counsel

8304041043

TRUST RECEIPT

Mark Twain National Bank
Trust Receipt for Securities

April 14, 1980
Date

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities held by said bank as custodian or pledgee, to wit:

40 Rauschenberg Lithographs

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof or the securities received in exchange therefor, are to be safely kept in trust for said bank and returned to it at its office during banking hours on or before the ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ or sooner on demand.)

Any monies collected by the undersigned as such agent upon or for said securities shall be immediately transmitted to said bank.

All responsibility for loss of said securities, by theft or otherwise, is assumed by the undersigned.

Kennedy for President Committee
FULL CORPORATION NAME

BY: [signature] [signature]
Steve Smith — Carolyn R. Reed
Chairman — Treasurer

[signature]
AUTHORIZED SIGNATURE
James F. O'Donnell, Vice President

For Bank's use only		
Handled for		Loan officer's OK
Loan Service Dept. by ____ 19 ____	Vault auditor by ____ 19 ____	Vault custodian by ____ 19 ____

CL - 61

8304041040 1

TRUST RECEIPT

Mark Twain National Bank
Trust Receipt for Securities

May 23, 1980

The undersigned Steve Smith and Carolyn R. Reed as agent for Mark Twain National Bank, St. Louis, Missouri and not otherwise has received at St. Louis, Missouri from said bank the following described securities held by said bank as custodian or pledgee, to wit:

#181-200 Nesbitt Lithographs titled Tulip, 24 x 35
#81- 100 Rosenblum Lithographs titled Solo, 25 x 44
#181-200 C.J. Yao Lithographs untitled 29 x 41
#181-200 Levine Lithographs titled Tired Earth, 25 x 38

The above mentioned securities are received by the undersigned for the purpose of securing loan.

And for that purpose only, and the bank expressly retains all its rights as custodian or pledgee of said securities. (Said securities or the proceeds of the sale thereof of the securities received in exchange therefore, are to be safely kept in trust for said bank [illegible] and returned to said Bank on demand.
Any monies collected by the undersigned as such agent upon or for said securities shall be immediately transmitted to said bank.

All responsibility for loss of said securities, by theft or otherwise, is assumed by the undersigned.

Kennedy for President Committee

By: _____

Steve Smith
Chairman

Carolyn R. Reed
Treasurer

8304104

CL - 61

3/76

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

30 May 1980

Mr. James F. O'Donnell
Vice President
Mark Twain National Bank
3322 LaRue Road
St. Louis, Missouri 63124

RE: Loan #0094805-00018

Dear Mr. O'Donnell:

Enclosed is our check in the amount of $3,000.00 to reduce our outstanding loan balance. We would appreciate your executing the enclosed copy of this letter, acknowledging receipt and releasing as collateral three of the Rauschenberg prints pledged to secure our loan.

Very truly yours,

KENNEDY FOR PRESIDENT COMMITTEE

Lois M. Spadafora

Release of loan collateral described above approved

By: _____
Pres.

83040410403

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

MARK TWAIN BANK

MARK TWAIN NATIONAL BANK

[illegible] Lindbergh Road
St. Louis, Missouri [illegible]
Telephone: [illegible]

June 16, 1980

Lois M. Spadafora
Kennedy For President Committee
1250 22nd Street N.W.
Washington, D.C. 20037

Dear Ms. Spadafora:

Enclosed please find a receipt for your check in the amount of $3,000.00 which has been applied to loan account #94805/1-8 to reduce the outstanding principal balance. Also enclosed is a collateral release pledge which requires the proper signature in order to release three of the lithographs held as collateral. Please complete the form and return it to me in the envelope provided and we will issue a copy of the release for your records.

Thank you for your co-operation in this matter. If you have any questions or problems regarding this procedure, please call.

Sincerely,

Jill Duvall

Jill Duvall
Note Teller

8304041040

Kennedy '80

1250 22nd Street N.W.
Washington, D.C. 20037
202-861-6000

18 August 1980

Peter F. Benoist, President
Mark Twain National Bank
3322 LaRue Road
St. Louis, Missouri 63124

Dear Mr. Benoist:

Enclosed are two checks in full payment of our two loans, as follows:

Loan No. 0094805-00018	$4,000.00	Balance due
Loan No. 0094805-00026	$10,000.00	Payment in full

We will appreciate your acknowledging receipt of these payments and executing the appropriate collateral release forms.

We also understand that you will send an interest notice upon receipt of the principal payments.

Very truly yours,

KENNEDY FOR PRESIDENT COMMITTEE

Lois M. Spadafora

ms/

8-26-80 KM
Ltr sent - interest notice mailed 8-27-80 K

83040410405

A copy of our report is filed with the Federal Election Commission and is available for purchase from the Federal Election Commission, Washington, D.C. 20463

KENNEDY FOR PRESIDENT COMMITTEE
WASHINGTON, D.C. 20037

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

DELUXE - FORM WVC-3 V-2

DATE	DESCRIPTION		AMOUNT
8-7-80	Loan repayment	00-03-75	4,000.00
	Balance of Loan #94805-00018		

KENNEDY FOR PRESIDENT COMMITTEE
WASHINGTON, D.C. 20037

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

DELUXE - FORM WVC-3 V-2

DATE	DESCRIPTION		AMOUNT
8-19-80	Loan Repayment	00-03-75	10,000.00

8304106

8304041040 7

82 MAR 26 P3:0

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Frank P. Reiche
Chairman
Federal Election Commission
1325 K Street NW
5th Floor
Washington, D.C. 20463

8820 Ladue Road / St. Louis, Mo. 63124
MARK TWAIN BANCSHARES, INC.

CERTIFIED
P15 [illegible]
MAIL

SUITE 1200
1050 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

8304104086

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

GCC#7356

GRAHAM & JAMES
ATTORNEYS AT LAW
1050-17TH STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 463-0800

CABLE ADDRESS ALL OFFICES
"CHALGRAY"
TLX 90-4103 CHALGRAY WSH

OTHER OFFICES
SAN FRANCISCO
LOS ANGELES
LONG BEACH
NEWPORT BEACH
NEW YORK
ANCHORAGE
SINGAPORE
LONDON
MILAN

March 15, 1982

2 MAR 15 P5:27

Kenneth A. Gross, Esquire
Associate General Counsel
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20463

Re: MUR 1393

Dear Ken:

I am writing in reference to the Commission's reason to believe notice to the Kennedy for President Committee in the above referenced matter.

Bill Oldaker is currently on vacation in Colorado. It is therefore not possible for us to draft a response to the Commission's notice until he returns. Accordingly, without objection, we will respond to the Commission's questions within ten days from Monday, March 22 (i.e., by April 1) and to the RTB notice within 15 days from the same date (i.e., by April 6).

In light of the fact that the information on which the finding is based has been in the Commission's hands for at least four months, we trust a one week delay will not cause any inconvenience. Please advise me if you have any objections.

Sincerely,

Gary W. Christian

GWC:kb

9304041049

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

Chemical Bank of New York
Norborne Berkeley, Jr., President
277 Park Avenue
New York, New York 10017

RE: MUR 1393

Dear Mr. Berkeley:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

8304041040

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

8304041041

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Chemical Bank of New York

SUMMARY OF ALLEGATIONS

The Commission's audit of the Kennedy for President Committee ("the Committee") revealed that respondent Chemical Bank accepted apparently insufficient collateral pledged for two bank loans obtained by the Kennedy for President Committee ("the Committee"), indicating possible violations of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee

3304104123

obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. An examination of Committee records revealed no evidence that works listed in the fundraising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

b. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980. Further, the representative revealed that an original work by Anuszkiewicz valued at $9,000, which

3304104[illegible]

Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000, was not in the Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

c. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory).

Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe Chemical Bank of New York violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the Chemical Bank of New York violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee that were not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

8304041041

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: Chemical Bank of New York
Norborne Berkeley, Jr., President
277 Park Avenue
New York, New York

The Federal Election Commission requests that you, as an officer of the Chemical Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loans obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $210,000	4/22/80
2. $540,000	5/2/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loans.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loans.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20515

RE: MUR 1393

Dear Senator Kennedy:

On March 11 , 1982, the Federal Election Commission determined that there is reason to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1), 434(b)(2), 432(c)(1), 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, the Committee has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against the Committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of reason to believe. See 11 C.F.R. § 111.18(d).

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

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

		MUR NO. 1393
		STAFF MEMBER(S) & TEL NO.
Respondent	Kennedy for President Committee	Nancy Nathan (202) 523-4073

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

SUMMARY OF ALLEGATIONS

The three matters referred to the Office of General Counsel are:

1) unreported receipts and receipts for which the Committee has been unable to provide adequate documentation of source or receipt, indicating possible violations of 2 U.S.C. §§ 434(b)(1), (2), and (4) and 432(c)(1) and (2);

2) apparently insufficient collateral pledged for five bank loans obtained by the Committee, indicating possible violations of 2 U.S.C. § 441b(a) by the banks for failure to comply with U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans, and a violation of 2 U.S.C. § 441b(a) by the Committee, for knowingly accepting those illegal contributions; and,

3) apparent violations of § 441a individual contribution limits by Committee contributors and of § 441a(f) by the Committee, for its acceptance of those excessive contributions.

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FACTUAL AND LEGAL ANALYSIS

I. Unreported Receipts

According to the Final Audit Report, the Committee failed to report receipts totaling $17,500.49.1/ Furthermore, the Final Audit Report indicates that the Committee failed to keep an account of $14,583.57.2/ The reporting and recordkeeping omissions stemmed from certain Committee deposits in state and scheduling accounts. The state accounts were apparently maintained for overhead expenses of state offices, and the scheduling accounts were maintained for the expenses of specific scheduled events. The audit revealed that $52,602.79 worth of receipts deposited in state and scheduling accounts had not been transferred from the Committee's national accounts.

It is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(1) and (2) for its continued failure to report receipts of $17,500.49 in its cash-on-hand or total receipts figures. It is further recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 432(c)(1) for its failure to keep an account of

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1/ The auditors reached this conclusion after analyzing the documentation provided by the Committee in response to the Interim Audit Report.

2/ The Interim Audit Report requested documentation for receipts totalling $52,602.79. Legible documentation was submitted for $38,019.22 in receipts, leaving $14,583.57 undocumented. The auditors include in the amount undocumented $9,249.50 for which illegible copies of checks and lists of receipts were submitted.

$14,583.57 worth of apparent contributions. 2a/

II. Improper Pledges of Collateral for Bank Loans

The Interim Audit Report recommended that the Committee file amended Schedules C-P disclosing details, including collateral, for twelve of the total twenty-four loans obtained by the Committee. The auditors noted, following the Committee's submission of amended schedules, that the documents on five of the loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on five loan documents. For three of the five loans referred, description of the collateral appearing on the amended schedules did not agree with the corresponding bank documents' descriptions; for the other two loans, no documentation was provided by the Committee. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

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2a/ The amounts referred to in the final audit report, which form the basis for the recommendations under Part I, do not include amounts for which similar findings of reporting and record-keeping violations were found in MUR 1370.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans could be deemed contributions by the banks to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting the banks' contributions that were violative of that provision of the Act.

The auditors noted the following facts indicating the possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, and also pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured. (See Attachment 1, items 3 and 5b). The addendum recited where the additional security it listed would be stored.

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It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

b. An examination of Committee records revealed no indication that works listed in the fund-raising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include: 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980 (Attachment 1, item #2); 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral on the addendum for the $240,000 District of Columbia National Bank loan (Attachment 1, item #3) for which the also-unprinted C.J. Yao works also served as collateral (see subsection a, supra); 20 prints of the same Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. (Attachment 1, item #5a). Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed (see subsection a, supra). Further, the representative revealed that an original work by Anuszkiewicz, valued at $9,000, which Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000 (Attachment 1, item #1), was not in the

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Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. That is demonstrated by Attachment 1. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist. (See subsection a, supra).

Because these facts indicate possibly deficient collateralization of the five loans referred following the audit, and because the facts indicate that the Kennedy for President Committee may have known that the loans by the above-named banks were obtained with insufficient collateralization, it is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

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III. Individual Excessive Contributions

The Interim Audit Report found that as many as 269 individuals had contributed in excess of $1,000 to the Committee for an excessive aggregate of $121,468.83. The Committee's response to the Interim Audit Report provided evidence that many of the apparent excessive contributions were due to computer errors, insufficient funds checks, or improper attributions by the Committee. The Audit Division has reviewed the Committee's response as well as subsequent information provided by the Committee. It now appears that 182 contributors exceeded the $1,000 limit and did not receive a refund or reattribute the contribution within 30 days, and did not receive a refund or reattribute their contributions until after the field audit was concluded. (See Attachment 2).3/ The total amount of excessive contributions from these individuals was $75,092.4/

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3/ In previous MURs dealing with excessive contribution receipts by the 1980 presidential campaigns, the Commission has proceeded against the committee involved for accepting excessive contribuions only with regard to the excessive contributions not shown to have been refunded or reattributed within 30 days. See 11 C.F.R. § 103.3(b)(2).

4/ At the time of the referral of this matter to the Office of General Counsel, the Committee had yet to give adequate evidence of a refund or attribution for 122 contributors representing an aggregate excessive amount of $48,817. As of October 6, 1981, only 11 contributions had not been shown to have been corrected. It must be observed, however, that these efforts to correct the violations have come about as a result of the audit process and are occurring many months after the excessive amounts were received.

It is recommended that the Commission find reason to believe that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in knowingly accepting contributions from 182 individuals totalling $75,092.

RECOMMENDATIONS

1. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

4. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

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Attachment 1

Description on Loan Documents

Bank	Date of Loan	Amount of Loan	No.	Type	Title	Artist	Value
. Chemical Bank of New York	4/22/80	$210,000	1	acrylic	untitled	Atnuszkiewicz	$9,000
. Chemical Bank of New York	5/2/80	$540,000	70	serigraph	SSKII 80	Daphnis	
			265	serigraph	Par Avion	Krushenick	
. District of Columbia National Bank	3/7/80	$240,000	170 (#11-180)	serigraph	untitled	Yao	
			270 (#1-100, #11-80, #1-100 of edition 300)	serigraph	Solo	Rosenblum	
. Mark Twain Bank, St. Louis, MO	4/6/80	$10,000	40	Lithograph		Rauschenberg	
. Mark Twain Bank	5/28/80	$10,000	20 (#81-100)	Lithograph	Solo	Rosenblum	
			20 (#181-200)	Lithograph	untitled	Yao	
			20 (#181-200)	Lithograph	Tulip	Nesbitt	

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Committee Description
(Inventory or Brochure)

No.	Type	Title	Artist
Edition 198	serigraph	Centered Square	Anuszkiewicz
Edition 235	serigraph	SSK 80	Daphnis
Edition 300	serigraph	untitled	Krushenick
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 45	serigraph	After Homage to Picasso	Rauschenberg
Edition 100	photographs		Rauschenberg
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 200	serigraph	Tulip	Nesbitt

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Attachment 2

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Wallace Albertson	$1,030	6/27/80	excess refunded 6/23/81
(Mr.) Avis Anagnos	1,850	4/16/80	"attribution"
John M. Anderson	1,250	10/9/80	"attribution"
Donald E. Axinn	1,060	12/19/79	"attribution"
William G. Barry	1,750	3/30/80	"attribution"
Mary Ann Beeneche	1,050	3/3/80	"attribution"
Roger Berlind	1,200	7/21/80	"attribution"
Floyd Bloss	1,050	4/10/80	"attribution"
William J. Boland	1,500	7/30/80	excess to charity 9/28/81
Morton Downey	1,750	2/11/80	excess refunded 6/19/81
James Drilias	1,100	3/18/80	excess to charity 9/28/81
Ed Edmundson	1,025	8/20/80	"attribution"
Neil Ellis	1,500	3/24/80	"attribution"
Anna Eshoo	1,150	8/18/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Robert S. Evans	$3,554	4/4/80	500 "attribution" 2,054 to charity 12/18/81
Louis Farina	1,100	3/6/80	excess refunded 6/8/81
Bill Farley	1,850	2/21/80	"attribution"
Christina Faro	1,500	2/25/80	excess refunded 6/8/81
J. E. Fernandes	1,550	3/10/80	"attribution"
Norma Filner	2,000	2/15/80	"attribution"
Harry Finkel	1,250	3/19/80	"attribution"
Mrs. Randolph Fiore	1,500	2/22/80	"attribution"
James Flanagan	1,200	3/14/80	"attribution"
Mrs. A. G. Fordyce	1,100	6/6/80	"attribution"
John Frank	1,250	2/12/80	"attribution"
Charles Frazier, Jr.	1,140	3/13/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Dominic Frontiere	$2,000	5/2/80	"attribution"
Vincent Gallo	1,875	4/25/80	"attribution"
James Garrity	1,100	3/20/80	"attribution"
John Geary	2,000	3/6/80	"attribution"
Thomas Geary	1,700	3/14/80	"attribution"
David Ginsburg	1,300	1/22/80	"attribution"
Betty Gosman	1,750	4/25/80	"attribution"
Nicholas Gouletas	2,000	5/5/80	excess refunded 11/12/80
Mary Ellen Grossman	1,250	6/2/80	excess refunded 6/8/81
Thomas Hadican	2,000	7/8/80	"attribution"
Gertrude Hamilton	1,100	5/27/80	excess refunded 6/8/81
Susan Haretakis	1,100	4/22/80	excess refunded 6/8/81
John Harris	1,250	4/30/80	excess refunded 6/8/81
George Hartzog, Jr.	1,900	2/6/80	"attribution"

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1/ if more than one excessive contribution made, date is date of first excessive (portion).

2 see cover memo regarding attributions and the absence of dates of disposition.

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive (s) 1/	Disposition 2/
Burton Haas	$1,250	2/5/80	"attribution"
Daphne Hatsopoulos	2,000	7/31/80	"attribution"
Kenneth Hayashi	1,500	5/15/80	excess to charity 9/28/81
Ellen Hirsch	1,060	8/22/80	excess refunded 6/8/81
Walter Hoffelder	1,200	3/14/80	"attribution"
Fred Hofheinz	1,250	1/29/80	"attribution"
Karen Horst	1,100	2/7/80	"attribution"
James Inglis	1,150	4/28/80	"attribution"
Alice Irwin	1,100	2/4/80	"attribution"
Joseph Iseman	1,015	3/13/80	"attribution"
Nick Kanis	1,050	3/3/80	"attribution"
Phillip Kay	2,000	4/1/80	excess refunded 6/8/81
Teresa Keeman	1,025	7/10/80	excess refunded 6/8/81
Michael Kent	1,450	2/28/80	excess refunded 9/25/81
John Kim	1,250	3/24/80	excess to charity 9/28/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessove Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Harry Kraut	$1,200	3/24/80	"attribution"
Vance Krites	1,250	4/16/80	excess refunded 6/8/81
David Kurt	1,275	3/26/80	excess refunded 6/8/81
Steve Lagos	1,100	1/7/80	"attribution"
Modesto Lanzone	1,200	9/17/80	"attribution"
Jose Lastra	1,305	5/23/80	"attribution"
Felicite Latane	1,025	8/20/80	"attribution"
Michael Latronica	1,400	3/14/80	excess refunded 6/8/81
Victoria Lawford	1,020	3/25/80	excess to charity 6/23/81
Beatrice Lawson	1,500	2/7/80	"attribution"
Irving Lazar	1,200	2/8/80	"attribution"
(Mr.) S. M. Lazarus	1,050	5/23/80	excess refunded 6/8/81
Jerry Brown	2,015	4/18/80	"attribution"

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1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
John Burgis	$1,500	5/15/80	"attribution"
Francis Burke	1,500	2/21/80	"attribution"
William Burke	2,000	7/15/80	"attribution"
Joseph Campanelli	2,250	1/16/80	"attribution"
John Campbell	2,000	1/29/80	"attribution"
Hiram Cancio	1,200	2/11/80	excess refunded 6/8/81
Irwin Cantor	1,060	12/19/79	"attribution"
Frank Capaldi	1,500	2/21/80	"attribution"
Joseph Carabetta	1,500	3/24/80	"attribution"
Thomas Cargill, Jr.	1,200	2/28/80	"attribution"
John Catabaan	1,050	8/7/80	excess to charity 6/23/81
Verdie Chase	1,200	4/24/80	excess refunded 6/8/81
Eliot Chertok	1,250	2/22/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2 see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Giraud Chester	$1,100	7/21/80	"attribution"
Josephine Chin	1,850	2/21/80	"attribution"
Franklin Chou	1,250	5/28/80	excess to charity 9/28/81
Andrew Cogan	1,050	3/13/80	"attribution"
Susanne Cohn	1,300	5/16/80	"attribution"
John Conners, Jr.	2,000	7/15/80	"attribution"
Vasa Cubaleski	1,600	4/16/80	excess refunded 6/23/81
George Cullen	1,100	3/14/80	excess refunded 6/8/81
(Dr.) L. Rodger Currie	2,000	7/15/80	excess to charity 12/18/81
Jan Cushing	1,050	4/28/80	"attribution"
Charles Daly	1,125	3/14/80	"attribution"
Kate Day	1,100	7/30/80	excess to charity 9/28/81
R.Villasenor Derivas	1,225	3/4/80	excess refunded 6/8/81
Michael Dewey	1,335	8/8/80	excess refunded 6/23/81
Rosemarie Dooley	1,575	2/22/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Joseph Raun	$1,020	3/21/80	"attribution"
Joseph Reber	1,125	8/20/80	"attribution"
Dixon Renear	1,500	8/5/80	"attribution"
Marilyn Richards	1,250	2/22/80	excess refunded 6/8/81
Donald Rodman	2,000	7/7/80	"attribution"
Frank Romano, Jr.	1,350	3/5/80	"attribution"
Gregg Rose	1,250	9/26/80	"attribution"
Carl Rosen	2,000	4/18/80	"attribution"
Arthur Ross	1,500	8/7/80	"attribution"
Robert Roth	1,125	12/21/79	"attribution"
V.Henry Rothschild	1,100	2/5/80	"attribution"
Vera Rubin	1,425	7/18/80	excess to charity 9/28/81
Sebastian Ruggeri	1,750	2/29/80	"attribution"
Charles Rummel	1,500	12/13/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).]
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
David Rust	$1,750	4/18/80	excess to charity 6/23/81
Henry Schiro	1,100	6/3/80	excess refunded 6/8/81
Michael Segal	2,000	3/6/80	"attribution"
John Sevcik	1,200	3/6/80	"attribution"
Gerald Shea	1,200	6/9/80	"attribution"
Robert Sheehan	1,250	6/10/80	excess refunded 3/25/81
Arnold Shevin	1,500	5/6/80	"attribution"
Isaac Shih	1,200	7/21/80	"attribution"
Joan Shih	1,260	4/29/80	"attribution"
Richard Sklar	1,100	7/14/80	"attribution"
Raymond Smith	2,000	5/5/80	"attribution"
Leonard Tuft	1,050	8/20/80	"attribution"
Michael Vallas	1,800	1/29/80	"attribution"
Harold Vicente	1,250	3/14/80	excess refunded 6/8/81
Sei-Mei Wang	1,100	8/7/80	"attribution"
Jacob Weglarz	2,000	3/19/80	excess refunded 6/8/81
Stephen Wilden	1,500	2/11/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
James Whitmore	$1,100	2/21/80	"attribution"
Edna Williams	2,000	2/19/80	excess refunded 6/8/81
Rosalie Wilson	2,000	4/30/80	"attribution"
Gow Sue Wong	1,150	2/21/80	"attribution"
Reginald Wong	1,600	2/25/80	"attribution"
Jane Wrightsman	2,000	2/11/80	excess refunded 6/8/81
Andrew Zamparelli	1,100	7/31/80	"attribution"
Burton Zien	1,200	8/20/80	"attribution"
Richard Len	1,200	4/18/80	"attribution"
Marcia Levine	1,050	5/30/81	"attribution"
Wayne Lewis	1,500	2/14/80	"attribution"
Stephen Lombardo, Jr.	1,200	3/6/80	excess refunded 6/8/81
Guillermo Maldonado	1,300	3/10/80	"attribution"
Eve Mandelberg	2,700	4/22/80	excess refunded 6/8/81
Fred Mangone	1,200	7/30/80	"attribution"
W. B. Maren	1,050	1/28/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Laurie Marsland	$1,250	2/26/80	"attribution"
Edward Mauldin	1,241	7/29/80	"attribution"
Phil Lehr	1,250	9/26/80	"attribution"
Priscilla McMillan	1,300	3/31/80	excess refunded 6/8/81
Margaret Miller	1,815	6/2/80	"attribution"
Craig Moon	1,075	5/23/80	"attribution"
Alice Morris	1,275	5/27/80	excess refunded 6/8/81
Charles Mosesian	1,100	4/18/80	excess refunded 6/8/81
Thomas Mount	1,125	9/25/80	"attribution"
(Mr.) L. T. Murphy	1,100	8/20/80	"attribution"
Martin Murphy	2,000	2/22/80	excess refunded 6/15/81
(Ms.) Cressey Nakagawa	1,250	9/26/80	excess refunded 6/8/81
Emilio Naranjo	1,200	5/20/80	"attribution"
Marianne Nestor	1,060	12/14/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Daniel O'Connell	$2,000	2/4/80	"attribution"
Leonard Pabich	1,060	2/8/80	excess refunded 6/8/81
Dr. Christos Papatheodorou	1,200	1/28/80	"attribution"
W. J. Payes	2,000	12/13/79	excess refunded 6/8/81
Endicott Peabody	1,125	8/20/80	excess refunded 6/8/81
Douglas Pendleton	1,250	7/7/80	"attribution"
John Perkins	1,100	not available	"attribution"
Loannis Alafoyiannis	1,500	4/15/80	excess to charity 9/28/81
Frank Kelley	1,101	5/12/80	"attribution"
Nancy Korman	1,175	5/23/80	"attribution"
Claude Lopiccolo	2,000	3/6/80	"attribution"
Thomas McAiley	1,190	3/25/80	"attribution"
Ronald Schleppy	2,000	1/15/80	excess to charity 6/15/81
Mary Walker	1,931	4/20/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Walter Beineche, Jr.	$ 2,000	4/16/80	"attribution"
Geoffrey Prentiss	1,800	4/10/80	excess refunded 6/8/81
Craig Prouty	1,200	4/18/80	excess refunded 6/8/81
Leo Racine	1,060	12/13/79	excess refunded 6/8/81
G. Robert Randazzo	1,500	2/25/80	excess to charity 9/28/81
Louis Camilli	1,250	2/20/80	"attribution"
Dione Bail	1,050	9/8/80	excess refunded 6/8/81
Michael Flaherty	1,010	7/31/80	"attribution"
Patricia Beaver	1,450	7/31/80	"attribution"
Katherine Kelley	2,000	5/8/80	"attribution"
Edward Flaherty	1,200	7/31/80	"attribution"
Grand Total	$257,092		
Combined Contribution Limit (182 x $1000)	(182,000)		
Total Contributions In Excess of Limits	$ 75,092		

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

8304104411

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

William Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1393

Dear Mr. Oldaker:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1), 434(b)(2), 432(c)(1), 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, the Committee has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath).

In the absence of any additional information which demonstrates that no further action should be taken against the Committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of reason to believe. See 11 C.F.R. § 111.18(d).

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

		MUR NO. 1393 STAFF MEMBER(S) & TEL NO.
Respondent	Kennedy for President Committee	Nancy Nathan (202) 523-4073

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

SUMMARY OF ALLEGATIONS

The three matters referred to the Office of General Counsel are:

1) unreported receipts and receipts for which the Committee has been unable to provide adequate documentation of source or receipt, indicating possible violations of 2 U.S.C. §§ 434(b)(1), (2), and (4) and 432(c)(1) and (2);

2) apparently insufficient collateral pledged for five bank loans obtained by the Committee, indicating possible violations of 2 U.S.C. § 441b(a) by the banks for failure to comply with U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans, and a violation of 2 U.S.C. § 441b(a) by the Committee, for knowingly accepting those illegal contributions; and,

3) apparent violations of § 441a individual contribution limits by Committee contributors and of § 441a(f) by the Committee, for its acceptance of those excessive contributions.

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FACTUAL AND LEGAL ANALYSIS

I. Unreported Receipts

According to the Final Audit Report, the Committee failed to report receipts totaling $17,500.49.1/ Furthermore, the Final Audit Report indicates that the Committee failed to keep an account of $14,583.57.2/ The reporting and recordkeeping omissions stemmed from certain Committee deposits in state and scheduling accounts. The state accounts were apparently maintained for overhead expenses of state offices, and the scheduling accounts were maintained for the expenses of specific scheduled events. The audit revealed that $52,602.79 worth of receipts deposited in state and scheduling accounts had not been transferred from the Committee's national accounts.

It is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(1) and (2) for its continued failure to report receipts of $17,500.49 in its cash-on-hand or total receipts figures. It is further recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 432(c)(1) for its failure to keep an account of

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1/ The auditors reached this conclusion after analyzing the documentation provided by the Committee in response to the Interim Audit Report.

2/ The Interim Audit Report requested documentation for receipts totalling $52,602.79. Legible documentation was submitted for $38,019.22 in receipts, leaving $14,583.57 undocumented. The auditors include in the amount undocumented $9,249.50 for which illegible copies of checks and lists of receipts were submitted.

$14,583.57 worth of apparent contributions. 2a/

II. Improper Pledges of Collateral for Bank Loans

The Interim Audit Report recommended that the Committee file amended Schedules C-P disclosing details, including collateral, for twelve of the total twenty-four loans obtained by the Committee. The auditors noted, following the Committee's submission of amended schedules, that the documents on five of the loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on five loan documents. For three of the five loans referred, description of the collateral appearing on the amended schedules did not agree with the corresponding bank documents' descriptions; for the other two loans, no documentation was provided by the Committee. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

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2a/ The amounts referred to in the final audit report, which form the basis for the recommendations under Part I, do not include amounts for which similar findings of reporting and record-keeping violations were found in MUR 1370.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans could be deemed contributions by the banks to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting the banks' contributions that were violative of that provision of the Act.

The auditors noted the following facts indicating the possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, and also pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured. (See Attachment 1, items 3 and 5b). The addendum recited where the additional security it listed would be stored.

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It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

b. An examination of Committee records revealed no indication that works listed in the fund-raising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include: 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980 (Attachment 1, item #2); 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral on the addendum for the $240,000 District of Columbia National Bank loan (Attachment 1, item #3) for which the also-unprinted C.J. Yao works also served as collateral (see subsection a, supra); 20 prints of the same Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. (Attachment 1, item #5a). Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed (see subsection a, supra). Further, the representative revealed that an original work by Anuszkiewicz, valued at $9,000, which Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000 (Attachment 1, item #1), was not in the

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Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. That is demonstrated by Attachment 1. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist. (See subsection a, supra).

Because these facts indicate possibly deficient collateralization of the five loans referred following the audit, and because the facts indicate that the Kennedy for President Committee may have known that the loans by the above-named banks were obtained with insufficient collateralization, it is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

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III. Individual Excessive Contributions

The Interim Audit Report found that as many as 269 individuals had contributed in excess of $1,000 to the Committee for an excessive aggregate of $121,468.83. The Committee's response to the Interim Audit Report provided evidence that many of the apparent excessive contributions were due to computer errors, insufficient funds checks, or improper attributions by the Committee. The Audit Division has reviewed the Committee's response as well as subsequent information provided by the Committee. It now appears that 182 contributors exceeded the $1,000 limit and did not receive a refund or reattribute the contribution within 30 days, and did not receive a refund or reattribute their contributions until after the field audit was concluded. (See Attachment 2).3/ The total amount of excessive contributions from these individuals was $75,092.4/

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3/ In previous MURs dealing with excessive contribution receipts by the 1980 presidential campaigns, the Commission has proceeded against the committee involved for accepting excessive contribuions only with regard to the excessive contributions not shown to have been refunded or reattributed within 30 days. See 11 C.F.R. § 103.3(b)(2).

4/ At the time of the referral of this matter to the Office of General Counsel, the Committee had yet to give adequate evidence of a refund or attribution for 122 contributors representing an aggregate excessive amount of $48,817. As of October 6, 1981, only 11 contributions had not been shown to have been corrected. It must be observed, however, that these efforts to correct the violations have come about as a result of the audit process and are occurring many months after the excessive amounts were received.

It is recommended that the Commission find reason to believe that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in knowingly accepting contributions from 182 individuals totalling $75,092.

RECOMMENDATIONS

1. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

4. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

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Description on Loan Documents

Attachment 1

Bank	Date of Loan	Amount of Loan	No.	Type	Title	Artist	Value
1. Chemical Bank of New York	4/22/80	$210,000	1	acrylic	untitled	Atnuszkiewicz	$9,000
2. Chemical Bank of New York	5/2/80	$540,000	70	serigraph	SSKII 80	Daphnis	
			265	serigraph	Par Avion	Krushenick	
3. District of Columbia National Bank.	3/7/80	$240,000	170 (#11-180)	serigraph	untitled	Yao	
			270 (#1-100, #11-80, #1-100 of edition 300)	serigraph	Solo	Rosenblum	
4. Mark Twain Bank, St. Louis, MO	4/6/80	$10,000	40	Lithograph		Rauschenberg	
5. Mark Twain Bank	5/28/80	$10,000	20 (#81-100)	Lithograph	Solo	Rosenblum	
			20 (#181-200)	Lithograph	untitled	Yao	
			20 (#181-200)	Lithograph	Tulip	Nesbitt	

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Committee Description
(Inventory or Brochure)

No.	Type	Title	Artist
Edition 198	serigraph	Centered Square	Anuszkiewicz
...			
Edition 235	serigraph	SSK 80	Daphnis
Edition 300	serigraph	untitled	Krushenick
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 45	serigraph	After Homage to Picasso	Rauschenberg
Edition 100	photographs		Rauschenberg
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 200	serigraph	Tulip	Nesbitt

Attachment 2

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Wallace Albertson	$1,030	6/27/80	excess refunded 6/23/81
(Mr.) Avis Anagnos	1,850	4/16/80	"attribution"
John M. Anderson	1,250	10/9/80	"attribution"
Donald E. Axinn	1,060	12/19/79	"attribution"
William G. Barry	1,750	3/30/80	"attribution"
Mary Ann Beeneche	1,050	3/3/80	"attribution"
Roger Berlind	1,200	7/21/80	"attribution"
Floyd Bloss	1,050	4/10/80	"attribution"
William J. Boland	1,500	7/30/80	excess to charity 9/28/81
Morton Downey	1,750	2/11/80	excess refunded 6/19/81
James Drilias	1,100	3/18/80	excess to charity 9/28/81
Ed Edmundson	1,025	8/20/80	"attribution"
Neil Ellis	1,500	3/24/80	"attribution"
Anna Eshoo	1,150	8/18/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Robert S. Evans	$3,554	4/4/80	500 "attribution" 2,054 to charity 12/18/81
Louis Farina	1,100	3/6/80	excess refunded 6/8/81
Bill Farley	1,850	2/21/80	"attribution"
Christina Faro	1,500	2/25/80	excess refunded 6/8/81
J. E. Fernandes	1,550	3/10/80	"attribution"
Norma Filner	2,000	2/15/80	"attribution"
Harry Finkel	1,250	3/19/80	"attribution"
Mrs. Randolph Fiore	1,500	2/22/80	"attribution"
James Flanagan	1,200	3/14/80	"attribution"
Mrs. A. G. Fordyce	1,100	6/6/80	"attribution"
John Frank	1,250	2/12/80	"attribution"
Charles Frazier, Jr.	1,140	3/13/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Dominic Frontiere	$2,000	5/2/80	"attribution"
Vincent Gallo	1,875	4/25/80	"attribution"
James Garrity	1,100	3/20/80	"attribution"
John Geary	2,000	3/6/80	"attribution"
Thomas Geary	1,700	3/14/80	"attribution"
David Ginsburg	1,300	1/22/80	"attribution"
Betty Gosman	1,750	4/25/80	"attribution"
Nicholas Gouletas	2,000	5/5/80	excess refunded 11/12/80
Mary Ellen Grossman	1,250	6/2/80	excess refunded 6/8/81
Thomas Hadican	2,000	7/8/80	"attribution"
Gertrude Hamilton	1,100	5/27/80	excess refunded 6/8/81
Susan Haretakis	1,100	4/22/80	excess refunded 6/8/81
John Harris	1,250	4/30/80	excess refunded 6/8/81
George Hartzog, Jr.	1,900	2/6/80	"attribution"

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1/ if more than one excessive contribution made, date is date of first excessive (portion).

2 see cover memo regarding attributions and the absence of dates of disposition.

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive (s) 1/	Disposition 2/
Burton Haas	$1,250	2/5/80	"attribution"
Daphne Hatsopoulos	2,000	7/31/80	"attribution"
Kenneth Hayashi	1,500	5/15/80	excess to charity 9/28/81
Ellen Hirsch	1,060	8/22/80	excess refunded 6/8/81
Walter Hoffelder	1,200	3/14/80	"attribution"
Fred Hofheinz	1,250	1/29/80	"attribution"
Karen Horst	1,100	2/7/80	"attribution"
James Inglis	1,150	4/28/80	"attribution"
Alice Irwin	1,100	2/4/80	"attribution"
Joseph Iseman	1,015	3/13/80	"attribution"
Nick Kanis	1,050	3/3/80	"attribution"
Phillip Kay	2,000	4/1/80	excess refunded 6/8/81
Teresa Keeman	1,025	7/10/80	excess refunded 6/8/81
Michael Kent	1,450	2/28/80	excess refunded 9/25/81
John Kim	1,250	3/24/80	excess to charity 9/28/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessove Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Harry Kraut	$1,200	3/24/80	"attribution"
Vance Krites	1,250	4/16/80	excess refunded 6/8/81
David Kurt	1,275	3/26/80	excess refunded 6/8/81
Steve Lagos	1,100	1/7/80	"attribution"
Modesto Lanzone	1,200	9/17/80	"attribution"
Jose Lastra	1,305	5/23/80	"attribution"
Felicite Latane	1,025	8/20/80	"attribution"
Michael Latronica	1,400	3/14/80	excess refunded 6/8/81
Victoria Lawford	1,020	3/25/80	excess to charity 6/23/81
Beatrice Lawson	1,500	2/7/80	"attribution"
Irving Lazar	1,200	2/8/80	"attribution"
(Mr.) S. M. Lazarus	1,050	5/23/80	excess refunded 6/8/81
Jerry Brown	2,015	4/18/80	"attribution"

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1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
John Burgis	$1,500	5/15/80	"attribution"
Francis Burke	1,500	2/21/80	"attribution"
William Burke	2,000	7/15/80	"attribution"
Joseph Campanelli	2,250	1/16/80	"attribution"
John Campbell	2,000	1/29/80	"attribution"
Hiram Cancio	1,200	2/11/80	excess refunded 6/8/81
Irwin Cantor	1,060	12/19/79	"attribution"
Frank Capaldi	1,500	2/21/80	"attribution"
Joseph Carabetta	1,500	3/24/80	"attribution"
Thomas Cargill, Jr.	1,200	2/28/80	"attribution"
John Catabaan	1,050	8/7/80	excess to charity 6/23/81
Verdie Chase	1,200	4/24/80	excess refunded 6/8/81
Eliot Chertok	1,250	2/22/80	"attribution"

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1/ if more than one excessive contribution made, date is date of first excessive (portion).

2 see cover memo regarding attributions and the absence of dates of disposition.

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Giraud Chester	$1,100	7/21/80	"attribution"
Josephine Chin	1,850	2/21/80	"attribution"
Franklin Chou	1,250	5/28/80	excess to charity 9/28/81
Andrew Cogan	1,050	3/13/80	"attribution"
Susanne Cohn	1,300	5/16/80	"attribution"
John Conners, Jr.	2,000	7/15/80	"attribution"
Vasa Cubaleski	1,600	4/16/80	excess refunded 6/23/81
George Cullen	1,100	3/14/80	excess refunded 6/8/81
(Dr.) L. Rodger Currie	2,000	7/15/80	excess to charity 12/18/81
Jan Cushing	1,050	4/28/80	"attribution"
Charles Daly	1,125	3/14/80	"attribution"
Kate Day	1,100	7/30/80	excess to charity 9/28/81
R.Villasenor Derivas	1,225	3/4/80	excess refunded 6/8/81
Michael Dewey	1,335	8/8/80	excess refunded 6/23/81
Rosemarie Dooley	1,575	2/22/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Joseph Raun	$1,020	3/21/80	"attribution"
Joseph Reber	1,125	8/20/80	"attribution"
Dixon Renear	1,500	8/5/80	"attribution"
Marilyn Richards	1,250	2/22/80	excess refunded 6/8/81
Donald Rodman	2,000	7/7/80	"attribution"
Frank Romano, Jr.	1,350	3/5/80	"attribution"
Gregg Rose	1,250	9/26/80	"attribution"
Carl Rosen	2,000	4/18/80	"attribution"
Arthur Ross	1,500	8/7/80	"attribution"
Robert Roth	1,125	12/21/79	"attribution"
V.Henry Rothschild	1,100	2/5/80	"attribution"
Vera Rubin	1,425	7/18/80	excess to charity 9/28/81
Sebastian Ruggeri	1,750	2/29/80	"attribution"
Charles Rummel	1,500	12/13/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).]

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
David Rust	$1,750	4/18/80	excess to charity 6/23/81
Henry Schiro	1,100	6/3/80	excess refunded 6/8/81
Michael Segal	2,000	3/6/80	"attribution"
John Sevcik	1,200	3/6/80	"attribution"
Gerald Shea	1,200	6/9/80	"attribution"
Robert Sheehan	1,250	6/10/80	excess refunded 3/25/81
Arnold Shevin	1,500	5/6/80	"attribution"
Isaac Shih	1,200	7/21/80	"attribution"
Joan Shih	1,260	4/29/80	"attribution"
Richard Sklar	1,100	7/14/80	"attribution"
Raymond Smith	2,000	5/5/80	"attribution"
Leonard Tuft	1,050	8/20/80	"attribution"
Michael Vallas	1,800	1/29/80	"attribution"
Harold Vicente	1,250	3/14/80	excess refunded 6/8/81
Sei-Mei Wang	1,100	8/7/80	"attribution"
Jacob Weglarz	2,000	3/19/80	excess refunded 6/8/81
Stephen Wilden	1,500	2/11/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributicns and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
James Whitmore	$1,100	2/21/80	"attribution"
Edna Williams	2,000	2/19/80	excess refunded 6/8/81
Rosalie Wilson	2,000	4/30/80	"attribution"
Gow Sue Wong	1,150	2/21/80	"attribution"
Reginald Wong	1,600	2/25/80	"attribution"
Jane Wrightsman	2,000	2/11/80	excess refunded 6/8/81
Andrew Zamparelli	1,100	7/31/80	"attribution"
Burton Zien	1,200	8/20/80	"attribution"
Richard Len	1,200	4/18/80	"attribution"
Marcia Levine	1,050	5/30/81	"attribution"
Wayne Lewis	1,500	2/14/80	"attribution"
Stephen Lombardo, Jr.	1,200	3/6/80	excess refunded 6/8/81
Guillermo Maldonado	1,300	3/10/80	"attribution"
Eve Mandelberg	2,700	4/22/80	excess refunded 6/8/81
Fred Mangone	1,200	7/30/80	"attribution"
W. B. Maren	1,050	1/28/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Laurie Marsland	$1,250	2/26/80	"attribution"
Edward Mauldin	1,241	7/29/80	"attribution"
Phil Lehr	1,250	9/26/80	"attribution"
Priscilla McMillan	1,300	3/31/80	excess refunded 6/8/81
Margaret Miller	1,815	6/2/80	"attribution"
Craig Moon	1,075	5/23/80	"attribution"
Alice Morris	1,275	5/27/80	excess refunded 6/8/81
Charles Mosesian	1,100	4/18/80	excess refunded 6/8/81
Thomas Mount	1,125	9/25/80	"attribution"
(Mr.) L. T. Murphy	1,100	8/20/80	"attribution"
Martin Murphy	2,000	2/22/80	excess refunded 6/15/81
(Ms.) Cressey Nakagawa	1,250	9/26/80	excess refunded 6/8/81
Emilio Naranjo	1,200	5/20/80	"attribution"
Marianne Nestor	1,060	12/14/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Daniel O'Connell	$2,000	2/4/80	"attribution"
Leonard Pabich	1,060	2/8/80	excess refunded 6/8/81
Dr. Christos Papatheodorou	1,200	1/28/80	"attribution"
W. J. Payes	2,000	12/13/79	excess refunded 6/8/81
Endicott Peabody	1,125	8/20/80	excess refunded 6/8/81
Douglas Pendleton	1,250	7/7/80	"attribution"
John Perkins	1,100	not available	"attribution"
Loannis Alafoyiannis	1,500	4/15/80	excess to charity 9/28/81
Frank Kelley	1,101	5/12/80	"attribution"
Nancy Korman	1,175	5/23/80	"attribution"
Claude Lopiccolo	2,000	3/6/80	"attribution"
Thomas McAiley	1,190	3/25/80	"attribution"
Ronald Schleppy	2,000	1/15/80	excess to charity 6/15/81
Mary Walker	1,931	4/20/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Walter Beineche, Jr.$	2,000	4/16/80	"attribution"
Geoffrey Prentiss	1,800	4/10/80	excess refunded 6/8/81
Craig Prouty	1,200	4/18/80	excess refunded 6/8/81
Leo Racine	1,060	12/13/79	excess refunded 6/8/81
G. Robert Randazzo	1,500	2/25/80	excess to charity 9/28/81
Louis Camilli	1,250	2/20/80	"attribution"
Dione Bail	1,050	9/8/80	excess refunded 6/8/81
Michael Flaherty	1,010	7/31/80	"attribution"
Patricia Beaver	1,450	7/31/80	"attribution"
Katherine Kelley	2,000	5/8/80	"attribution"
Edward Flaherty	1,200	7/31/80	"attribution"
Grand Total	$257,092		
Combined Contribution Limit (182 x $1000)	(182,000)		
Total Contributions In Excess of Limits	$ 75,092		

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1393
Kennedy for President Committee	)	
	)	

FIRST QUESTIONS

To: William Oldaker, Treasurer
Kennedy for President Committee
1050 Seventeenth Street, N.W.
Washington, D.C.

The Federal Election Commission requests that you, as treasurer of the Kennedy for President Committee, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions. Questions refer to five loans obtained by your Committee from the following banks on the dates indicated:

Bank	Amount	Date
1. Chemical Bank of New York	$210,000	4/22/80
2. Chemical Bank of New York	$540,000	5/2/80
3. District of Columbia National Bank	$240,000	3/7/80
4. Mark Twain Bank	$ 10,000	4/6/80
5. Mark Twain Bank	$ 10,000	5/28/80

1. For each of the five loans listed above, relate the information given bank officials by the Committee's representatives, before the loan documents were signed, in describing the collateral pledged.

2. For each of the art works series pledged for the five loans in question, please state when reproductions were made, how many were made, and the costs of reproduction.

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3. For each of the art works series pledged for the five loans in question, on what dates did the Committee learn that the donated works had not yet been reproduced?

4. Please state what information concerning the number of reproductions existing, the reproduction rights to each of the art works pledged, and the costs associated with reproduction, was given to the banks listed above by the Committee before and after the loan documents were signed, and state when the information was given.

5. For each of the loans listed above, on what dates did Committee representatives inform officials of the bank involved that prints of the pledged works did not exist?

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

Mr. Robert S. Evans
60 Cliff Street
New Haven, Connecticut 06511

RE: MUR 1393

Dear Mr. Evans:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Robert S. Evans

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

SUMMARY OF ALLEGATIONS AND ANALYSIS

The Commission's audit of the Kennedy for President Committee revealed that Robert S. Evans contributed in excess of the $1,000 limitation imposed by 2 U.S.C. § 441a. Specifically, it is alleged that Robert Evans contributed $2,054 more than allowable under § 441a.

RECOMMENDATION

1. Find reason to believe Robert S. Evans violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

Ms. Eve Mandelberg
60 East Seventeenth Street
Brooklyn, New York 11226

RE: MUR 1393

Dear Ms. Mandelberg:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

8304041047

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Eve Mandelberg

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

SUMMARY OF ALLEGATIONS AND ANALYSIS

The Commission's audit of the Kennedy for President Committee revealed that Eve Mandelberg contributed in excess of the $1,000 limitation imposed by 2 U.S.C. § 44la. Specifically, it is alleged that Eve Mandelberg contributed $1,700 more than allowable under § 44la.

RECOMMENDATION

1. Find reason to believe Eve Mandelberg violated 2 U.S.C. § 44la by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

D.C. National Bank
Thomas Condit, President
1801 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1393

Dear Mr. Condit:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

8304041047 6

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent D.C. National Bank

SUMMARY OF ALLEGATIONS

The Committee's audit of the Kennedy for President Committee ("the Committee") revealed that respondent D.C. National Bank accepted apparently insufficient collateral pledged for a bank loan obtained by the Kennedy for President Committee, indicating a possible violation of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making a contribution rather than a loan.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee

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obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, the Committee has said that the C.J. Yao prints did not exist at the time the loan was secured. The addendum recited where the additional security it listed would be stored. It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

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b. An examination of Committee records revealed no evidence that works listed in the fundraising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral for the $240,000 District of Columbia National Bank loan which the also-unprinted C.J. Yao works also served as collateral (see supra).

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist.

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Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe District of Columbia National Bank violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the District of Columbia National Bank violated 2 U.S.C. § 441b(a) by making a loan to the Kennedy for President Committee that was not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: D.C. National Bank
Thomas Condit, President
1801 K Street, N.W.
Washington, D.C. 20006

The Federal Election Commission requests that you, as an officer of the D.C. National Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loan obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $240,000	3/7/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loan.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loan.

5. Please state the purpose served by the addendum to the loan document, the reason for the listing of additional security, and the date on which the addendum was made.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 12, 1982

Mark Twain Bank
Peter Benoist, President
8820 Ladue Road
St. Louis, Missouri 63124

RE: MUR 1393

Dear Mr. Benoist:

On March 11, 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

Frank P. Reiche

Frank P. Reiche
Chairman for the
Federal Election Commission

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

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Mark Twain Bank

SUMMARY OF ALLEGATIONS

The Commission's audit of the Kennedy for President Committee ("the Committee") revealed that respondent Mark Twain Bank may have accepted apparently insufficient collateral pledged for bank loans obtained by the Kennedy for President Committee, indicating possible violations of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis

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which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. With regard to collateral pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured.

b. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 20 prints of the Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed.

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c. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist.

Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe Mark Twain Bank violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the Mark Twain Bank violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee that were not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: Mark Twain Bank
Peter Benoist, President
8820 Lade Road
St. Louis, Missouri 63124

The Federal Election Commission requests that you, as an officer of the Mark Twain Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loans obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $10,000	4/6/80
2. $10,000	5/28/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loans.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loans.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1393
Kennedy for President Committee	)	
Robert S. Evans	)	
Eve Mandelberg	)	
Chemical Bank of New York	)	
Mark Twain Bank	)	
District of Columbia National Bank	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on March 11, 1982, the Commission decided by a vote of 6-0 to take the following actions in MUR 1393:

1. Find Reason to Believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find Reason to Believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find Reason to Believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

(Continued)

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4. Find Reason to Believe Chemical Bank (New York), District of Columbia National Bank, and Mark Twain Bank (St. Louis) violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee.

5. Find Reason to Believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

6. Find Reason to Believe Robert S. Evans violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

7. Find Reason to Believe Eve Mandelberg violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

Commissioners Aikens, Elliott, Harris, McDonald, McGarry and Reiche voted affirmatively in this matter.

Attest:

3-12-82
Date

Marjorie W. Emmons
Secretary of the Commission

Received in Office of Commission Secretary: 3-9-82, 11:19
Circulated on 48 hour tally basis: 3-9-82, 4:00

8304041049

March 9, 1982

MEMORANDUM TO: Marjorie W. Emmons

FROM: Phyllis A. Kayson

SUBJECT: MUR 1393

Please hwve the attached First General Counsel's Report distributed to the Commission on a 48 hour tally basis. Thank you.

Attachment

cc: Nathan

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● SENSITIVE ●

RECEIVED
OFFICE OF THE
COMMISSION SECRETARY
82 MAR 9 AII: 19

FEDERAL ELECTION COMMISSION
1325 K Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL
BY OGC TO THE COMMISSION 3-9-82

MUR # 1393
STAFF MEMBER:
Nancy Nathan

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

RESPONDENTS' NAMES: Kennedy for President Committee; Robert S. Evans; Eve Mandelberg; Chemical Bank of New York; Mark Twain Bank; Distict of Columbia National Bank

RELEVANT STATUTES: 2 U.S.C. §§ 431(8)(vii)(II); 432(c)(1); 434(b)(1), (2); 441a; 441a(f); 441b(a)
11 C.F.R. § 103.3(b)(2)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

GENERATION OF MATTER

The Commission's final audit report of the Kennedy for President Committee ("the Committee") included referral of three matters to the Office of General Counsel. (Attachment 1, including Exhibits 1-3, summarizing the three matters referred to OGC).

SUMMARY OF ALLEGATIONS

The three matters referred to OGC and which are the subject of this report are:

1) unreported receipts and receipts for which the Committee has been unable to provide adequate documentation of

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source or receipt, indicating possible violations of 2 U.S.C. §§ 434(b)(1), (2), and (4) and 432(c)(1) and (2);

2) apparently insufficient collateral pledged for five bank loans obtained by the Committee, indicating possible violations of 2 U.S.C. § 441b(a) by the banks for failure to comply with U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans, and a violation of 2 U.S.C. § 441b(a) by the Committee, for knowingly accepting those illegal contributions; and,

3) apparent violations of § 441a individual contribution limits by Committee contributors and of § 441a(f) by the Committee, for its acceptance of those excessive contributions.

FACTUAL AND LEGAL ANALYSIS

I. Unreported Receipts

According to the Final Audit Report, the Committee failed to report receipts totaling $17,500.49.1/ Furthermore, the Final Audit Report indicates that the Committee failed to keep an account of $14,583.57.2/ The reporting and recordkeeping omissions stemmed from certain Committee deposits in state and scheduling accounts. The state accounts were apparently

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1/ The auditors reached this conclusion after analyzing the documentation provided by the Committee in response to the Interim Audit Report.

2/ The Interim Audit Report requested documentation for receipts totalling $52,602.79. Legible documentation was submitted for $38,019.22 in receipts, leaving $14,583.57 undocumented. The auditors include in the amount undocumented $9,249.50 for which illegible copies of checks and lists of receipts were submitted.

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maintained for overhead expenses of state offices, and the scheduling accounts were maintained for the expenses of specific scheduled events. The audit revealed that $52,602.79 worth of receipts deposited in state and scheduling accounts had not been transferred from the Committee's national accounts.

It is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(1) and (2) for its continued failure to report receipts of $17,500.49 in its cash-on-hand or total receipts figures. It is further recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 432(c)(1) for its failure to keep an account of $14,583.57 worth of apparent contributions.2a/

II. Improper Pledges of Collateral for Bank Loans

The Interim Audit Report recommended that the Committee file amended Schedules C-P disclosing details, including collateral, for twelve of the total twenty-four loans obtained by the Committee. The auditors noted, following the Committee's submission of amended schedules, that the documents on five of the loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with that described on five loan documents. For three of the five loans referred, description of the collateral appearing on the amended schedules did not agree with the corresponding bank documents'

2a/ The amounts referred to in the final audit report, which form the basis for the recommendations under Part I, do not include amounts for which similar findings of reporting and record-keeping violations were found in MUR 1370.

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descriptions; for the other two loans, no documentation was provided by the Committee. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans could be deemed contributions by the banks to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting the banks' contributions that were violative of that provision of the Act.

The auditors noted the following facts indicating the possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, and also pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured. (See, Attachment 2, items 3 and 5b). The addendum

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recited where the additional security it listed would be stored. It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

b. An examination of Committee records revealed no indication that works listed in the fund-raising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include: 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980 (Attachment 2, item #2); 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral on the addendum for the $240,000 District of Columbia National Bank loan (Attachment 2, item #3) for which the also-unprinted C.J. Yao works also served as collateral (see supra); 20 prints of the same Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. (Attachment 2, item #5a). Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed (see subsection a, supra). Further, the representative revealed that an original work by Anuszkiewicz, valued at $9,000, which Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000 (Attachment 2, item #1), was not in the Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to

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the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

d. Some desriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. That is demonstrated by Attachment 2. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist. (See subsection a, supra).

Because these facts indicate possibly deficient collateralization of the five loans referred following the audit, it is recommended that the Commission find reason to believe Chemical Bank of New York, District of Columbia National Bank, and Mark Twain Bank of St. Louis violated 2 U.S.C. § 441b(a). Further, because the facts indicate that the Kennedy for President Committee may have known that the loans that may represent illegal contributions by the above-named banks were obtained with insufficient collateralization, it is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

III. Individual Excessive Contributions

The Interim Audit Report found that as many as 269 individuals had contributed in excess of $1,000 to the Committee for an excessive aggregate of $121,468.83. The Committee's response to the Interim Audit Report provided evidence that many

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$1,000. See Attachment 4 for the dates and amounts of these contributions, and of refunds made.

It is recommended that the Commission find reason to believe that Robert S. Evans and Eve Mandelberg, whose contributions to the Kennedy for President Committee exceeded their individual contribution limits, violated 2 U.S.C. § 441a, and that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in knowingly accepting contributions from 182 individuals totalling $75,092.

RECOMMENDATIONS

1. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

4. Find reason to believe Chemical Bank (New York), District of Columbia National Bank, and Mark Twain Bank (St. Louis) violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee.

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5. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

6. Find reason to believe Robert S. Evans violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

7. Find reason to believe Eve Mandelberg violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

Charles N. Steele
General Counsel

March 8, 1982
Date

By: Kenneth A. Gross
Associate General Counsel

Attachments
1. Excerpts from final audit report
2. Description of loan documents
3. List of excessive contributors and memo from audit division
4. Individuals contributing in excess of $2,000
5 - 10. Letters

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Attached are the pertinent excerpts of the final audit report on the Kennedy for President Committee dealing with the three issues referred to the Office of General Counsel.

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Unreported Receipts

A review of funds deposited into the state and scheduling accounts revealed that 72 deposits made to 23 accounts, totaling $52,602.79, were not comprised of funds transferred from the national accounts. The Committee did not maintain any records which indicated the source of these funds nor were the receipts reported on the Committee's disclosure reports. Committee officials stated that they would attempt to determine the source of the funds.

The interim audit report contained a recommendation that the Committee identify the source of these funds and amend its reports to include the $52,602.79 in receipts previously not reported. In response to that recommendation, the Committee provided legible copies of deposit tickets and contributor checks which identified the source of the funds for $38,019.22. The Committee also provided copies of deposit tickets for an additional $9,249.50, however, the accompanying copies of the microfilmed bank documents (copies of checks and lists of receipts) were not legible. The Committee did not provide any records pertaining to the remaining $5,334.17, however, copies of letters requesting these records from the appropriate banks were provided.

The Audit staff determined, after reviewing the documents noted above, that the Committee has not included in its reports $17,500.49 out of the $52,602.79 in unreported receipts. At least half of this $17,500.49 is comprised of deposits for which the Committee had documentation.

Recommendation

The Audit staff recommends that the Committee's material non-compliance with the finding be referred to the Office of General Counsel.

(3)

Notwithstanding the minor discrepancies noted above, the Committee has materially complied with the interim audit report recommendation for production of the documents and disclosure of the loans. However, a review of the loan documents provided has raised a number of questions concerning the collateral on the loans. It appears that artwork was pledged as collateral on loans that may not have been in existence (a series of prints had not been printed), or may not have been in the Committee's possession. The collateral listed on documents relating to five (5) loans included works of art from six (6) artists (either the original or a series of prints). However, evidence of the existence of this collateral was not found in the Committee's records. These records consisted of the Committee's brochure which identified artwork used as incentives for individual contributions and the Committee's inventory of artwork on hand as of August 13, 1981. Therefore, the Audit staff was unable to evaluate the adequacy of the collateral for these loans. For one (1) of the five (5) loans discussed above, a Committee official stated that the prints were not produced, however, the Committee owned the original work of art and maintained the right to produce the prints.

In the Committee's response concerning the placing of a value on the artwork for purposes of determining Committee net outstanding campaign obligations, officials have stated: "The 'appraised value' of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's 'worth' to an individual recipient, the value of an individual print to the Committee would be much less. An indication of the magnitude of the reduction in value involved is that, in those cases where artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 of the artwork's 'appraised value'." However, for one (1) loan the appraised value of the artwork pledged as collateral was equal to the amount of the loan principal ($240,000). Approximately five (5) months after the loan was negotiated additional artwork was pledged as collateral. The appraised value of the additional collateral was $154,000; however, this artwork is included in the discussion above concerning whether the collateral existed at the time it was pledged. Two (2) other loans obtained through the same bank were also reported as being secured with artwork, however, these are the two (2) loans noted above for which no documentation was presented.

Since the Committee has not provided documentation for two (2) of the loans and the collateral for the third loan does not appear to offer sufficient protection to the bank in the case of default by the Committee, the Audit staff feels that it is necessary to obtain additional information from the bank in order to determine whether the loans were made in the normal course of business.

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Attachment 1-3 of 4

Exhibit 3

1. Receipt of Contributions Exceeding $1,000 per Person

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized committees with respect to any election to Federal office which, in the aggregate, exceed $1,000.

During the threshold audit fieldwork, the Audit staff made the Committee aware that the absence of procedures for handling possible excessive contributions could result in a material problem as the campaign progressed. In the threshold report of the Audit Division the Audit staff made a recommendation that the Committee develop procedures to identify and refund excessive contributions in a timely manner.

During the post primary audit, a review of the Committee's contribution records and reports filed for the period revealed 269 contributors who had contributed $121,468.83 in excess of their allowable limitations. Throughout the period audited, the Committee had attempted to contact the contributors to determine whether a portion of their contributions could be attributed to a spouse. However, as of the close of the audit fieldwork, no evidence was available to allow for such an attribution for any of the contributors noted above.

The Audit staff recommended in the interim audit report that the Committee present documentation that the contributions are not excessive, have been legally attributed, or the excessive portions have been refunded to the original contributors.

On May 19, 1981, the Audit staff received the Committee's response to the interim audit report in which the Committee stated:

1. $92,301.83 of the excessive portion of contributions was in fact not excessive for one of the following reasons:

   a. computer error/duplicate line items;

   b. NSF checks not deleted from the computer master file;

   c. the excessive portion was refunded subsequent to the close of the audit fieldwork;

Attachment 1 - 4 of 4

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Attachment 2 - 1 of 2

Description on Loan Documents

Bank	Date of Loan	Amount of Loan	No.	Type	Title	Artist	Value
1. Chemical Bank of New York	4/22/80	$210,000	1	acrylic	untitled	Atnuszkiewicz	$9,000
2. Chemical Bank of New York	5/2/80	$540,000	70	serigraph	SSKII 80	Daphnis	
			265	serigraph	Par Avion	Krushenick	
3. District of Columbia National Bank	3/7/80	$240,000	170 (#11-180)	serigraph	untitled	Yao	
			270 (#1-100, #11-80, #1-100 of edition 300)	serigraph	Solo	Rosenblum	
4. Mark Twain Bank, St. Louis, MO	4/6/80	$10,000	40	Lithograph		Rauschenberg	
5. Mark Twain Bank	5/28/80	$10,000	20 (#81-100)	Lithograph	Solo	Rosenblum	
			20 (#181-200)	Lithograph	untitled	Yao	
			20 (#181-200)	Lithograph	Tulip	Nesbitt	

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Committee Description
(Inventory or Brochure)

No.	Type	Title	Artist
Edition 198	serigraph	Centered Square	Anuszkiewicz
Edition 235	serigraph	SSK 80	Daphnis
Edition 300	serigraph	untitled	Krushenick
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 45	serigraph	After Homage to Picasso	Rauschenberg
Edition 100	photographs		Rauschenberg
Edition 300 (3 states of 100 each)	serigraph	Sail	Rosenblum
Edition 200	serigraph	Tulip	Nesbitt

Attachment 2 - 2of2

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MUR

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 4, 1982

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: B. ALLEN CLUTTER
STAFF DIRECTOR

FROM: BOB COSTA RC

SUBJECT: KENNEDY FOR PRESIDENT COMMITTEE ("THE COMMITTEE") - EXCESSIVE CONTRIBUTIONS

Attached please find the names of individuals whose aggregate election-to-date contributions to the Committee exceeded the $1,000 2 U.S.C. 44la(a)(l)(A) contribution limitation and were not resolved in a timely manner. Per instructions from your Office, contributions which were excessive for a period exceeding 30 days (from the time of receipt of the excessive portion), with the exception of those resolved by the Committee prior to the fieldwork review, are included in this referral. There were a total of 182 individuals who contributed $75,092 in excess of their limits that meet this criteria (see Attachment).

It should be noted that exact dates of disposition are available for those contributions that have been refunded or transferred to charity only. Dates of "attribution" were not readily available for those excessives resolved through attribution to another contributor. The Committee sent cover letters accompanied by attribution forms to the contributors which were to be completed and returned. In most cases, only the attribution forms were available for review. The forms provided for the signature of the person to whom the contribution, or excessive portion thereof, was to be attributed, but not for the date of attribution.

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Attachment 3 (1a of 13)

The preliminary list of excessive contributions was provided to the Committee at the exit conference on February 5, 1981. A review of the dates of receipt of the excessive contributions indicates that the latest excessive was received on October 9, 1980. Therefore, it can be concluded that all excessive contributions in this referral were outstanding for at least four months.

If you have any questions concerning this matter, please contact Kevin McFadden on extension 3-4155.

Attachment as stated

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Attachment 3 (16 of 18)

Attachment 3

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Wallace Albertson	$1,030	6/27/80	excess refunded 6/23/81
(Mr.) Avis Anagnos	1,850	4/16/80	"attribution"
John M. Anderson	1,250	10/9/80	"attribution"
Donald E. Axinn	1,060	12/19/79	"attribution"
William G. Barry	1,750	3/30/80	"attribution"
Mary Ann Beeneche	1,050	3/3/80	"attribution"
Roger Berlind	1,200	7/21/80	"attribution"
Floyd Bloss	1,050	4/10/80	"attribution"
William J. Boland	1,500	7/30/80	excess to charity 9/28/81
Morton Downey	1,750	2/11/80	excess refunded 6/19/81
James Drilias	1,100	3/18/80	excess to charity 9/28/81
Ed Edmundson	1,025	8/20/80	"attribution"
Neil Ellis	1,500	3/24/80	"attribution"
Anna Eshoo	1,150	8/18/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Robert S. Evans	$3,554	4/4/80	500 "attribution" 2,054 to charity 12/18/81
Louis Farina	1,100	3/6/80	excess refunded 6/8/81
Bill Farley	1,850	2/21/80	"attribution"
Christina Faro	1,500	2/25/80	excess refunded 6/8/81
J. E. Fernandes	1,550	3/10/80	"attribution"
Norma Filner	2,000	2/15/80	"attribution"
Harry Finkel	1,250	3/19/80	"attribution"
Mrs. Randolph Fiore	1,500	2/22/80	"attribution"
James Flanagan	1,200	3/14/80	"attribution"
Mrs. A. G. Fordyce	1,100	6/6/80	"attribution"
John Frank	1,250	2/12/80	"attribution"
Charles Frazier, Jr.	1,140	3/13/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3-2 of 13

(9)

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Dominic Frontiere	$2,000	5/2/80	"attribution"
Vincent Gallo	1,875	4/25/80	"attribution"
James Garrity	1,100	3/20/80	"attribution"
John Geary	2,000	3/6/80	"attribution"
Thomas Geary	1,700	3/14/80	"attribution"
David Ginsburg	1,300	1/22/80	"attribution"
Betty Gosman	1,750	4/25/80	"attribution"
Nicholas Gouletas	2,000	5/5/80	excess refunded 11/12/80
Mary Ellen Grossman	1,250	6/2/80	excess refunded 6/8/81
Thomas Hadican	2,000	7/8/80	"attribution"
Gertrude Hamilton	1,100	5/27/80	excess refunded 6/8/81
Susan Haretakis	1,100	4/22/80	excess refunded 6/8/81
John Harris	1,250	4/30/80	excess refunded 6/8/81
George Hartzog, Jr.	1,900	2/6/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2 see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive (s) 1/	Disposition 2/
Burton Haas	$1,250	2/5/80	"attribution"
Daphne Hatsopoulos	2,000	7/31/80	"attribution"
Kenneth Hayashi	1,500	5/15/80	excess to charity 9/28/81
Ellen Hirsch	1,060	8/22/80	excess refunded 6/8/81
Walter Hoffelder	1,200	3/14/80	"attribution"
Fred Hofheinz	1,250	1/29/80	"attribution"
Karen Horst	1,100	2/7/80	"attribution"
James Inglis	1,150	4/28/80	"attribution"
Alice Irwin	1,100	2/4/80	"attribution"
Joseph Iseman	1,015	3/13/80	"attribution"
Nick Kanis	1,050	3/3/80	"attribution"
Phillip Kay	2,000	4/1/80	excess refunded 6/8/81
Teresa Keeman	1,025	7/10/80	excess refunded 6/8/81
Michael Kent	1,450	2/28/80	excess refunded 9/25/81
John Kim	1,250	3/24/80	excess to charity 9/28/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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of the apparent excessive contributions were due to computer errors, insufficient funds checks, or improper attributions by the Committee. The Audit Division has reviewed the Committee's response as well as subsequent information provided by the Committee. It now appears that 182 contributors exceeded the $1,000 limit and did not receive a refund or reattribute the contribution within 30 days, and did not receive a refund or reattribute their contributions until after the field audit was concluded. (See Attachment 3). 3/ The total amount of excessive contributions from these individuals was $75,092.4/

In fact, there are two contributors whose excess contributions amount to more than

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3/ In previous MURs dealing with excessive contribution receipts by the 1980 presidential campaigns, the Commission has proceeded against the committee involved for accepting excessive contribuions only with regard to the excessive contributions not shown to have been refunded or reattributed within 30 days. See 11 C.F.R. § 103.3(b)(2).

4/ At the time of the referral of this matter to the Office of General Counsel, the Committee had yet to give adequate evidence of a refund or attribution for 122 contributors representing an aggregate excessive amount of $48,817. As of October 6, 1981, only 11 contributions had not been shown to have been corrected. It must be observed, however, that these efforts to correct the violations have come about as a result of the audit process and are occurring many months after the excessive amounts were received.

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Kennedy For President
Excessove Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Harry Kraut	$1,200	3/24/80	"attribution"
Vance Krites	1,250	4/16/80	excess refunded 6/8/81
David Kurt	1,275	3/26/80	excess refunded 6/8/81
Steve Lagos	1,100	1/7/80	"attribution"
Modesto Lanzone	1,200	9/17/80	"attribution"
Jose Lastra	1,305	5/23/80	"attribution"
Felicite Latane	1,025	8/20/80	"attribution"
Michael Latronica	1,400	3/14/80	excess refunded 6/8/81
Victoria Lawford	1,020	3/25/80	excess to charity 6/23/81
Beatrice Lawson	1,500	2/7/80	"attribution"
Irving Lazar	1,200	2/8/80	"attribution"
(Mr.) S. M. Lazarus	1,050	5/23/80	excess refunded 6/8/81
Jerry Brown	2,015	4/18/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3 - 5 of 13

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
John Burgis	$1,500	5/15/80	"attribution"
Francis Burke	1,500	2/21/80	"attribution"
William Burke	2,000	7/15/80	"attribution"
Joseph Campanelli	2,250	1/16/80	"attribution"
John Campbell	2,000	1/29/80	"attribution"
Hiram Cancio	1,200	2/11/80	excess refunded 6/8/81
Irwin Cantor	1,060	12/19/79	"attribution"
Frank Capaldi	1,500	2/21/80	"attribution"
Joseph Carabetta	1,500	3/24/80	"attribution"
Thomas Cargill, Jr.	1,200	2/28/80	"attribution"
John Catabaan	1,050	8/7/80	excess to charity 6/23/81
Verdie Chase	1,200	4/24/80	excess refunded 6/8/81
Eliot Chertok	1,250	2/22/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2 see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3 - 6 of 13

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Giraud Chester	$1,100	7/21/80	"attribution"
Josephine Chin	1,850	2/21/80	"attribution"
Franklin Chou	1,250	5/28/80	excess to charity 9/28/81
Andrew Cogan	1,050	3/13/80	"attribution"
Susanne Cohn	1,300	5/16/80	"attribution"
John Conners, Jr.	2,000	7/15/80	"attribution"
Vasa Cubaleski	1,600	4/16/80	excess refunded 6/23/81
George Cullen	1,100	3/14/80	excess refunded 6/8/81
(Dr.) L. Rodger Currie	2,000	7/15/80	excess to charity 12/18/81
Jan Cushing	1,050	4/28/80	"attribution"
Charles Daly	1,125	3/14/80	"attribution"
Kate Day	1,100	7/30/80	excess to charity 9/28/81
R.Villasenor Derivas	1,225	3/4/80	excess refunded 6/8/81
Michael Dewey	1,335	8/8/80	excess refunded 6/23/81
Rosemarie Dooley	1,575	2/22/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Joseph Raun	$1,020	3/21/80	"attribution"
Joseph Reber	1,125	8/20/80	"attribution"
Dixon Renear	1,500	8/5/80	"attribution"
Marilyn Richards	1,250	2/22/80	excess refunded 6/8/81
Donald Rodman	2,000	7/7/80	"attribution"
Frank Romano, Jr.	1,350	3/5/80	"attribution"
Gregg Rose	1,250	9/26/80	"attribution"
Carl Rosen	2,000	4/18/80	"attribution"
Arthur Ross	1,500	8/7/80	"attribution"
Robert Roth	1,125	12/21/79	"attribution"
V.Henry Rothschild	1,100	2/5/80	"attribution"
Vera Rubin	1,425	7/18/80	excess to charity 9/28/81
Sebastian Ruggeri	1,750	2/29/80	"attribution"
Charles Rummel	1,500	12/13/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).]

2/ see cover memo regarding attributions and the absence of dates of disposition.

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(15)

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
David Rust	$1,750	4/18/80	excess to charity 6/23/81
Henry Schiro	1,100	6/3/80	excess refunded 6/8/81
Michael Segal	2,000	3/6/80	"attribution"
John Sevcik	1,200	3/6/80	"attribution"
Gerald Shea	1,200	6/9/80	"attribution"
Robert Sheehan	1,250	6/10/80	excess refunded 3/25/81
Arnold Shevin	1,500	5/6/80	"attribution"
Isaac Shih	1,200	7/21/80	"attribution"
Joan Shih	1,260	4/29/80	"attribution"
Richard Sklar	1,100	7/14/80	"attribution"
Raymond Smith	2,000	5/5/80	"attribution"
Leonard Tuft	1,050	8/20/80	"attribution"
Michael Vallas	1,800	1/29/80	"attribution"
Harold Vicente	1,250	3/14/80	excess refunded 6/8/81
Sei-Mei Wang	1,100	8/7/80	"attribution"
Jacob Weglarz	2,000	3/19/80	excess refunded 6/8/81
Stephen Wilden	1,500	2/11/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
James Whitmore	$1,100	2/21/80	"attribution"
Edna Williams	2,000	2/19/80	excess refunded 6/8/81
Rosalie Wilson	2,000	4/30/80	"attribution"
Gow Sue Wong	1,150	2/21/80	"attribution"
Reginald Wong	1,600	2/25/80	"attribution"
Jane Wrightsman	2,000	2/11/80	excess refunded 6/8/81
Andrew Zamparelli	1,100	7/31/80	"attribution"
Burton Zien	1,200	8/20/80	"attribution"
Richard Len	1,200	4/18/80	"attribution"
Marcia Levine	1,050	5/30/81	"attribution"
Wayne Lewis	1,500	2/14/80	"attribution"
Stephen Lombardo, Jr.	1,200	3/6/80	excess refunded 6/8/81
Guillermo Maldonado	1,300	3/10/80	"attribution"
Eve Mandelberg	2,700	4/22/80	excess refunded 6/8/81
Fred Mangone	1,200	7/30/80	"attribution"
W. B. Maren	1,050	1/28/80	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).
2/ see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3-10 of 13

(17)

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Laurie Marsland	$1,250	2/26/80	"attribution"
Edward Mauldin	1,241	7/29/80	"attribution"
Phil Lehr	1,250	9/26/80	"attribution"
Priscilla McMillan	1,300	3/31/80	excess refunded 6/8/81
Margaret Miller	1,815	6/2/80	"attribution"
Craig Moon	1,075	5/23/80	"attribution"
Alice Morris	1,275	5/27/80	excess refunded 6/8/81
Charles Mosesian	1,100	4/18/80	excess refunded 6/8/81
Thomas Mount	1,125	9/25/80	"attribution"
(Mr.) L. T. Murphy	1,100	8/20/80	"attribution"
Martin Murphy	2,000	2/22/80	excess refunded 6/15/81
(Ms.) Cressey Nakagawa	1,250	9/26/80	excess refunded 6/8/81
Emilio Naranjo	1,200	5/20/80	"attribution"
Marianne Nestor	1,060	12/14/79	"attribution"

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3-11 of 13

(18)

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Daniel O'Connell	$2,000	2/4/80	"attribution"
Leonard Pabich	1,060	2/8/80	excess refunded 6/8/81
Dr. Christos Papatheodorou	1,200	1/28/80	"attribution"
W. J. Payes	2,000	12/13/79	excess refunded 6/8/81
Endicott Peabody	1,125	8/20/80	excess refunded 6/8/81
Douglas Pendleton	1,250	7/7/80	"attribution"
John Perkins	1,100	not available	"attribution"
Loannis Alafoyiannis	1,500	4/15/80	excess to charity 9/28/81
Frank Kelley	1,101	5/12/80	"attribution"
Nancy Korman	1,175	5/23/80	"attribution"
Claude Lopiccolo	2,000	3/6/80	"attribution"
Thomas McAiley	1,190	3/25/80	"attribution"
Ronald Schleppy	2,000	1/15/80	excess to charity 6/15/81
Mary Walker	1,931	4/20/80	excess refunded 6/8/81

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

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Attachment 3 - 12 of 13

(19)

Kennedy For President
Excessive Contributions

Contributor	Election-To Date Total	Date of Excessive(s) 1/	Disposition 2/
Walter Beineche, Jr.$	2,000	4/16/80	"attribution"
Geoffrey Prentiss	1,800	4/10/80	excess refunded 6/8/81
Craig Prouty	1,200	4/18/80	excess refunded 6/8/81
Leo Racine	1,060	12/13/79	excess refunded 6/8/81
G. Robert Randazzo	1,500	2/25/80	excess to charity 9/28/81
Louis Camilli	1,250	2/20/80	"attribution"
Dione Bail	1,050	9/8/80	excess refunded 6/8/81
Michael Flaherty	1,010	7/31/80	"attribution"
Patricia Beaver	1,450	7/31/80	"attribution"
Katherine Kelley	2,000	5/8/80	"attribution"
Edward Flaherty	1,200	7/31/80	"attribution"
Grand Total	$257,092		
Combined Contribution Limit (182 x $1000)	(182,000)		
Total Contributions In Excess of Limits	$ 75,092		

1/ if more than one excessive contribution made, date is date of first excessive (portion).

2/ see cover memo regarding attributions and the absence of dates of disposition.

Attachment 3 - 13 of 13

Attachment 4: Individuals Who Contributed to the Kennedy for President Committee in Excess of $2,000

Name	Total Contributions	Amount in Excess
Robert S. Evans	$3,554* Date of Excessive: 4/4/80 $500 reattributed to another $2,054 deposited in escrow by Committee 9/25/81	$2,054
Eve Mandelberg	$2,700 Date of Excessive: 4/22/80 Excess refunded 6/8/81	$1,700

*Includes in-kind contribution of $1,904.

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(21)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

William Oldaker, Esquire
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

RE: MUR 1393

Dear Mr. Oldaker:

On , 1982, the Federal Election Commission determined that there is reason to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1), 434(b)(2), 432(c)(1), 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, the Committee has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath).

In the absence of any additional information which demonstrates that no further action should be taken against the Committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of reason to believe. See 11 C.F.R. § 111.18(d).

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

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Attachment 5- 2 of 12

(23)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 1393
Kennedy for President Committee	)	
	)	

FIRST QUESTIONS

To: William Oldaker, Treasurer
Kennedy for President Committee
1050 Seventeenth Street, N.W.
Washington, D.C.

The Federal Election Commission requests that you, as treasurer of the Kennedy for President Committee, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions. Questions refer to five loans obtained by your Committee from the following banks on the dates indicated:

Bank	Amount	Date
1. Chemical Bank of New York	$210,000	4/22/80
2. Chemical Bank of New York	$540,000	5/2/80
3. District of Columbia National Bank	$240,000	3/7/80
4. Mark Twain Bank	$ 10,000	4/6/80
5. Mark Twain Bank	$ 10,000	5/28/80

1. For each of the five loans listed above, relate the information given bank officials by the Committee's representatives, before the loan documents were signed, in describing the collateral pledged.

2. For each of the art works series pledged for the five loans in question, please state when reproductions were made, how many were made, and the costs of reproduction.

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Attachment 5 - 3 of 12

3. For each of the art works series pledged for the five loans in question, on what dates did the Committee learn that the donated works had not yet been reproduced?

4. Please state what information concerning the number of reproductions existing, the reproduction rights to each of the art works pledged, and the costs associated with reproduction, was given to the banks listed above by the Committee before and after the loan documents were signed, and state when the information was given.

5. For each of the loans listed above, on what dates did Committee representatives inform officials of the bank involved that prints of the pledged works did not exist?

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL NO.
Nancy Nathan
(202) 523-4073

Respondent Kennedy for President Committee

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

SUMMARY OF ALLEGATIONS

The three matters referred to the Office of General Counsel are:

1) unreported receipts and receipts for which the Committee has been unable to provide adequate documentation of source or receipt, indicating possible violations of 2 U.S.C. §§ 434(b)(1), (2), and (4) and 432(c)(1) and (2);

2) apparently insufficient collateral pledged for five bank loans obtained by the Committee, indicating possible violations of 2 U.S.C. § 441b(a) by the banks for failure to comply with U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans, and a violation of 2 U.S.C. § 441b(a) by the Committee, for knowingly accepting those illegal contributions; and,

3) apparent violations of § 441a individual contribution limits by Committee contributors and of § 441a(f) by the Committee, for its acceptance of those excessive contributions.

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FACTUAL AND LEGAL ANALYSIS

I. Unreported Receipts

According to the Final Audit Report, the Committee failed to report receipts totaling $17,500.49.1/ Furthermore, the Final Audit Report indicates that the Committee failed to keep an account of $14,583.57.2/ The reporting and recordkeeping omissions stemmed from certain Committee deposits in state and scheduling accounts. The state accounts were apparently maintained for overhead expenses of state offices, and the scheduling accounts were maintained for the expenses of specific scheduled events. The audit revealed that $52,602.79 worth of receipts deposited in state and scheduling accounts had not been transferred from the Committee's national accounts.

It is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(1) and (2) for its continued failure to report receipts of $17,500.49 in its cash-on-hand or total receipts figures. It is further recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 432(c)(1) for its failure to keep an account of

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1/ The auditors reached this conclusion after analyzing the documentation provided by the Committee in response to the Interim Audit Report.

2/ The Interim Audit Report requested documentation for receipts totalling $52,602.79. Legible documentation was a submitted for $38,019.22 in receipts, leaving $14,583.57 undocumented. The auditors include in the amount undocumented $9,249.50 for which illegible copies of checks and lists of receipts were submitted.

Attachment 5 - 6 of 12

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$14,583.57 worth of apparent contributions. 2a/

II. Improper Pledges of Collateral for Bank Loans

The Interim Audit Report recommended that the Committee file amended Schedules C-P disclosing details, including collateral, for twelve of the total twenty-four loans obtained by the Committee. The auditors noted, following the Committee's submission of amended schedules, that the documents on five of the loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on five loan documents. For three of the five loans referred, description of the collateral appearing on the amended schedules did not agree with the corresponding bank documents' descriptions; for the other two loans, no documentation was provided by the Committee. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

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2a/ The amounts referred to in the final audit report, which form the basis for the recommendations under Part I, do not include amounts for which similar findings of reporting and record-keeping violations were found in MUR 1370.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans could be deemed contributions by the banks to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting the banks' contributions that were violative of that provision of the Act.

The auditors noted the following facts indicating the possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, and also pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured. (See Attachment 1, items 3 and 5b). The addendum recited where the additional security it listed would be stored.

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It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

b. An examination of Committee records revealed no indication that works listed in the fund-raising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include: 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980 (Attachment 1, item #2); 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral on the addendum for the $240,000 District of Columbia National Bank loan (Attachment 1, item #3) for which the also-unprinted C.J. Yao works also served as collateral (see subsection a, supra); 20 prints of the same Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. (Attachment 1, item #5a). Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed (see subsection a, supra). Further, the representative revealed that an original work by Anuszkiewicz, valued at $9,000, which Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000 (Attachment 1, item #1), was not in the

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Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. That is demonstrated by Attachment 1. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist. (See subsection a, supra).

Because these facts indicate possibly deficient collateralization of the five loans referred following the audit, and because the facts indicate that the Kennedy for President Committee may have known that the loans by the above-named banks were obtained with insufficient collateralization, it is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

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III. Individual Excessive Contributions

The Interim Audit Report found that as many as 269 individuals had contributed in excess of $1,000 to the Committee for an excessive aggregate of $121,468.83. The Committee's response to the Interim Audit Report provided evidence that many of the apparent excessive contributions were due to computer errors, insufficient funds checks, or improper attributions by the Committee. The Audit Division has reviewed the Committee's response as well as subsequent information provided by the Committee. It now appears that 182 contributors exceeded the $1,000 limit and did not receive a refund or reattribute the contribution within 30 days, and did not receive a refund or reattribute their contributions until after the field audit was concluded. (See Attachment 2).3/ The total amount of excessive contributions from these individuals was $75,092.4/

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3/ In previous MURs dealing with excessive contribution receipts by the 1980 presidential campaigns, the Commission has proceeded against the committee involved for accepting excessive contribuions only with regard to the excessive contributions not shown to have been refunded or reattributed within 30 days. See 11 C.F.R. § 103.3(b)(2).

4/ At the time of the referral of this matter to the Office of General Counsel, the Committee had yet to give adequate evidence of a refund or attribution for 122 contributors representing an aggregate excessive amount of $48,817. As of October 6, 1981, only 11 contributions had not been shown to have been corrected. It must be observed, however, that these efforts to correct the violations have come about as a result of the audit process and are occurring many months after the excessive amounts were received.

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It is recommended that the Commission find reason to believe that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in knowingly accepting contributions from 182 individuals totalling $75,092.

RECOMMENDATIONS

1. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

4. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

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Attachment 5 - 12 of 12

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mark Twain Bank
Peter Benoist, President
8820 Ladue Road
St. Louis, Missouri 63124

RE: MUR 1393

Dear Mr. Benoist:

On , 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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Attachment 6 - 1 of 7

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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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

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Attachment 6 - 2 of 7

(34)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: Mark Twain Bank
Peter Benoist, President
8820 Lade Road
St. Louis, Missouri 63124

The Federal Election Commission requests that you, as an officer of the Mark Twain Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loans obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $10,000	4/6/80
2. $10,000	5/28/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loans.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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Attachment 6- 3 of 7

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4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loans.

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Mark Twain Bank

SUMMARY OF ALLEGATIONS

The Commission's audit of the Kennedy for President Committee ("the Committee") revealed that respondent Mark Twain Bank may have accepted apparently insufficient collateral pledged for bank loans obtained by the Kennedy for President Committee, indicating possible violations of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis

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Attachment 6 - 5 of 7

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which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. With regard to collateral pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured.

b. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 20 prints of the Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed.

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Attachment 6 - 6017

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c. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist.

Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe Mark Twain Bank violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the Mark Twain Bank violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee that were not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

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(39)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Chemical Bank of New York
Norborne Berkeley, Jr., President
277 Park Avenue
New York, New York 10017

RE: MUR 1393

Dear Mr. Berkeley:

On , 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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Attachment 7 - 1 of 7

(40)

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

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(41)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: Chemical Bank of New York
Norborne Berkeley, Jr., President
277 Park Avenue
New York, New York

The Federal Election Commission requests that you, as an officer of the Chemical Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loans obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $210,000	4/22/80
2. $540,000	5/2/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loans.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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Attachment 7-3of7

(42)

4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loans.

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Chemical Bank of New York

SUMMARY OF ALLEGATIONS

The Commission's audit of the Kennedy for President Committee ("the Committee") revealed that respondent Chemical Bank accepted apparently insufficient collateral pledged for two bank loans obtained by the Kennedy for President Committee ("the Committee"), indicating possible violations of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee

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Attachment 7-5 of 7

(44)

obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. An examination of Committee records revealed no evidence that works listed in the fundraising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

b. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980. Further, the representative revealed that an original work by Anuszkiewicz valued at $9,000, which

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Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000, was not in the Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

c. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory).

Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe Chemical Bank of New York violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the Chemical Bank of New York violated 2 U.S.C. § 441b(a) by making loans to the Kennedy for President Committee that were not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

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(46)

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

D.C. National Bank
Thomas Condit, President
1801 K Street, N.W.
Washington, D.C. 20006

RE: MUR 1393

Dear Mr. Condit:

On , 1982, the Federal Election Commission determined that there is reason to believe that your bank violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter. Additionally, please submit answers to the enclosed questions within ten days of your receipt of this letter. (Statements should be submitted under oath.)

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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Attachment 8 - 1 of 8

(47)

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

83040410531

Attachment 8-2 of 8

(48)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 1393
Kennedy for President Committee)

FIRST QUESTIONS

To: D.C. National Bank
Thomas Condit, President
1801 K Street, N.W.
Washington, D.C. 20006

The Federal Election Commission requests that you, as an officer of the D.C. National Bank, or your authorized agent having knowledge of the information sought herein, submit in writing, under oath, within ten days, responses to the following questions, related to the following loan obtained by the Kennedy for President Committee:

Amount of Loan	Date
1. $240,000	3/7/80

1. Relate the description of collateral in the form of art works given to the Bank by representatives of the Kennedy for President Committee in applying for the loan.

2. Please state what information concerning the number of reproductions existing, the reproduction rights to the art works pledged, and costs associated with reproduction was given to the Bank by the Committee before and/or after the loan documents were completed, and state when such information was given.

3. On what dates, if any, did Committee representatives inform the Bank that prints of the pledged works did not exist?

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Attachment 8-30/8

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4. Please supply any writings between the Committee or its representatives and the Bank concerning the collateral pledged for the loan.

5. Please state the purpose served by the addendum to the loan document, the reason for the listing of additional security, and the date on which the addendum was made.

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent D.C. National Bank

SUMMARY OF ALLEGATIONS

The Committee's audit of the Kennedy for President Committee ("the Committee") revealed that respondent D.C. National Bank accepted apparently insufficient collateral pledged for a bank loan obtained by the Kennedy for President Committee, indicating a possible violation of 2 U.S.C. § 441b(a) for failure to comply with 2 U.S.C. § 431(8)(vii)(II) and thereby making a contribution rather than a loan.

FACTUAL BASIS AND LEGAL ANALYSIS

The Commission's auditors noted, following the Committee's submission of amended schedules, that the documents on certain loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on the loan documents. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee

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Attachment 8 - 5 of 8

(51)

obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans presumably would be deemed contributions by the bank to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting a bank's contribution that was violative of that provision of the Act.

The auditors noted the following facts indicating possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, the Committee has said that the C.J. Yao prints did not exist at the time the loan was secured. The addendum recited where the additional security it listed would be stored. It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

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Attachment 8-6 of 8

(52)

b. An examination of Committee records revealed no evidence that works listed in the fundraising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral for the $240,000 District of Columbia National Bank loan which the also-unprinted C.J. Yao works also served as collateral (see supra).

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist.

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Attachment 8-7 of 8

(52a)

Because these facts indicate possibly deficient collateralization of loans referred following the audit, it is recommended that the Commission find reason to believe District of Columbia National Bank violated 2 U.S.C. § 441b(a).

RECOMMENDATION

1. Find reason to believe the District of Columbia National Bank violated 2 U.S.C. § 441b(a) by making a loan to the Kennedy for President Committee that was not in compliance with the requirements of 2 U.S.C. § 431(8)(vii)(II).

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Mr. Robert S. Evans
60 Cliff Street
New Haven, Connecticut 06511

RE: MUR 1393

Dear Mr. Evans:

On , 1982, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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Attachment 9- 1 of 3

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

8304041055

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Robert S. Evans

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

SUMMARY OF ALLEGATIONS AND ANALYSIS

The Commission's audit of the Kennedy for President Committee revealed that Robert S. Evans contributed in excess of the $1,000 limitation imposed by 2 U.S.C. § 441a. Specifically, it is alleged that Robert Evans contributed $2,054 more than allowable under § 441a.

RECOMMENDATION

1. Find reason to believe Robert S. Evans violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

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Attachment 9- 3 of 3

(56)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ms. Eve Mandelberg
60 East Seventeenth Street
Brooklyn, New York 11226

RE: MUR 1393

Dear Ms. Mandelberg:

On , 1982, the Federal Election Commission determined that there is reason to believe that you violated 2 U.S.C. § 441a, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against you, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of probable cause to believe a violation has occurred. See 11 C.F.R. § 111.18(d).

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

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

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Attachment 10 - 1 of 3

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

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FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

MUR NO. 1393
STAFF MEMBER(S) & TEL. NO.
Nancy Nathan
(202) 523-4073

Respondent Eve Mandelberg

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

SUMMARY OF ALLEGATIONS AND ANALYSIS

The Commission's audit of the Kennedy for President Committee revealed that Eve Mandelberg contributed in excess of the $1,000 limitation imposed by 2 U.S.C. § 441a. Specifically, it is alleged that Eve Mandelberg contributed $1,700 more than allowable under § 441a.

RECOMMENDATION

1. Find reason to believe Eve Mandelberg violated 2 U.S.C. § 441a by making contributions exceeding the limits imposed by that provision to the Kennedy for President Committee.

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Attachment 10-3 of 3

(59)

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

The Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20515

RE: MUR 1393

Dear Senator Kennedy:

On , 1982, the Federal Election Commission determined that there is reason to believe that the Kennedy for President Committee violated 2 U.S.C. §§ 434(b)(1), 434(b)(2), 432(c)(1), 441a(f) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, the Committee has an opportunity to demonstrate that no action should be taken against it. Please submit any factual or legal materials which you believe are relevant to the Commission's consideration of this matter.

In the absence of any additional information which demonstrates that no further action should be taken against the Committee, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. Of course, this does not preclude the settlement of this matter through conciliation prior to a finding of reason to believe. See 11 C.F.R. § 111.18(d).

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

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Attachment 11 - 1 of 10

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 Nancy B. Nathan, the attorney assigned to this matter, at (202) 523-4073.

Sincerely,

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

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Attachment 11- 20

(61)

FEDERAL ELECTION COMMISSION

GENERAL COUNSEL'S FACTUAL AND LEGAL ANALYSIS

		MUR NO. 1393 STAFF MEMBER(S) & TEL NO.
Respondent	Kennedy for President Committee	Nancy Nathan (202) 523-4073

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

SUMMARY OF ALLEGATIONS

The three matters referred to the Office of General Counsel are:

1) unreported receipts and receipts for which the Committee has been unable to provide adequate documentation of source or receipt, indicating possible violations of 2 U.S.C. §§ 434(b)(1), (2), and (4) and 432(c)(1) and (2);

2) apparently insufficient collateral pledged for five bank loans obtained by the Committee, indicating possible violations of 2 U.S.C. § 441b(a) by the banks for failure to comply with U.S.C. § 431(8)(vii)(II) and thereby making contributions rather than loans, and a violation of 2 U.S.C. § 441b(a) by the Committee, for knowingly accepting those illegal contributions; and,

3) apparent violations of § 441a individual contribution limits by Committee contributors and of § 441a(f) by the Committee, for its acceptance of those excessive contributions.

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Attachment 11- 3 of 10

(62)

FACTUAL AND LEGAL ANALYSIS

I. Unreported Receipts

According to the Final Audit Report, the Committee failed to report receipts totaling $17,500.49.1/ Furthermore, the Final Audit Report indicates that the Committee failed to keep an account of $14,583.57.2/ The reporting and recordkeeping omissions stemmed from certain Committee deposits in state and scheduling accounts. The state accounts were apparently maintained for overhead expenses of state offices, and the scheduling accounts were maintained for the expenses of specific scheduled events. The audit revealed that $52,602.79 worth of receipts deposited in state and scheduling accounts had not been transferred from the Committee's national accounts.

It is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 434(b)(1) and (2) for its continued failure to report receipts of $17,500.49 in its cash-on-hand or total receipts figures. It is further recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 432(c)(1) for its failure to keep an account of

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1/ The auditors reached this conclusion after analyzing the documentation provided by the Committee in response to the Interim Audit Report.

2/ The Interim Audit Report requested documentation for receipts totalling $52,602.79. Legible documentation was submitted for $38,019.22 in receipts, leaving $14,583.57 undocumented. The auditors include in the amount undocumented $9,249.50 for which illegible copies of checks and lists of receipts were submitted.

(63)

$14,583.57 worth of apparent contributions. 2a/

II. Improper Pledges of Collateral for Bank Loans

The Interim Audit Report recommended that the Committee file amended Schedules C-P disclosing details, including collateral, for twelve of the total twenty-four loans obtained by the Committee. The auditors noted, following the Committee's submission of amended schedules, that the documents on five of the loans raised questions concerning the sufficiency of the collateral pledged in the form of art works. Specifically, the auditors cited difficulties matching descriptions of the art work in the Committee's campaign fundraising materials with the descriptions on five loan documents. For three of the five loans referred, description of the collateral appearing on the amended schedules did not agree with the corresponding bank documents' descriptions; for the other two loans, no documentation was provided by the Committee. It appeared that, at least for some of those loans, the art in question may not physically have existed at the time pledged.

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2a/ The amounts referred to in the final audit report, which form the basis for the recommendations under Part I, do not include amounts for which similar findings of reporting and record-keeping violations were found in MUR 1370.

In pertinent part, the Act defines loans that are exempt from the definition of "contribution" as those made "on a basis which assures repayment." 2 U.S.C. § 431(8)(vii)(II); 11 C.F.R. § 100.8(a)(12). There is a question whether the Committee obtained express agreement from the contributing artists for reproduction rights to the works pledged in obtaining the loans. The existence of such rights at the time the loans were obtained is critical to a determination whether the loans satisfy the requirements of § 431(8)(vii)(II). If the rights were not held, and even if they were but the prints had not yet been reproduced, the loans could be deemed contributions by the banks to the Committee, in violation of 2 U.S.C. § 441b(a). The Committee would have violated 2 U.S.C. § 441b(a) for knowingly accepting the banks' contributions that were violative of that provision of the Act.

The auditors noted the following facts indicating the possible § 441b(a) violations:

a. With regard to collateral pledged as "additional security" in an addendum to the $240,000 loan document at the District of Columbia National Bank, with an effective date of July 29, 1980, and also pledged for a $10,000 loan from the Mark Twain Bank of St. Louis, dated May 28, 1980, the Committee has said the C.J. Yao prints did not exist at the time the loan was secured. (See Attachment 1, items 3 and 5b). The addendum recited where the additional security it listed would be stored.

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It remains to be determined whether the "additional security" was needed before the loan was made, or whether in fact the collateral listed on the original loan document was sufficient.

b. An examination of Committee records revealed no indication that works listed in the fund-raising brochure, or August 13, 1981 inventory of artwork on hand, actually had been printed.

c. Statements by an employee of the Committee's counsel, Joann Rosskam, made to auditors on November 7, 1981, confirmed that certain other pledged works never have been printed. They include: 265 Krushenick serigraph prints pledged as partial collateral for a $540,000 Chemical Bank of New York loan dated May 2, 1980 (Attachment 1, item #2); 270 Rosenblum serigraph prints ("Solo") pledged as partial collateral on the addendum for the $240,000 District of Columbia National Bank loan (Attachment 1, item #3) for which the also-unprinted C.J. Yao works also served as collateral (see subsection a, supra); 20 prints of the same Rosenblum series ("Solo") pledged for a $10,000 Mark Twain Bank of St. Louis loan dated May 28, 1980. (Attachment 1, item #5a). Additionally, that Committee representative confirmed the auditors' conclusion that the C.J. Yao works never have been printed (see subsection a, supra). Further, the representative revealed that an original work by Anuszkiewicz, valued at $9,000, which Chemical Bank documents show as collateral for an April 23, 1980 loan of $210,000 (Attachment 1, item #1), was not in the

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(66)

Committee's possession when pledged. It was not clear to the auditor who spoke with Ms. Rosskam whether the legal rights to the Anuszkiewicz work were held by the Committee at that time, but physical possession had not yet been transferred.

d. Some descriptions of works donated to the Committee by artists vary, sometimes substantially, from descriptions of works by the same artists that were listed on loan documents. That is demonstrated by Attachment 1. Statements by Ms. Rosskam to the auditors asserted, however, that where discrepancies appeared because of variations in descriptions, those were insignificant (i.e., that the bank documents' listings were for the same works described differently in the Committee brochure and inventory). It also should be noted that no works by C.J. Yao were listed in the Committee inventory or brochure; the Committee admits those works do not exist. (See subsection a, supra).

Because these facts indicate possibly deficient collateralization of the five loans referred following the audit, and because the facts indicate that the Kennedy for President Committee may have known that the loans by the above-named banks were obtained with insufficient collateralization, it is recommended that the Commission find reason to believe the Committee violated 2 U.S.C. § 441b(a).

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Attachment 11 - 8 of 10

(67)

III. Individual Excessive Contributions

The Interim Audit Report found that as many as 269 individuals had contributed in excess of $1,000 to the Committee for an excessive aggregate of $121,468.83. The Committee's response to the Interim Audit Report provided evidence that many of the apparent excessive contributions were due to computer errors, insufficient funds checks, or improper attributions by the Committee. The Audit Division has reviewed the Committee's response as well as subsequent information provided by the Committee. It now appears that 182 contributors exceeded the $1,000 limit and did not receive a refund or reattribute the contribution within 30 days, and did not receive a refund or reattribute their contributions until after the field audit was concluded. (See Attachment 2).3/ The total amount of excessive contributions from these individuals was $75,092.4/

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3/ In previous MURs dealing with excessive contribution receipts by the 1980 presidential campaigns, the Commission has proceeded against the committee involved for accepting excessive contribuions only with regard to the excessive contributions not shown to have been refunded or reattributed within 30 days. See 11 C.F.R. § 103.3(b)(2).

4/ At the time of the referral of this matter to the Office of General Counsel, the Committee had yet to give adequate evidence of a refund or attribution for 122 contributors representing an aggregate excessive amount of $48,817. As of October 6, 1981, only 11 contributions had not been shown to have been corrected. It must be observed, however, that these efforts to correct the violations have come about as a result of the audit process and are occurring many months after the excessive amounts were received.

Attachment 11 - 9 of 10

It is recommended that the Commission find reason to believe that the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in knowingly accepting contributions from 182 individuals totalling $75,092.

RECOMMENDATIONS

1. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 434(b)(1) and (2) in failing to include all receipts in its reports to the Commission.

2. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 432(c)(1) in failing to accurately keep account of all contributions received.

3. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441b(a) in knowingly accepting certain bank loans violative of 2 U.S.C. § 441b(a).

4. Find reason to believe the Kennedy for President Committee violated 2 U.S.C. § 441a(f) in accepting contributions that exceeded the individual contributors' limits under 2 U.S.C. § 441a.

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SENSITIVE

ACTION DOCUMENT #081-065

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

Scheduled Late

SEP 10 P5: 18

September 10, 1981

MEMORANDUM

TO: THE COMMISSIONERS

EXECUTIVE SESSION

THROUGH: B. ALLEN CLUTTER
STAFF DIRECTOR

SEP 15 1981

FROM: BOB COSTA

SUBJECT: FINAL AUDIT REPORT - KENNEDY FOR PRESIDENT COMMITTEE

Attached is the final audit report on the Kennedy for President Committee.

As directed, in the Commission meeting on August 26, 1981, the Audit staff has met with the Office of General Counsel staff to review and redraft Finding II.C. - Allocation of Expenditures to States. After meeting with the Counsel staff it was decided that the finding would be revised to condense the original six (6) subsections into four (4) subsections and to include a recommendation at the end of each subsection. Each subsection now incorporates all of the Committee's comments as they relate to each specific type of activity which the Committee believes to be exempt from the state expenditure limitation. For example Finding II.C Subsection a. pertains to the Compliance and Fundraising exemptions and the three areas of expenditures affected: overhead expenditures, field staff salaries, and advance staff salaries. The recommendations at the end of each subsection request the documentation and/or information which the Audit staff feels is necessary in order for a determination to be made as to the accuracy and reasonableness of the Committee's calculations, however we have not stated that if such documentation is submitted the Committee's position will be accepted. We feel that such a determination can be made only after a review of any submission.

The Counsel's office has informed this office that it will circulate a separate memorandum to the Commission pointing out areas in the report which they feel should be discussed in further detail.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C.

3: SEP 10

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MEMORANDUM TO THE COMMISSIONERS

FINAL AUDIT REPORT -
KENNEDY FOR PRESIDENT COMMITTEE

The one area in which the Audit staff and Counsel's office are still not in agreement is the Committee's allocations to an exempt category portions of each Advance staff person's salary for time spent providing services to the national press. This matter is addressed in Finding II.C Subsection 3. During the discussion of this matter in the aforementioned Commission meeting, the Commission voted 3-3 as to whether to accept the Committee's allocation in this area. Since the resolution of this matter remains unclear, the finding has remained in the report for discussion purposes. A second issue does remain open on this subject even if the Committee's allocation theory is accepted. That issue is the derivation of the percentage of time spent by the advance staff on National press matters. The Committee has not provided any information on the source of the percentage.

The only other findings requiring a Commission vote are II.F pertaining to the Committee's escrow account and III.B pertaining to the repayment of non-qualified campaign expenditures related to expenditures in excess of the state expenditure limits. Additional Exhibits to the report are letters received from Fox and Company relating to the methodology used to arrive at the exempt Compliance and Fundraising percentages.

All changes and/or additions to the report based on discussions with the Counsel's office have been underlined. We recommend that this report be placed on the agenda for the scheduled Executive Session on September 15, 1981. If you have any questions concerning any of the matters discussed, please contact Ray Lisi or Joe Stoltz at extension 3-4155.

Attachments as stated

MEMORANDUM TO THE COMMISSIONERS

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KENNEDY FOR PRESIDENT COMMITTEE

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Attachments as stated

9/10

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

REPORT OF THE AUDIT DIVISION ON THE KENNEDY FOR PRESIDENT COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Kennedy for President Committee ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037".

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The Committee registered with the Federal Election Commission on October 29, 1979 as the principal campaign committee of the Honorable Edward M. Kennedy, a Democratic candidate for the nomination to the office of the President of the United States. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1980 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. 1/ The Committee reported a beginning cash balance of $409,168.91, total receipts of $11,804,166.54, total expenditures of $11,953,427.73, and a closing cash balance on August 31, 1980 of $259,907.72. As of August 31, 1980, the Committee reported expenditures of $9,782,864.70 subject to the overall expenditure limitation.

1/ In accordance with standard Audit Division practice, a review was made of the Committee's expenditures through December 31, 1980, to verify that each was a qualified campaign expense and to determine the accuracy of the Statement of Net Outstanding Campaign Obligations as of November 28, 1980. Although the Threshold Audit Report covered the period October 29, 1979 through December 31, 1979, the unavailability of records at that time necessitated that the majority of the tests conducted in this audit cover the period October 29, 1979, through August 31, 1980.

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B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Stephen E. Smith, Chairman, Ms. Carolyn A. Reed, Treasurer from inception to June 13, 1980, and Mr. William C. Oldaker, Treasurer from June 13, 1980 to the present.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation and analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations Relating to Title 2 of the United States Code

A. Reporting Errors and Omissions

Section 434(b)(1)(2) and (4) of Title 2 of the United States Code states that each report shall disclose the amount of cash on hand at the beginning of the reporting period; and for the reporting period and the calendar year, the total amount of all receipts and dis' .rsements.

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person who makes a contribution(s) to the committee in an aggregate amount or value in excess of $200 within t e calendar year, together with the date and amount of any such contribution.

Section 432(c)(1)(2) and (3) of Title 2 of the United States Code states, in part, that the treasurer of a committee shall keep an account of all contributions received, the name and address of any person who makes any contribution in excess of $50, together with the date and amount, and the identification of any person making a contribution(s) aggregating more than $200 during a calendar year, together with the date and amount.

1. Background

During the period audited, the Committee opened 200 bank accounts. Seven (7) of these accounts were maintained at the national campaign offices. The remaining 193 accounts included 63 accounts maintained at the state level, and 130 scheduling accounts. Scheduling accounts were used to fund specific events, and were separate from the funding of state offices.

The Committee's procedures provided for funding the state and scheduling accounts with transfers solely from the national accounts. All contributions received at the state and scheduling level were to be forwarded directly to the national office for deposit into a national account. Expenditure information for the state and scheduling accounts was forwarded to the national office for inclusion in the monthly reports. All expenditures from all accounts were to be itemized on Schedules B-P regardless of amount. Due to the fact that only $3,103.52 in unitemized expenditures were reported during the period October 29, 1979 through August 31, 1980, and that our tests identified expenditures not itemized that were in an amount in excess of $3,103.52, any disbursement not found itemized was considered an unreported disbursement.

2. Unreported Expenditures

a. National Accounts

Our review of the Committee's expenditure records for the period October 29, 1979 through August 31, 1980 revealed that 34 expenditures totaling $73,916.15 were not reported. The expenditures appeared to be for normal Committee operating expenses and the Audit staff found no apparent reason for this failure to report. Further, Committee officials were unable to determine the cause of this problem.

The interim audit report contained a recommendation that the Committee amend its reports to include the 34 expenditures noted above. On May 19, 1981, the Committee submitted an amended report covering calendar year 1980, itemizing 29 of the 34 expenditures, totaling $71,591.63. A Committee official stated that the remaining five (5) expenditures comprised the unitemized operating expenditure figure contained in the 1979 year end report. Based on the dollar amount, it is possible that four (4) of these expenditures comprised the unitemized operating expenditure figure on the 1979 year end report.

Recommendation

Since the Committee has materially complied with the recommendation, the Audit staff recommends that no further action be taken on this matter.

b. State and Scheduling Accounts

A review was made of the 193 state and scheduling accounts maintained by the Committee. The results of our tests disclosed a material error rate in the Committee's reporting of expenditures from these accounts.

During the audit fieldwork the Committee was in the process of reviewing their files and preparing amended expenditure schedules to include previously unreported state and scheduling expenditures. A comparison of our test results to the amended schedules indicated that the filing of the amended schedules would materially correct the Committee's reports. The amended schedules contained $220,526.54 in previously unreported activity.

The interim audit report contained a recommendation that the Committee file the amendment mentioned above. The Committee stated in its written response to the audit report that they had included in the 1980 amendment, filed on May 19, 1981, state and scheduling account expenditures totaling $207,409.04, which were previously unreported. Our review of the amendment disclosed that it actually included $210,153.89 in expenditures. The Committee explained that the discrepancy between the dollar amount of the state and scheduling account expenditures included in the comprehensive amendment filed and the proposed amendment originally reviewed by the Audit staff, was a result of the proposed amendment not reflecting all expenditure amount corrections. Upon receipt of the amendment, the test results were again compared and it was determined that the amendment as filed materially complies with the recommendation.

Recommendation

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

a. $9,000.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

b. a $9,181.66 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

Recommendation

The Audit staff recommends no further action in this matter.

B. Missing Records

Section 432(c) and (d) of Title 2 of the United States Code states, in part, that a treasurer of a political committee shall keep an account of all contributions received on behalf of such political committee, and any disbursements made, including a receipt, invoice, or cancelled check for each disbursement in excess of $200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each person required to file any report or statement under this subchapter shall maintain records, including bank records, with respect to the matters required to be reported from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

In addition, Section 9033.1(a)(3) of Title 11 of the Code of Federal Regulations requires a candidate receiving matching funds to keep and furnish to the Commission any records, including bank records for all accounts.

In addition to numerous verbal requests, the Audit staff made eight (8) written requests, beginning on October 23, 1980, for the production of various missing bank records. These requests were presented to the Committee's staff who were available to the Auditors on a daily basis and were working with the records being requested. Due to the substantial delays the Auditors encountered in the receipt of many requested documents and records, particularly bank records, the Commission sent a letter to the candidate, on December 3, 1980, which requested cooperation from the candidate and Committee personnel concerning the production of these records. At the conclusion of the audit fieldwork, the Committee had still not obtained and provided all requested records pertaining to the bank accounts.

The final list of missing bank account records was given to the Committee and discussed with them on January 9, 1981. The list included twenty-one bank accounts which were missing statements, cancelled checks, and/or deposit slips. These missing bank records were needed in order to verify reported figures and could have resulted in additional corrections to the Committee's reports. Committee officials stated that they would attempt to obtain the missing records and provide them for our review.

The interim audit report contained a recommendation that the Committee provide the bank records for our review. Subsequent to the audit fieldwork the Committee provided records for 18 of the 21 bank accounts. For two (2) of the bank accounts the records which were not provided consisted of cancelled checks associated with three (3) bank statements. The remaining one (1) account was lacking one (1) bank statement. It should be noted, however, that the Audit staff was able to include the expenditures connected with these accounts in the overall expenditure review of the state and scheduling accounts. For two (2) of these accounts, the Committee provided letters sent to the banks requesting these records.

Recommendation

Since the Committee has provided the majority of the records requested, the Audit staff recommends that no further action be taken on this matter.

C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or $200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect to a particular State shall be allocated to that State.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific State shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures.

A review of the Committee's system for allocating expenditures to states revealed a number of areas where allocations were not performed. An extensive review was made of all expenditures relating to the states of New Hampshire and Iowa since these were the only states where the limitations were approached.

The Committee maintained monthly state allocation reports which contained a listing by state of all expenditures allocated to the states from the national operating accounts and state and scheduling accounts. A comparison of the allocation reports to the FEC Forms 3Pc, "Allocation of Primary Expenditures by State for a Presidential Candidate", filed by the Committee from inception through August 31, 1980 revealed more expenditures reported on the Forms 3Pc than contained on the allocation reports. Committee personnel were unable to provide the Audit staff with workpapers to support the reported 3Pc totals nor could they provide an explanation for the differences. Various expenditure testing performed on the allocation reports verified that, with the exception of specific categories of expenditures noted below, the allocation of expenditures contained on the allocation reports were substantially correct. Therefore, the allocation report totals were used as a base to which additions and/or adjustments to the expenditure totals for New Hampshire and Iowa were made.

In addition to the national accounts, the Committee maintained 14 New Hampshire accounts (all in New Hampshire) and 23 Iowa accounts (22 in Iowa and one (1) in Nebraska) from which expenditures were made but were not allocated. Reconciled totals from these accounts were added to the state allocation report totals to yield a grand total of $227,736.65 allocable to New Hampshire and $421,376.94 allocable to Iowa.

The interim audit report also identified the following categories of expenditures as containing errors or omissions requiring adjustments to the above totals for New Hampshire and Iowa.

1. March and April, 1980, Expenditures

A review of the state allocation reports revealed that the Committee did not allocate any expenditures made from the national operating accounts during the months of March and April, 1980. A review of the check copies which contained the Committee's state allocation codes for that time period was performed to identify expenditures relating to the New Hampshire and Iowa campaigns. The results of that review required additional allocations of $34,786.01 to New Hampshire and $8,917.22 to Iowa.

2. Media

The Committee did not allocate any expenditures from its national operating accounts to its media firm for the purchase of radio, television, or newspaper advertising even though the media firm had supplied the Committee with detailed information with which to do so. The documentation supporting the allocations maintained by the media firm was reviewed by the Audit staff. The review disclosed allocations of $48,347.81 to New Hampshire and $85,668.82 to Iowa.

3. Payroll

The Committee did not allocate to the respective states either the salaries of individuals who, according to payroll registers, were assigned to state offices (field personnel) or individuals who were assigned to specific events in one (1) or more states (advance personnel). In addition, neither unemployment taxes nor the employer's portion of FICA taxes were allocated. The Audit staff identified total payroll related expenses (gross payroll, unemployment taxes, and employer's FICA) of $83,506.34 allocable to New Hampshire and $127,327.08 to Iowa.

4. Per Diem and Expense Reimbursements

A review of per diem and expense reimbursement payments and the documentation maintained by the Committee (i.e., reimbursement request forms with attached invoices and receipts, indicating a destination) supporting these expenditures identified an additional $2,432.38 allocable to New Hampshire and $2,852.09 to Iowa.

In addition to the above, the Audit staff identified $20,084.24 in expenditures which were not adequately documented to allow an allocation determination. These expenditures were supported solely by a cancelled check which did not identify the state(s), if any, to which the expenditures were allocable nor were these expenditures allocated to any state by the Committee. Per diem payments accounted for $18,840.00 and expense reimbursements for the remaining $1,244.24.

5. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations as of November 28, 1980, and the Committee's list of accounts payable and billings and invoices supporting these payables, identified outstanding debts totaling $3,242.18 which were related to the Committee's New Hampshire campaign and $10,970.84 to Iowa.

6. Other Vendor Payments

An analysis of other vendor payments and the documentation maintained supporting these payments (i.e., including bills, invoices, and check stubs containing the Committee's allocation codes) from the operating accounts and a review of expenditures from September 1, 1980 through November 30, 1980, identified additional amounts of $28,171.79 allocable to New Hampshire and $47,287.44 allocable to Iowa.

The interim audit report included a final summary of Committee expenditures allocable to New Hampshire totaling $428,223.16 and Iowa totaling $704,400.43.

The Audit staff recommended in the interim audit report, that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect these adjustments within 30 days of receipt of the report. In addition, a recommendation was made that the Committee provide the Audit staff with sufficient documentation to allow an allocation determination for those expenditures noted as not adequately documented in II.C.4. above. With respect to other state allocation errors, a recommendation was made that no action be taken since it would have no effect on the Committee's compliance with those state limitations.

In its response to the interim audit report received on May 19, 1981, the Committee provided documentation verifying that the expenditures noted in II.C.4. were not allocable to either New Hampshire or Iowa. The Committee also stated that its method of analyzing state by state expenditures was to review, with the assistance of two (2) accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purpose of influencing the nomination in that particular state and then if all or any of the expenditure could be allocated to an exempt expenditure category.

The Committee provided the Audit staff with a computer printout which included all expenditures which were noted in the interim audit report as being allocable to New Hampshire and Iowa. Each expenditure on the printout was allocated into one (1) or more exempt (not subject to the expenditure limit) or non-exempt (subject to the expenditure limit) categories as follows:

Non-Exempt Category

1. Primary

Exempt Category

1. Compliance
2. Fundraising
3. Phone/Travel-Interstate
4. National Press
5. Other

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Due to the methodology employed by the Committee in preparing its response, the expenditure categories presented by the Committee do not correspond to those contained in the interim audit report. Therefore, the remainder of the staff's analysis does not address the same categories of expenditures contained in the interim report but generally addresses the categories as presented by the Committee. However, certain of these categories have been combined for ease of presentation.

a. Compliance and Fundraising

In its response the Committee stated: "During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditures in a manner consistent with salary allocation."

The Committee asked a public accounting firm to develop the methodology and establish the percentages to be used in allocating costs to exempt functions. The firm stated in a letter that it used a sample of four (4) states 2/ from which it computed a weighted average percentage of fundraising and compliance time. The Committee stated that the selection of the states was on a judgemental basis and the information pertaining to each employee was based on interviews with the official who directed the campaign activity in that state. Using this procedure the firm determined that 17% of payroll costs related to fundraising and 22% related to compliance.

Overhead expenses were isolated and the percentages noted above were applied to all overhead expenses allocating an amount to exempt compliance and fundraising. The Committee also determined the amount of time spent on compliance and fundraising activities for field staff and charged a portion of those individual's salaries to exempt compliance and fundraising. In addition, a review of the computer printout supplied by the Committee reveals that the Committee has allocated what appears to be 10-17% of each advance person's salary to fundraising. Since no information was provided in the Committee's response concerning the compliance and fundraising percentages applied to advance staff salaries, it is not known how those percentages were derived. 3/

2/ The four (4) states were New Hampshire, Iowa, New York, and Ohio.

3/ The Audit staff has adjusted the totals allocated to advance staff salaries for the difference between a seven day work week and the five day work week which was used by the Audit staff in arriving at the total in the interim report.

Although it appears justifiable that a portion of overhead and payroll related costs can be charged to exempt categories, the limited information which has been provided concerning the procedures used does not allow the staff to make a determination concerning the reasonableness of the allocation.

All that has been provided by the Committee is a letter from the accounting firm explaining in general terms the procedure it followed to arrive at the percentages. The letter states that the amount of compliance and fundraising time spent by individuals in the four states was determined through discussions with the state desk people directing the campaign activity in that state. Workpapers prepared by the accounting firm supporting the discussions and calculations noted in the letter were not available for the Audit staff's review at the time the Committee's response was received. In the absence of these workpapers the Audit staff has no information concerning the questions asked of the campaign officials interviewed, how the interviewers defined "compliance" and "fundraising", on what basis the persons interviewed assigned percentages to each staff members' activities, or any other records (i.e. time sheets, job descriptions, etc.) which were used as a basis for determining the percentages. In addition, the Committee has not provided the definition of the types of expenditures to which the overhead percentages would be applied. Further, the Committee stated in its response that they recognized the need for establishing these percentages during the campaign; however, the Audit staff was provided no evidence or information to indicate that the information used by the accounting firm was obtained during the campaign. The timing of the interviews is an important factor to take into consideration when determining the reasonableness of the resulting percentages, because the calculations were based on a single individual's recollection of activities.

Therefore, other than those expenditures which could be clearly identified as relating to compliance and fundraising activities, no adjustments have been made to the expenditures allocable to New Hampshire and Iowa based on the Committee's response.

Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's compliance and fundraising allocations within 30 days of receipt of this report, that no adjustments be made to the amounts allocable to New Hampshire or Iowa on the basis of the Committee's response in this area except as noted above. This documentation should include but is not limited to:

a. all workpapers generated by the Committee and/or accounting firm used to derive the compliance and fundraising allocations;

b. questions asked of the individuals interviewed;

c. job descriptions and/or time sheets for the individuals for whom salaries were allocated;

d. a description of the duties of the individuals interviewed;

e. the basis for the selection of the four (4) states used.

b. Interstate Travel and Communications

In its response the Committee stated "The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2(c)(2) to the national expenditure limitations."

The Committee provided the Audit staff with workpapers which they stated would support the Committee's allocation of long distance telephone charges to an exempt category. The workpapers indicate that all calculations for determining the amount of long distance telephone charges allocated to an exempt category for New Hampshire 4/ were based on reviewing two (2) telephone bills. The workpapers state that 62% of the total amount of all telephone bills were long distance and that 27% of the long distance calls were out of state. The 27% was then applied to all phone charges for New Hampshire, both those made at campaign headquarters and those contained on hotel bills and expense reimbursement forms, and the resulting amount allocated to an exempt expenditure category. The Audit staff is unable to verify the accuracy of these percentages since the Committee provided only the summary pages for the telephone bills which did not include the itemized listing of phone calls. Further, it would appear that if the percentage calculations are correct, a sample consisting of two (2) selected telephone bills is not statistically valid.

4/ No records were provided for the Iowa computations.

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The Commission, in a meeting on June 9, 1981, determined that only long distance telephone charges originating in a particular state made within that state or to another state, other than national headquarters, were required to be allocated. Letters were mailed to the affected presidential candidate committees on July 2, 1981, notifying the committees of the new determinations concerning the allocation of the telephone charges. The letter also stated that the committees had 30 days from receipt of the letter, to submit to the Audit Division an amended state allocation schedule, thereby reducing the amount previously allocated for such expenditures. The committees were also instructed to provide computational schedules including copies of bills, expense vouchers, or any other documentation supporting such an amendment. The Committee received the letter by certified mail on July 7, 1981. Since the Committee has not provided the Audit staff the documentation requested in the letter, no change to the total amount allocated in the interim report has been made.

The Audit staff has adjusted the total allocable to New Hampshire by $7,054.97 and Iowa by $1,956.66 for other interstate charges (interstate travel and delivery services) for which adequate documentation was provided.

Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's interstate travel and long distance telephone allocations within 30 days of receipt of this report, that no adjustments be made to the amounts allocable to New Hamphire or Iowa on the basis of the Committee's response in this area except as noted above

This documentation should include but is not limited to:

a. itemized telephone bills for all telephone numbers for which charges have been allocated to an exempt category;

b. expense and travel reimbursement forms including receipts and invoices (i.e., airline tickets, gas receipts, etc.) verifying interstate travel for those items not previously documented; and

c. Committee generated workpapers including adding machine tapes derived from the information above.

c. Media Expenditures

In its response the Committee stated that it had reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by the vendor (which was found to be acceptable by the Audit staff

during the fieldwork) was incorrect. 5/ They further stated: "The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV station to allocate the cost of a broadcast." However, other than a letter from their media firm explaining that they had recalculated the media costs based on "County Coverage Reports (CCR)" rather than on the basis of "Area of Dominant Influence (ADI)" 6/ no other workpapers supporting the reallocation of media expenditures was supplied to the Audit staff with the response. The letter from the media firm does not provide an explanation of the method used for determining the number of eligible voters in the County Coverage Reports.

At the time the Committee's response was received they indicated that the reduction of total media expenditures allocable to New Hampshire and Iowa contained on the computer printout was an estimate and that the media firm had not completed their calculations.

On June 11, 1981, the Committee provided the final figures for the media allocations. The Audit staff does not object to the use of the CCRs for the allocation of media expenditures; however, based on the review of these allocations and the supporting documentation, the Audit staff noted the following:

1. It appeared that the Committee's media vendor simply applied New Hampshire and Iowa CCR percentages to those media buys previously allocated to these states under ADI but did not (re)allocate to these states any buys previously not allocated under ADI which would be required under CCR. There are 10 out-of-state stations which overlap New Hampshire according to CCR data. The Committee made media buys at five (5) of these stations for which no (re)allocations have been made. 7/ The dates of these buys are not known to the Audit staff at this time to verify that the buys were all subsequent to the New Hampshire primary and would, in fact, not require such an allocation.

5/ As noted earlier in this report, although provided with the media allocation totals by their media firm the Committee had not allocated any media costs.

6/ The Area of Dominant Influence (ADI) is a geographic design which defines each television market, exclusive of another, based on measurable viewing patterns. County Coverage Reports detail for every county, net weekly circulation (number of different households viewing the station in a week), for every station, whether the county is within or outside the station's ADI.

7/ Two (2) of these were Springfield, Massachusetts stations, two (2) were Burlington, Vermont, and one (1) was New Bedford, Massachusetts.

2. $1,450 in media buys at one (1) of the Burlington, Vermont TV stations referred to above were reviewed during the audit fieldwork that were denoted "N.H. primary". These expenditures did not require an allocation to New Hampshire under the ADI method but most likely would on the basis of CCR. The Committee's revised figures did not include any allocation to New Hampshire for these purchases.

3. On July 8, 1981, the Committee provided the Audit staff with schedules indicating that refunds from various New Hampshire and Iowa stations had been received and that $5,327.86 and $3,502 should be deducted from the New Hampshire and Iowa allocations, respectively. These schedules were dated November 18, 1980 while the media firm's CCR reallocations were dated May 18 and 21, 1981. Therefore, it appears that the refunds are calculated under ADI percentages while the time buys are now (re)allocated under CCR percentages.

The above matters have been discussed with the Committee's controller who requested clarification and/or additional information from their media firm representative. With respect to item number a., the media firm representative stated that the reallocation was done "from scratch" and that all buys at the five (5) stations with a New Hampshire overlap were subsequent to the New Hampshire primary.

With respect to item number b., the media firm representative advised that his assistant may have missed the Burlington, Vermont buys. A copy of the invoice in question was provided to the Committee's controller who was to forward it to the media representative. The Committee's controller stated that any necessary corrections would be provided to the Audit staff.

With respect to item number c., he agreed that the refunds would require an allocation adjustment calculated on the basis of CCR percentages.

Due to (1) the possible omission of the Burlington, Vermont media buys from the Committee's reallocations, (2) the timing of the Massachusetts and Vermont primaries (March 4) in relation to the New Hampshire primary (February 26) and that the media firm asserts that no Massachusetts or Vermont buys were prior to February 26, and (3) the fact that the Committee's revised media allocations are again subject to change (on the basis of eligible Democratic votership), no changes have been made to the Audit staff's original media allocations, except for minor revisions resulting from other updated information.

Recommendation

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

a. documentation for all media buys made at the five (5) stations noted in a. and b. above which will show the dates the programs were broadcast; and

b. revised refund schedules using CCR data as noted in c. above.

Absent the presentation of the documentation noted above within 30 days of receipt of this report, pursuant to 11 C.F.R. Section 9038.2(b), no adjustments to the amount allocable to New Hampshire and Iowa will be made based on the Committee's response in this area.

d. National Press

The Committee stated in its response that each expenditure preliminarily allocated to New Hampshire or Iowa was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. They further stated that the Committee's method of billing the press (225% of first class air fare) was reviewed and approved by the Commission during an enforcement proceeding. The Committee believes that many of the expenditures allocated to New Hampshire and Iowa were for services provided to the National Press. Since the costs of these services were included in the basis for the 225% charge and subsequently reimbursed to the Committee, they therefore should not be allocated to the states' limits.

The Audit staff does not disagree with the concept that expenditures for services provided to members of the press which are subsequently reimbursed by the press need not be charged to any limitation. However, the Committee has not provided any information to show a relationship between any particular expenditure or group of expenditures which they have charged to exempt National Press and the activities of the National Press. In addition, the Committee has not provided a list of the total amount billed to the national press nor the total amount received from the national press based on these billing.

Furthermore, in its response to Commission inquiries during the enforcement proceeding, Committee officials indicated that the charge to the press for traveling with the candidate was always initially based on 225% of first class airfare but was often adjusted downward once the total cost of the trip was determined. Of the four (4) examples of campaign flights provided to the Commission by the Committee during the proceeding the highest billing rate reported by the Committee was approximately 150% of the first class airfare.

The Committee has also stated that the salaries of various staff persons who devoted all or a part of their time to the national press likewise should not be allocated to an individual state but should be treated as a national non-allocable expenditure. The Committee has therefore allocated approximately 33% of each advance staff person's salary to exempt national press.

The Committee has not provided the Audit staff any information as to how this percentage was derived. Further, no definition of these activities has been offered by the Committee nor have any worksheets or other documents supporting this allocation been presented to the Audit staff.

11 C.F.R. 106.2 states that expenditures for administrative, staff, and overhead costs directly relating to national campaign headquarters need not be allocated to states while expenditures for staff, media, printing, and other goods and services used in a campaign in a specific state shall be attributed to that State. Since these salaries were for staff services used in the states of Iowa and New Hampshire and do not relate directly to national headquarters, the Audit staff can find no basis for exempting advance staff salaries from the state expenditure limits.

The Audit staff has not adjusted any of the amounts allocable to New Hampshire and Iowa in the area of national press based on the Committee's response.

Recommendation

The Audit staff recommends that, pursuant to 11 C.F.R. Section 9038.2(b), absent the presentation of documentation verifying the accuracy and reasonableness of the Committee's National Press allocations within 30 days of receipt of this report that no adjustments be made to the amount allocable to New Hampshire or Iowa on the basis of the Committee's response in this area. This documentation should include but is not limited to:

a. the total amount billed to the national press by trip and the total amount received from the press based on these billings;

b. the types of expenditures charged to exempt national press and their relationship to the national press. At a minimum this documentation should indicate that for the expenses charged to the national press, that the national press were in the area at the time the services were rendered;

c. workpapers used to derive the percentages applied to the salaries of advance staff personnel allocated to exempt national press; and

d. the activities performed by the advance staff personnel which constitute "national press" activity and the amount of time spent by each of these individuals in those activities as well as the method employed in making these determinations.

The Audit staff's review of the Committee's response and accompanying documentation pertaining to a-d above resulted in $385,851.07 in expenditures allocable to New Hampshire and $636,456.32 to Iowa.

D. Contributions From Other Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code requires a committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 432(c)(4) of Title 2 of the United States Code states, in part, that the treasurer of a political committee shall keep an account of the identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. In addition, Section 431(11) defines, in part, the term "person" to include a partnership, committee, association, corporation, or any other organization or group of persons.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000.

1. Itemization of Contributions from Political Committees

A review of reports on file at the Commission revealed that 28 political committees reported making 31 contributions to the Committee totaling $30,322.00 which were not itemized on the Committee's disclosure reports. The Committee maintained copies of the transfer checks for seven (7) of these contributions.

The Audit staff recommended that the Committee file amended reports itemizing these contributions. On May 19, 1981, the Committee filed comprehensive amendments itemizing these contributions.

Recommendation

The Audit staff recommends no further action on this matter.

2. Excessive Contributions from Registered Committees

A review of the Committee's receipt records revealed that the Committee received contributions from one multicandidate committee which exceeded the limitation by $4,875.00. In addition, the Audit staff identified contributions in excess of $1,000 from two (2) political committees that apparently were not qualified as multicandidate committees as defined by Section 441a(a)(4). The excessive portion of the contributions from the two (2) non-qualified committees totaled $3,702.60.

The Audit staff recommended that the Committee refund the excessive portions of these contributions. On June 15, 1981, the Committee provided a copy of the check used to refund the $4,875 to the multicandidate committee. For the excessive contribution from one (1) of the apparent non-qualified committees, the Committee provided a copy of the check to document that the excessive portion was contributed to a charitable organization since the committee is no longer in existence. For both refunds, a Committee official agreed to provide copies of the cancelled checks upon receipt from the bank.

For the remaining apparent non-qualified committee, the Committee treasurer stated that the contributing committee had informed him that they had achieved multicandidate status prior to making the contribution. A review of records on file at the Commission indicates that the committee met the requirements for obtaining multicandidate status on April 8, 1980 which was four (4) days after the contribution was made.

Recommendation

Since the excessive contributions received from two (2) of the committees have been disposed of properly, the Audit staff recommends that no further action be taken.

Further, the Audit staff is of the opinion that the multicandidate committee's qualifying four (4) days after contributions exceeding $1,000 were made is immaterial and recommends that no further action be taken on this matter.

E. Undisclosed Debt

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

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other 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 the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over $500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts at November 30, 1980, the Audit staff identified a total of $177,149.32 in debts which were not disclosed by the Committee. In addition, it was determined that the Committee's disclosed debts at November 30, 1980 were overstated by $34,749.27.

Of the $177,149.32 in undisclosed debts, $136,592.65 were supported by unpaid bills, invoices, etc.

In the interim audit report the Audit staff recommended that the Committee amend their December Monthly report and subsequent reports to the extent affected, to accurately reflect the outstanding debts as of November 30, 1980. On May 19, 1980, amended reports were filed substantially correcting the understatement.

Recommendation

The Audit staff recommends that no further action be taken on this matter.

New Wording

F. Processing of Questionable Contributions

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditures by the corporation or the national bank.

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of the contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the Committee's response.

The Committe maintained a separate checking account, known as the escrow account, for depositing contributions which needed further documentation to confirm their legality. Funds in the escrow account were not expended for campaign purposes until their legality was determined, at which time they were transferred to the operating account.

During the threshold audit, it was determined that the Committee's written procedures for processing questionable contributions deposited into the escrow account were not followed by Committee personnel. The threshold report of the Audit Division included a recommendation that the Committee follow its written procedures as well as revise those procedures to include a written record noting the basis for the appearance of illegality of the contributions.

During the post-primary audit, there appeared to be no change in the Committee's method of processing contributions deposited into the escrow account.

According to the Committee's bank records, the balance in the escrow account at January 1, 1980 was $120,542.06. During the period January 1 through August 31, 1980, receipts totaling $172,796.50 were deposited into the escrow account and $243,960.51 was disbursed, leaving a balance at August 31, 1980 of $49,378.05. The Audit staff was able to verify that $236,608.65 was transferred from the escrow account to the Committee's operating account. Also, cancelled checks for contribution refunds totaling $3,815.00 were reviewed by the Audit staff.

The "escrow check log", the Committee's record of deposits into the escrow account, showed a balance at August 31, 1980 of $59,260.48. The records maintained by the Committee do not contain sufficient detail to explain either the discrepancy between the bank balance and escrow check log balance or the source of the contributions making up the $49,378.05 bank balance.

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As best could be determined by the records provided, contributions making up this balance could have been in the account, in some cases, for as long as eight (8) months.

In its interim audit report, the Audit staff recommended that the Committee determine the source and legality of the $49,378.05 remaining in the escrow account at August 31, 1980 and refund to the original contributors any contributions confirmed to be from impermissible sources. It further recommended that if the source of any contributions could not be identified, the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign or candidate. The Audit staff also recommended that the Committee provide copies of cancelled checks for all contribution refunds made during the period January 1, 1980 to August 31, 1980.

On May 19, 1981 and July 27, 1981, the Committee presented to the Audit staff documentation verifying transfers totaling $20,640 in permissible contributions to the operating account. Documentation was also provided verifying that $3,272.00 was comprised of funds from impermissible sources which the Committee intended to contribute to charity. In addition, cancelled checks for all contribution refunds (except 12 outstanding checks totaling $1,140) were made available for review by the Audit staff. The Committee adjusted the account by $1,348.00 for NSF check charges which were erroneously charged to the account and bank charges of $29.57. The Committee did not provide documentation adequately identifying the source of the remaining $25,644.48 in the escrow account. For a detailed analysis of the deficiencies in the Committee's response see Attachment 2.

Recommendation

The Audit staff recommends that within 30 days of receipt of this report, the Committee provide documentation that the $25,644.48 balance of undocumented contributions contained on Attachment 3 are permissible under the Act. For any contributions comprising any portion of that amount which are not permissible the Committee should provide evidence (cancelled checks) that those contributions have been disposed of in a lawful manner unrelated to any Federal election, campaign, or candidate.

G. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on February 9, 1981 and June 25, 1981.

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III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) and (b) of Title 11, Code of Federal Regulations, requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, an estimate of necessary winding down costs, and the total of the fair market value of capital assets on hand, within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

On August 13, 1980, Senator Edward M. Kennedy's candidacy terminated for the purpose of incurring qualified campaign expenses. 8/

At the conclusion of the audit fieldwork, the Committee had filed NOCO statements covering the period from August 13, 1980 through December 26, 1980. To facilitate the verification of the Committee's net outstanding campaign obligations, the NOCO statement as of November 28, 1980 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position as of November 28, 1980, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs (see Attachment 3).

8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for President is the end of the matching payment period for a candidate seeking the Presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Section 9033.5(a) or (b). Since the Democratic Party nominated its Candidate for President on August 13, 1980, that date is the date of Senator Kennedy's ineligibility.

Various artists produced original works of art which could be reproduced and used by the Committee as inducements in the solicitation of contributions. It was further determined that the Committee had negotiated bank loans secured by a number of these prints. The Committee has not recognized art prints as a capital asset(s) in any NOCO statement filed to date. Due to the effect on matching fund entitlement that the consideration of art prints as a capital asset(s) could have, the Audit staff requested that the Committee furnish an inventory of art prints on hand at November 28, 1980, as well as an accounting of all prints disposed of between the ineligibility date and November 28, 1980. This information was to be used to determine the inventory on hand at the candidate's date of ineligibility. On January 28, 1981, the Committee presented a memorandum to the Audit staff which stated that, as of November 28, 1980, there were 6,525 art prints on hand. However, the information contained in this memorandum was not sufficient to calculate the inventory at the candidate's ineligibility date.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit a written independent appraisal of the fair market value of the art prints and provide an inventory of prints on hand at August 13, 1980. In the Committee's response to the interim audit report, received on May 19, 1981, the Committee treasurer stated that there were 6,904 prints on hand at August 15, 1980. The Committee, however, did not provide the fair market value appraisal of the artworks because (the Committee) "believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least $10,000." Further the response states: "The request is inappropriate because there is no basis on which to determine the 'fair market value' of the artwork for purposes of 11 C.F.R. Section 9034.5(c), 26 U.S.C. Section 9034."

The Committee treasurer also cited Advisory Opinion Request 1980-136 in which the Commission was unable to decide whether the Committee could lawfully use the artwork to settle debts and stated: "...without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible."

Finally, the Committee treasurer asserted that the artwork should not be treated as a "capital asset" since it cannot be readily converted to cash or used in debt settlement due to restrictions placed on its sale or disposition.

He concluded that "the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair."

As of November 28, 1980, the Committee's reported net outstanding campaign obligations as adjusted totaled $1,134,566.51. Based on that amount, the Committee received a matching fund payment of $29,004.47. Therefore, as of that date, the candidate had received no matching fund payments in excess of his entitlement. However, this determination may be subject to change based on the effect that the inclusion of art prints as an asset may have on the Committee's financial position.

Recommendation

The Audit staff recommends that, until such time that the Commission approves or proposes permissible alternatives as to the disposition or liquidation of the artwork, no further action can be taken on this matter.

B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032(9)(A) and (B) of Title 26 of the United States Code and Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value incurred by a candidate, or by its authorized committee, in connection with his campaign for nomination or election; and neither the incurring nor payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

1. Expenditures in Excess of State Limitations

As previously discussed in Finding II.C., the Audit staff identified expenditures in excess of the state limitations in New Hampshire and Iowa.

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On April 9, 1981, the Commission approved the Audit staff's recommendation that the Committee be requested to demonstrate, within 30 days of receipt of the interim audit report, that these state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee's response to the interim audit report, and the documentation which accompanied it, and made revisions to the amounts allocable to the New Hampshire and Iowa state limits. The revised summary of Committee expenditures allocable to New Hampshire and Iowa is presented below:

	New Hampshire	Iowa
Committee Allocation Reports	$ 210,884.64	$ 380,792.10
March and April Expenditures	34,425.68	8,917.22
Media	52,151.20	80,390.69
Salaries	73,211.98	111,039.94
Per Diem and Expense Reimbursements	1,913.60	2,852.09
Outstanding Debts	3,242.18	10,970.84
Other Vendor Payments	10,021.79	41,493.44
Total	$ 385,851.07	$ 636,456.32
State Limitations	(294,400.00)	(489,881.00)
Amount in Excess of Limitation	$ 91,451.07	$ 146,575.32

Recommendation

The Audit staff recommends that these expenditures totaling $238,026.39 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

2. Payment of Parking Violations

During the conduct of various audit procedures, the staff identified Committee payments totaling $141.50 for parking tickets received during the campaign. The entire $141.50 was expended prior to the date of ineligibility.

Recommendation

The Audit staff recommends that these expenditures totaling $141.50 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

Repayment Summary

Finding III.B.1.	Expenditures in Excess of State Limitations	$238,026.39
Finding III.B.2.	Payment of Parking Violations (pre-ineligibility)	$ 141.50
Total		$238,167.89

Pursuant to Section 9038.2 of the Code of Federal Regulations, the amounts noted above in the Repayment Summary, totaling $238,167.89, are repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

Attachment 1

Comparison of Allocation Totals

New Hampshire

	Audit Verified	Committee Reallocation	Difference
Committee Allocation Reports	$210,884.64	$158,176.01	$ 52,708.63
March & April Expenditures	34,425.68	19,678.47	14,747.21
Media	52,151.20	46,021.85	6,129.35
Salaries	73,211.98	46,138.74	27,073.24
Per Diem & Expense Reimbursement	1,913.60	1,086.13	827.47
Outstanding Debts	3,242.18	2,740.08	502.10
Other Vendor Payments	10,021.79	5,670.94	4,350.85
Total	$385,851.07	$279,512.22	$106,338.85

Iowa

	Audit Verified	Committee Reallocation	Difference
Committee Allocation Reports	$380,792.10	$258,320.27	$122,471.83
March & April Expenditures	8,917.22	5,889.15	3,028.07
Media	80,390.69	85,180.86	(4,790.17)
Salaries	111,039.94	74,981.10	36,058.84
Per Diem & Expense Reimbursement	2,852.09	1,775.03	1,077.06
Outstanding Debts	10,970.84	8,942.24	2,028.60
Other Vendor Payments	41,493.44	38,198.32	3,295.12
Total	$636,456.32	$473,286.87	$163,169.45

8,304,484,950

Attachment 2

ANALYSIS OF COMMITTEE RECONCILIATION OF ESCROW ACCOUNT

		Committee Response	Audit Verified Amount
Bank Balance at August 31, 1980		$49,378.05	$49,378.05
Undocumented expenditures during period 9/1/80 - 1/31/81 1/		(12,090.00)	(10,870.00)
Bank Balance at March 31, 1981		37,288.05	
Committee adjustments			
Redeposited check 2/	(1,000.00)		
Outstanding checks 3/	(1,140.00)		(1,140.00)
NSF checks erroneously charged to escrow account 4/	1,348.00		1,348.00
Escrow transfer 5/	(3,000.00)		
Miscellaneous bank charges	(29.57)	(3,821.57)	(29.57)
		33,466.48 6/	
Permissable contributions to be transferred to the operating account 7/		(13,520.00)	(9,770.00)
Unidentified deposit donated to charity 8/		(3,000.00)	
Amount from prohibited sources to be donated to charity 9/		(3,522.00)	(3,272.00)
Balance (undocumented contributions remaining in the escrow account) 10/		$13,424.48	$25,644.48

1/ The Committee submitted documentation confirming the legality of $10,870.00 of this amount which has been transferred to the operating account.

2/ No documentation concerning this check has been provided.

3/ This amount comprises 12 checks which have been outstanding for over one year.

4/ These NSF checks were charged against the escrow account prior to August 31, 1980. The escrow account has been reimbursed by the operating account for these charges.

5/ The Committee has not identified this transfer.

6/ The Committee submitted a computer print-out of contributors' names and contributions totaling this amount.

7/ The Committee submitted documentation confirming the legality of $9,770.00 of this amount.

8/ The Committee has not provided sufficient information to identify this deposit nor have they provided a copy of the check made payable to the charity.

9/ Contributions comprising $250 of this amount had already been refunded in February and April 1980.

10/ The Committee has not presented documentation confirming the legality of this amount.

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Attachment 3

Kennedy For President Committee
Statement of Net Outstanding Campaign Obligations

November 28, 1980

	As Stated		Adjusted by Audit		
Assets					
Cash	$ 168,566		$ 149,781.27	1/	
Accounts Receivable (net)	10,000		10,000.00		
Capital Assets	-0-			4/	
		$ 178,566			$ 159,781.27
Obligations					
Accounts Payable for Qualified Campaign Expenses	$ 664,800		$ 646,638.78	2/	
Estimated Wind Down Costs 11/28/80 to 5/15/81 (Projected Termination Date)	181,000	3/	149,700.00	3/	
Bank Notes Payable	484,897		484,897.00		
Accrued Interest	13,112	$1,343,809	13,112.00		$1,294,347.78
Net Outstanding Campaign Obligations - Deficit		$1,165,243			$1,134,566.51 4/

1/ Cash in bank was adjusted to accurately reflect the candidate's cash position at 11/28/80.

2/ The Committee's accounts payable balance was adjusted by eliminating undocumented payables totaling $45,479.70 (11 C.F.R. Section 9033.1(a)(1)(i)), and adding documented payables not included in the Committee's balance totaling $61,758.08. Included in the documented payables is a $21,502 contingent liability currently in dispute with the creditor.

3/ The Committee inadvertantly omitted an estimate of wind down costs on the original 11/28/80 NOCO statement. The Committee corrected this oversight by letter indicating that the subsequent NOCO statement of December 15, 1980 included wind down costs which totaled $181,000.00. This amount was adjusted by disallowing a $15,000 postage and handling estimate for mailing gifts to campaign staff and volunteers which does not meet the definition of a wind down cost (11 C.F.R. Section 9034.4(c)), and to correct a $16,300 addition error in totaling the various components of wind down costs.

4/ Exclusive of a valuation of art prints as assets.

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Exhibit 1

Unreported Receipts

A review of funds deposited into the state and scheduling accounts revealed that 72 deposits made to 23 accounts, totaling $52,602.79, were not comprised of funds transferred from the national accounts. The Committee did not maintain any records which indicated the source of these funds nor were the receipts reported on the Committee's disclosure reports. Committee officials stated that they would attempt to determine the source of the funds.

The interim audit report contained a recommendation that the Committee identify the source of these funds and amend its reports to include the $52,602.79 in receipts previously not reported. In response to that recommendation, the Committee provided legible copies of deposit tickets and contributor checks which identified the source of the funds for $38,019.22. The Committee also provided copies of deposit tickets for an additional $9,249.50, however, the accompanying copies of the microfilmed bank documents (copies of checks and lists of receipts) were not legible. The Committee did not provide any records pertaining to the remaining $5,334.17, however, copies of letters requesting these records from the appropriate banks were provided.

The Audit staff determined, after reviewing the documents noted above, that the Committee has not included in its reports $17,500.49 out of the $52,602.79 in unreported receipts. At least half of this $17,500.49 is comprised of deposits for which the Committee had documentation.

Recommendation

The Audit staff recommends that the Committee's material non-compliance with the finding be referred to the Office of General Counsel.

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Loan Records

During the fieldwork, the Audit staff requested that the Committee provide for review copies of executed notes, loan agreements, collateral agreements and security agreements for loans reported by the Committee. The Committee's reports disclosed 24 loans totaling $2,647,500.00. At that time the Committee provided sufficient documentation to support one (1) loan. Additionally, partial supporting documentation was provided for three (3) other loans. The remainder of the documents maintained by the Committee were copies of loan agreements and notes which were not signed by the Committee and/or bank officials. Further, the Committee did not disclose on Schedule C-P the collateral and/or the security for 12 of the 24 loans.

Committee officials stated that they would provide the Audit staff with the loan records and amend their reports accordingly.

The interim audit report recommended that the Committee provide copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as noted above. In addition, the interim audit report recommended that the Committee file amendments disclosing the nature of the obligations, including collateral and/or security for 12 of the 24 loans.

Subsequent to the audit fieldwork, the Committee provided the requested documentation or other bank documents which contained the necessary information for 21 of the 23 loans. For four (4) of the 21 loans, the documentation provided was loan history records which included the amount and date of the loan, the rate of interest, the specifics of the security, and a record of payment. The Committee did not provide documentation for the remaining two (2) loans, which totaled $15,000.

Additionally, the Committee submitted amended Schedules C-P on May 19, 1981. These schedules included a description of the security for 11 of the 12 loans originally lacking adequate disclosure. However, the description of the security for three (3) of these loans does not agree with the security disclosed on the bank documents provided for our review. In two (2) cases, art prints pledged as collateral for the loans were not disclosed as part of the security. In the third case, the Committee disclosed "proceeds from fundraising solicitations" as security, whereas the bank documents indicated that the security for the loan was matching funds.

Notwithstanding the minor discrepancies noted above, the Committee has materially complied with the interim audit report recommendation for production of the documents and disclosure of the loans. However, a review of the loan documents provided has raised a number of questions concerning the collateral on the loans. It appears that artwork was pledged as collateral on loans that may not have been in existence (a series of prints had not been printed), or may not have been in the Committee's possession. The collateral listed on documents relating to five (5) loans included works of art from six (6) artists (either the original or a series of prints). However, evidence of the existence of this collateral was not found in the Committee's records. These records consisted of the Committee's brochure which identified artwork used as incentives for individual contributions and the Committee's inventory of artwork on hand as of August 13, 1981. Therefore, the Audit staff was unable to evaluate the adequacy of the collateral for these loans. For one (1) of the five (5) loans discussed above, a Committee official stated that the prints were not produced, however, the Committee owned the original work of art and maintained the right to produce the prints.

In the Committee's response concerning the placing of a value on the artwork for purposes of determining Committee net outstanding campaign obligations, officials have stated: "The 'appraised value' of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's 'worth' to an individual recipient, the value of an individual print to the Committee would be much less. An indication of the magnitude of the reduction in value involved is that, in those cases where artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 of the artwork's 'appraised value'." However, for one (1) loan the appraised value of the artwork pledged as collateral was equal to the amount of the loan principal ($240,000). Approximately five (5) months after the loan was negotiated additional artwork was pledged as collateral. The appraised value of the additional collateral was $154,000; however, this artwork is included in the discussion above concerning whether the collateral existed at the time it was pledged. Two (2) other loans obtained through the same bank were also reported as being secured with artwork, however, these are the two (2) loans noted above for which no documentation was presented.

Since the Committee has not provided documentation for two (2) of the loans and the collateral for the third loan does not appear to offer sufficient protection to the bank in the case of default by the Committee, the Audit staff feels that it is necessary to obtain additional information from the bank in order to determine whether the loans were made in the normal course of business.

Recommendation

Since questions remain concerning the collateral on the above mentioned eight (8) loans, the Audit staff recommends that this matter be referred to the Office of General Counsel.

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Exhibit 3

1. Receipt of Contributions Exceeding $1,000 per Person

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized committees with respect to any election to Federal office which, in the aggregate, exceed $1,000.

During the threshold audit fieldwork, the Audit staff made the Committee aware that the absence of procedures for handling possible excessive contributions could result in a material problem as the campaign progressed. In the threshold report of the Audit Division the Audit staff made a recommendation that the Committee develop procedures to identify and refund excessive contributions in a timely manner.

During the post primary audit, a review of the Committee's contribution records and reports filed for the period revealed 269 contributors who had contributed $121,468.83 in excess of their allowable limitations. Throughout the period audited, the Committee had attempted to contact the contributors to determine whether a portion of their contributions could be attributed to a spouse. However, as of the close of the audit fieldwork, no evidence was available to allow for such an attribution for any of the contributors noted above.

The Audit staff recommended in the interim audit report that the Committee present documentation that the contributions are not excessive, have been legally attributed, or the excessive portions have been refunded to the original contributors.

On May 19, 1981, the Audit staff received the Committee's response to the interim audit report in which the Committee stated:

1. $92,301.83 of the excessive portion of contributions was in fact not excessive for one of the following reasons:

   a. computer error/duplicate line items;

   b. NSF checks not deleted from the computer master file;

   c. the excessive portion was refunded subsequent to the close of the audit fieldwork;

d. the contribution was from a different person but incorrectly attributed to the (excessive) contributor; or

e. an amount equal to or greater than the excessive portion was attributed to another contributor and has been confirmed either in writing or by phone.

2. The Committee is attempting to obtain documentation from 49 contributors to substantiate that $17,523 in excessive contributions are not excessive, and

3. $12,585 in apparent excessive contributions inadvertantly accepted is being returned to 32 contributors.

The Audit staff reviewed the documentation supplied by the Committee to support the above and verified that $75,316.83 in excessive contributions (pertaining to 164 contibutors) was resolved due to NSF checks not deleted from the master file, contributions attributed to the wrong contributor, duplicate computer line items and documented attributions to other contributors.

In summary, the Audit staff determined that there remain 122 contributors who contributed $48,817 in excess of their allowable limitations. 1/ This $48,817 is comprised primarily of (1) contributions identified as being returned but for which evidence of the refund has not been provided, (2) attributions confirmed by telephone, and (3) those contributions pending confirmation.

Recommendation

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

1/ This includes five (5) contributors who became excessive as a result of the attributions mentioned in the previous paragraph.

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KENNEDY FOR PRESIDENT COMMITTEE

1000 Sixteenth Street, N. W.
Washington, D. C. 20036

May 18, 1981

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N. W.
Washington, D. C.

RE: Interim Report of the Audit Division
on the Kennedy for President Committee

Dear Chairman McGarry:

This letter will address the issues raised in the Commission's Interim Audit Report on the Kennedy for President Committee following the format set out in its report.

In response to the report the Committee has taken the following actions in order to comply fully with the letter and the spirit of the Federal Election Campaign Act:

1. The Committee has prepared and filed a Comprehensive Amendment as of November 30, 1980, correcting the technical reporting errors and omissions which were cited in the Commission's report.

2. The Committee has conducted an exhaustive search of its records to determine the nature, extent and identification of all deposits which were made into state and other local accounts, and where required, the Committee has reported all such deposits in the Comprehensive Amendment.

3. During the past several weeks the Committee has reviewed all of the contributions which the Commission felt might represent excessive contributions. In reviewing the Commission's schedule of such contributions it became apparent that a large number of these, in fact, were not excessive. The most common error arose from the Committee's computer entry system which often would enter a contribution from the same individual in the same amount several times. Further, the computer from time to time through entry error, aggregated contributions from individuals living in the same household with similar first names and the same family name.

4. The Committee devoted substantial resources to studying expenditures in New Hampshire and Iowa which may have exceeded the limitations of 2 U.S.C. Section 9035. For the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedure for determining

what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations set forth a "reasonable basis" standard for allocations, and in particular, 11 C.F.R. Section 106.2 sets forth a regulatory scheme for the allocation of expenditures among states by candidates for presidential nomination.

The standards, although somewhat vague, were applied in 1976 without apparent difficulty. It appears, however, that the Commission has changed its position in 1980 shifting the burden to the candidate to prove that any method of allocation was reasonable in contrast to the standard used in 1976 that placed on the Commission the burden of proving that the allocation was in fact unreasonable. The Committee believes that any method of allocation between states which is reasonable should be accepted by the Commission, and if, in the future, the Commission desires to regulate this area in a more specific manner, it should do so through the regulatory framework set up under the statute not retrospectively through the audit process.

The Committee's method in analyzing its state expenditures in Iowa and New Hampshire was to examine each expenditure made on an individual basis to determine whether or not the individual expenditure should be allocated to the particular state in whole or in part. The bulk of the work in this area was performed by independent auditors working for two national accounting firms. A more specific description of the Committee's analysis of expenditures made in Iowa and New Hampshire will be set out later in this letter.

COMMITTEE RESPONSE

Following are the Committee's specific responses to the interim report's findings and recommendations, numbered to correspond to your report.

II. Audit Findings & Recommendations Relating to Title 2 of the U.S.Code

FEC Auditors' Recommendations

"The Audit staff recommends that . . . . the Committee:

1) amend their reports to include the 34 expenditures totalling $73,916.15 made from national accounts previously unreported;
2) amend their reports to include the $220,526.54 in expenditures drawn on state and scheduling accounts and not previously reported;
3) identify the source of the funds and amend their reports to include the $52,602.79 in receipts comprising the deposits to the 23 state and scheduling accounts previously not reported;
4) amend their reports to increase unitemized receipts by $9,000.00 to correct the error made in attempting to adjust for contributions returned by the bank for insufficient funds; and
5) amend their reports for mathematical errors which caused a $9,[illegible] understatement in total expenditures."

The Committee, through its Comprehensive Amendment, has corrected all of the aforementioned reporting errors and currently reported any items which were previously omitted. Further, the Committee has refiled the November 30, 1980 Year End 1980, and March 31, 1981 reports correcting past reporting errors described in the Audit Report. Specifically:

1) The Committee has included in its 1980 Comprehensive Amendment, 34 expenditures totalling $73,916.15 made from national accounts which were previously inadvertently unreported (Exhibit A);

2) The Committee also included in the 1980 Comprehensive Amendment, state and scheduling account expenditures totalling $207,409.04 which were not previously reported. The discrepancy between this amount and the $220,526.54 reflected in the Auditors' recommendation results because the auditors arrived at their total by reviewing a draft of the Comprehensive Amendment. The draft did not properly reflect expenditure amount corrections. The 1980 Comprehensive Amendment, as filed, reflects amount corrections by reporting the actual amount of the expenditure while simultaneously deducting the amount originally reported (Exhibit A).

3) The Committee has provided the auditors with records of 67 deposits totalling $49,[illegible]8.16 as outlined in Attachment 2 of the Interm Report:

The Committee has amended its reports to reflect receipts in 20 of the state and scheduling accounts listed in Attachment 2 of the interim report (Exhibit A), except in cases where the documentation was illegible. Despite repeated efforts by the Committee, documentation for the following five deposits has not been obtained:

Bank	Date	Amount
Bank of Maine	2/14/80	$ 200.00
	7/15/80	70.68
	7/01/80	913.00
Merchants National Bank	4/21/80	320.00
Berlin City Bank	Unknown	1,380.50
Total		$2,884.18

B. Missing Records

1. Bank Accounts Records

"The Audit staff recommends that the Committee provide for our review . . . . the bank records outlined on Attachment 3."

The Committee has provided records from 21 banks as requested by the Audit Staff but the Committee to date has been unable to obtain the records required from the following three banks. Further efforts are being made to obtain these records:

State	Bank
Vermont	Merchants National
Rhode Island	Columbus National Bank
Maine	Bank of Maine

The Audit Staff indicated a failure on the part of the Committee to furnish missing bank records and loan documentation despite repeated requests to Committee Officials for such information. From the facts available to Committee Officials, this statement appears to be incorrect. Although Committee Officials were aware of the Auditors' interest in obtaining the missing bank records, no formal requests were received by the Treasurer or Chairman of the Committee. Upon the first informal request by the Audit Staff, the Committee Staff sent letters to the various banks requesting photocopies of all missing documentation, but as the Commission is well aware, banks may be quite slow in responding to such requests. The Committee made repeated requests of banks that failed to respond and to date, all but the three banks noted above have responded. The Committee has furnished the Audit Staff with all the records in its possession and included in the 1980 Comprehensive Amendment any receipts ascertained to have been previously unreported.

2. Loan Records
FEC Auditor's Recommendation

"The Audit Staff recommends that the Committee provide for our review . . . . . copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as indicated on Attachment 4. In addition, the Audit Staff recommends that the Committee file an amendment to disclose the nature of the obligations, including collateral and/or security for the 12 loans".

The Committee wishes to direct the Commission's attention to the fact that neither the statute nor the Commission regulations require the Committee to keep executed copies of loan agreements or executed notes. The Committee has attempted to obtain copies of all the original loan agreements and executed notes from the various banks. Wherever the Committee has been unable to obtain a copy of the original papers from a bank, the Committee has received a letter from the president or loan officer of the bank which specifies the terms of the agreement or note.

It was the Committee's practice during the campaign to prepare various loan documents and have the Committee's Treasurer or Chairman sign the papers. These were then copied at the Committee's headquarters with the originals being forwarded to the bank. Once the bank was in receipt of these documents, it executed and retained the originals. Therefore, in most cases the copies signed only by the Committee's Treasurer of the loan documents were in the Committee's possession.

The Committee has provided the Commission's auditors with copies of all executed notes, loan agreements, collateral agreements, security agreements requested (See Attachment B), except those concerning the following loans which have been documented in a different fashion.

Bank/Lender	Date	Amount
Chemical Bank NY	11/16/79	$ 200,000
	11/23/79	100,000
	11/27/79	100,000
	11/30/79	200,000
	12/03/79	100,000
	12/04/79	100,000
	02/11/80	100,000
	03/14/80	100,000
District of Columbia National Bank Washington, D. C.	11/05/79	$160,000
	11/28/79	90,000
	04/07/80	5,000
	04/22/80	10,000

In the Committee's Comprehensive Amendment, the Committee has disclosed all of the securities and collateral for the various loans which were made to the Committee (See Attachment A).

C. ALLOCATION OF EXPENDITURES TO STATES
FEC Auditor's Recommendation

"The Audit staff recommends that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect their adjustments. . . . In addition, we recommend the Committee provide the Audit staff with sufficient documentation to allow an allocation determination to be made for those expenditures noted in II.C.4. above".

The Committee has adjusted its accounting records to reflect the amounts allocable to Iowa (Exhibit C), and New Hampshire (Exhibit D) and has amended its last three required reports to reflect adjustments. The Committee has ready for inspection all documentation for the allocations in Iowa and New Hampshire.

Again, for the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations 11 C.F.R. Section 104.10 and 106.1 (a) set forth the "reasonable basis" standard for allocations, and 11 C.F.R. Section 106.2 sets forth a regulatory scheme for all allocation of expenditures among states by candidates for presidential nomination.

11 C.F.R. Section 106.2 states in relevant part:

(a) Expenditures made by . . . an authorized committee which seeks to influence the nomination . . . shall be allocated to that State . . .

(b) Expenditures for administrative, staff, and overhead cost directly relating to national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.

(c) An expenditure . . . for use in two or more States, which cannot be attributed in specific amounts to each State, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures (Emphasis added).

(1) Expenditures for . . . television. . distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience. . . of voter age which can reasonably be expected to be influenced by these advertisements (Emphasis added).

(2) Expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

As stated above, the standards, although somewhat vague, were applied in 1976 without apparent difficulty. It is clear under the standard applied for the 1976 elections and the Commission's regulations, that the Committee followed reasonable methods in allocating expenditures between various states, national and exempt accounts.

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The Committee's method of analyzing state by state expenditures in the cases of Iowa and New Hampshire was to review, with the assistance of two accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purposes of influencing the nomination in that particular state. For example, if the voucher indicated that it was a per diem payment made to an individual from an Iowa State Account for a per diem in New York, the per diem was allocated to New York.

OVERHEAD ALLOCATION

During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditure in a manner consistent with salary allocation.

In order to implement a reliable allocation policy, the Committee asked the independent auditing firm of Fox & Company to develop a methodology and establish percentages to be used in allocating costs to exempt functions.

Fox & Company computed a weighted average percentage [illegible] fundraising and compliance time for each state using a sample of four states, thus computing an average to be applied to all states. The computation involved totalling the detail estimates provided by state coordinators for the four sample states to obtain the percentage of exempt costs.

The selection of four states by Fox & Company was judgmentally based on various levels of campaign activity and based on the timing of the state campaigns, in an attempt to insure a representative sample. Percentages were assigned to employees in each state based on interviews with state campaign officials, selected because they directed the campaign activity in each state.

Using the methodology and procedure previously described, Fox & Company determined that [illegible] of payroll costs related to fundraising and [illegible] related to compliance.

[illegible] AND COMMUNICATIONS

[illegible] all interstate travel, interstate [illegible] and interstate [illegible] and all [illegible] limitations.

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MEDIA EXPENDITURES

The Committee reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by its vendor had been incorrect. The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV Station to allocate the cost of a broadcast (Exhibit F).

NATIONAL PRESS

Further, each expenditure which the FEC Auditors preliminarily allocated to Iowa or New Hampshire, was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. The Committee's billing of the National Press has already been reviewed by the Commission, through an enforcement proceeding. The Committee's basis for charging National Press 225% of the cost of a first class air fare was approved by the Commission in that investigation. The Commission determined that these charges, which covered, among other things, air travel and various ground services that were provided by the Committee, were permitted under the FECA. These services included transportation to and from the airport, baggage handling, typewriters in press rooms, telephone, coffee and refreshments, station wagons and vans in motorcades. In cases where transportation was needed from to to town, buses were supplied without additional cost to the National Press. In conjunction with these services to the National Press, campaign staff was also assigned to the National Press travelling with the candidate.

An attempt has been made to isolate all of these costs and to identify the various staff persons who devoted all or a portion of their time to the National Press. It is clear that since these expenditures were related to the National Press, they should not be allocated to an individual state, but should treated as National Expenditures. (Cf. 11 C.F.R. Section 9004.6 and Explanation and Justification).

COMPLIANCE AND RECORDKEEPING

Further, the Committee [illegible] each individual or [illegible] of an individual's time that was devoted to record keeping or compliance activity, and identified their expenditures as being exempt from the state limits. (Cf. 11 C.F.R. Section [illegible]).

[illegible]

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ADVANCE STAFF PERSONNEL

The Audit Staff provided the Committee with workpapers supporting their determination of the amount of advance staff payroll of $ 26,613 and $ 38,188 allocable to Iowa and New Hampshire. The Audit Staff determined their allocations by first computing the daily salary for each advance person, assuming a five day work week. The daily salary was then multiplied by the number of days the advance person spent in the State to arrive at the total allocation per person.

The Committee reviewed the work records of its advance personnel and ascertained that during the campaign period they worked on a seven day work week and therefore determined their daily salary based on a seven day week and not the five day week used by the Committee Auditors in the interim report.

Recognizing that the advance staff worked seven days per week during the campaign and made several trips in and out of a given State during the campaign, the Committee has used the following procedure to allocate advance staff salaries.

The daily salary for each individual was computed based upon a seven day week. This daily salary was multiplied by the number of days each advance person spent in the State, excluding all travel days, to arrive at the maximum amount allocable to the State if the advance person spent most of his time involved in influencing the election in that State.

Since the nature of advance work involved significant expenditure of time supporting national press corps, compliance, and fundraising activity, the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person. The Committee determined that $14,906 of advance salaries was allocable to Iowa and $20,324 to New Hampshire.

ALLOCATION SUMMARY

When these adjustments were taken into account as indicated on the attached Exhibits C and D, the total expenditure in Iowa was $ 41,807 and $ 247,221 in New Hampshire. It is the Committee's understanding that the formula used in determining these allocated amounts was reasonable and within the Commission's guidelines and regulations.

The revised allocations are reflected in the 1972 Comprehensive Statement.

D. REVIEW OF RECEIPTS

1. Timely Processing of Questionable Contributions
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee attempt to determine the source and legality of the $49,378.05 . . . . . remaining in the escrow account. Any contributions confirmed to be from impermissible sources should be refunded to the original contributors and copies of the cancelled checks (front and back) provided to the Audit Staff.

If the source of any of the contributions cannot be identified, the Audit Staff recommends that the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign, or candidate.

The Audit Staff also recommends that . . ., the Committee provide copies of cancelled checks not already provided (front and back) for all contribution refunds made during the period January 1, 1980 through August 31, 1980."

The Committee has reconciled the escrow accounts and provided an inventory of its current composition (Exhibit E). One deposit of $3,000 could not be identified and has been donated to a qualified charity under 26 U.S.C. 501 (c)(3) (Exhibit G).

The Committee is attempting to determine the legality of a number of escrowed items and is in the process of contacting each person who is indicated as the donor. The Committee has refunded to the original contributor or donated to charity, all contributions from possibly impermissible sources (Exhibit I).

2. Receipt of Contributions Exceeding $1,000 per Person
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee present documentation that the contributions are not excessive, have been legally attributed, or the excessive portions have been refunded to the original contributors."

The Committee has determined that $92,301.83 in contributions were not excessive.

The Committee refunded to 32 contributors $ 12,55[illegible] of what appears to be excessive contributions inadvertently accepted (Exhibit H).

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The Committee is still attempting to obtain documentation from 49 contributors with contributions totalling $ 17,523.00 which will substantiate that the contributions are not excessive.

E. CONTRIBUTIONS FROM OTHER POLITICAL COMMITTEES

1. Itemization of Contributions from Political Committees

2. Excessive Contributions from Registered Committees
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee either provide evidence that the contributions noted in (1) above were not received or file amended reports itemizing the contributions. In addition, the Audit Staff recommends that the Committee refund the excessive portion of the contributions noted in (2) above."

The Committee has, through its Comprehensive Amendment, itemized 27 contributions totalling $ 30,319 from political committees which may not have been itemized in previous reports. A $3.00 amount from the Kennedy for President Committee is an internal transfer. As to the excessive contribution in the amount of $4,87[illegible], this was inadvertently transferred from the Carter/Kennedy Unity Dinner Committee and has been returned. The second purported excessive contribution in the amount of $3,702.60, does not appear to the Committee to be excessive since it was made by a qualified multi-candidate committee.

F. UNDISCLOSED DEBT
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee amend their December Monthly Report to accurately reflect the outstanding debts as of November 30, 1980, and amend subsequent reports to the extent that they are affected by those changes."

The Committee has refiled its December Monthly Report to accurately reflect the outstanding debt as of November 30, 1980, and has refiled subsequent reports to the extent necessary (Exhibit A).

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III. Findings Related to Title 26 of the United States Code
Determination of Net Outstanding Campaign Obligations
and Repayment of the U. S. Treasury

A. Determination of Net Outstanding Campaign Obligations

FEC Auditors Recommendation

"The Audit Staff recommends that the Committee obtain a written independent appraisal as to the fair market value of the art prints as of August 13, 1980, as well as a correct inventory of items on hand as of that date and submit this information to the Audit Staff . . ."

The Committee provided the requested inventory (Attachment K), but believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least $10,000. The standard fee for such an appraisal is 1% of the appraisal value. The request is inappropriate because there is no basis on which to determine the "fair market value" of the artwork for purposes of 11 C.F.R. Section 9034.5 (c), 26 U.S.C. Section 9034.

Background

The Federal Election Campaign Act exempts individual volunteer services from the definition of "contribution", 2 U.S.C. Section 431 (8)(B)(i) (Supp. III 1979). Pursuant to this provision the Commission determined that no contribution results where an artist donates his or her services to a political committee by creating works of art that the committee then "sells", or more precisely, uses as inducement for contributions, Advisory Opinion 1979-35. Any amounts paid by a person who receives such artwork, are considered contributions to the Committee, Advisory Opinion 1980-34.

Relying on the Commission's interpretation, a number of noted artists volunteered their services to the Kennedy for President Committee to create limited edition original works of art which the Committee could use to raise funds. The Committee paid for the materials used and other expenses of production while the artists donated their services. The artwork consisted of limited edition lithographs and serigraphs. 7,222 pieces were created, of which 6,904 remained in the Committee's possession on August 13, 1980 (See Exhibit K).

Use of the Artwork

The Committee used the artwork in three ways: 1) The artwork was offered as an inducement for contributions. The artwork could not be "sold" in the commercial sense because the Commission's ruling that artwork sold at or above the estimated contributions limit on the item would be considered contributions limit on the item. The Committee did not establish a price to any of the items. Although promotional literature indicated each piece's "appraised" value, contributors were often given works of art with a value appraised at less than their contributions. Also the amount contributed for any particular piece varied. 2) The artwork was

used as collateral for a number of bank loans. It was appraised in connection with the negotiation of these loans, with the values for individual pieces ranging from $225 to $1,200. (See Exhibit K). Only 1/3 of this "appraised value" was acceptable to the banks as an estimate of the work's value as collateral, however. (The Commission determined in MUR 1195 that there was no reason to believe the use of the artwork as collateral for loans violated the Act). 3) After the end of the campaign, much of the artwork was given to campaign workers and other persons who had been especially helpful to the campaign in appreciation of their assistance.

The Committee sought an Advisory Opinion on whether it could use the artwork in settlement of debts. (AOR 1980-136) The Commission was unable to decide whether such use violated the Act.

(a) Lack of Basis to Determine "Fair Market Value"

Commission regulations do not define the term "fair market value". Since "fair market value" is a term of art for tax purposes, it is appropriate to construe the Commission's use of the term in a manner consistent with the Internal Revenue Code. Cf. 2 U.S.C. Section 438 (f) (Supp. III 1979).

Valuation of assets often occurs in connection with Federal gift taxes. Tax on a gift of property is imposed based on its "fair market value" on the date of the gift. See 26 C.F.R. Section 25.2512-1. "Fair market value" is defined as:

> (T)he price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.

Similar definitions apply in the context of income tax and estate tax. See 26 C.F.R. Sections 2.2002-1, 2031-1 (1980).

It is well settled that restrictions on the sale or disposition of property must be taken into account in determining its "fair market value". See P. Stephens, G. Manfield & S. Lind, Federal Estate and Gift Taxation, Section 2512, 10.01 (2)(a) (1978 & Supp. 1980). The question often arises in the case of restrictions on the sale or disposition of stock in closely held corporations. See Spitzer v. Commissioner, 153 F. 2d 967 (5th Cir. 1946); Janes v. Commissioner, 148 F.2d 230 (2d Cir. 1945); Commissioner v. McCann, 146 F.2d 384 (3rd Cir. 1944). Where such restrictions, or other characteristics, make stock unsalable, they must be taken into account in determining fair market value. See Koffler v. Commissioner, 326 F.2d 60 (2d Cir. 1963).

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Applying these principles to the question of determining "fair market value" for purposes of calculating net outstanding campaign obligations (NOCO), some difficulties immediately appear. The Commission has imposed a direct restriction of the sale of donated artwork -- any sale must be subject to the contribution limits of the Act, even if potential buyers are not informed that the proceeds of the sale will go to a political committee. See Advisory Opinion 1980-34; Advisory Opinion 1979-35. This restriction depresses value in two ways. First, the purchase price must not exceed $1,000 (unless a group of individuals engaged in a joint purchase). Second, the universe of potential buyers is decreased by excluding those persons who have already given the maximum amount as well as those persons who may wish to own the artwork but do not want to be a contributor to the committee "selling" it. 1/

Even if a discount might be calculable for the restrictions imposed on the "sale" or disposition of the artwork; calculations of fair market value is made impossible by the fact that the Commission has not stated what other legal uses may be made of the artwork. For example, the Commission was unable to decide whether the artwork may be used in debt settlement. See Response to Advisory Opinion Request 1980-136. Without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible.

1/ Another difficulty is that the artwork is often given as an inducement for contributions more than the work's "appraised value". Also, the artwork may be given away as an award at a means of showing appreciation to campaign workers or to other persons who have been especially helpful.

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(b) Cost as Value

The Committee bore the complete expense of production of the artwork including paper, printing, services of production personnel, etc. The total cost to the Committee was approximately $90,000. Another possible basis of valuing the artwork, therefore, would be to use the amount actually invested in it by the Committee. This would comport with the approved method for valuing inventories for tax purposes under the Internal Revenue Code. See 26 C.F.R. Section 1.471-2(c) (1980). Viewing the artwork as inventory rather than a capital asset would be much more realistic in view of the similarity between a commercial dealer holding goods for sale and the Committee's holding the artwork as an inducement for contributions. The artwork was not produced for investment purposes. From the beginning, the Committee intended to distribute in return for contributions. Treating the artwork as inventory would place it properly in the same category as other fundraising items such as books, records, and T-shirts.

(c) The Artwork is Not a "Capital Asset"

Commission regulations define "capital asset" for "Net Outstanding Campaign Obligations" as "any property which has remaining useful life exceeding 1 year from the candidate's ineligibility, provided that the fair market value at the date of ineligibility exceeds $500, (emphasis added). 11 C.F.R. Section 9034.5 (c) (1980). It is impossible to calculate the artwork's fair market value for NOCO purposes (see above discussion). Since there is no basis on which to determine that the value of any of the prints exceeds $500, it should not be held to be a "capital asset".

If one attempts to calculate the "fair market value" of the artwork for NOCO purposes based on its "appraised value", the discounting required to take account of the restrictions imposed on the Committee's use of the artwork would certainly bring the "value" of any particular print below $500. The "appraised value" of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's "worth" to an individual recipient, the value of an individual print to the Committee would be much less.

This is true even in the absence of sales restrictions. The Committee, in order to market the prints commercially, would have to "job-out" the artwork to a number of galleries, with attendant commissions and transaction costs, or would have to "wholesale" it, requiring a significant discount. An indication of the magnitude of the reduction in value involved is that, in those cases in which artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 the artwork's "appraised value". Since the highest "appraised value" for any piece was $1,200, 1/3 of "appraised value" formula used by the banks demonstrates that no work exceeds $500 in value, even before discounting for restrictions on sale and disposition.

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Not treating the artwork as a "capital asset" also agrees with the purposes of including only capital assets in the NOCO calculation. Capital assets are included on the assumption that such assets can be readily converted into cash or used in debt settlement. Because of the restrictions on its sale or disposition, the artwork cannot be considered readily convertible into cash in the same manner as, for example, an automobile owned by the Committee. Furthermore, the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so unable on the date of ineligibility grossly unfair.

B. Apparent Unqualified Campaign Expenses
FEC Auditors' Recommendation

> "Absent a showing to the contrary. . . the Audit Staff will recommend to the Commission that these expenditures totalling $348,342.59 be determined as non-qualified campaign expenses, and be repaid in full to the United States Treasury."

As above stated, the Committee has analyzed each item making up the Commission Auditors total expenditures for Iowa and New Hampshire. The Committee allocated $451,803 to Iowa, and $267,223 to New Hampshire. (Exhibits L & M). The limit in Iowa was $489,881 and in New Hampshire $294,400. Therefore, the Committee believes it did not have expenditures in excess of the limits.

Sincerely,

William C. Oldaker
Treasurer

Exhibit 9
Page 1 of

Fox & Company

Certified Public Accountants

1211 Avenue of the Americas
New York, New York
10036
(212) 730-0600

June 2, 1981

Mr. Jay Clevenson
Controller
KENNEDY FOR PRESIDENT
1000 16th Street N.W.
Washington, D. C. 20007

Dear Jay:

At the request of KENNEDY FOR PRESIDENT COMMITTEE officials, we have developed a methodology which establishes the percentage of overhead costs allocable to compliance and fundraising activities which are specifically exempt from state expenditure limitations. Under generally accepted accounting principles, it is both permissable and preferable to allocate overhead costs to other departments (in the case of a political committee, to components of the committee), based on a systematic and rational method. Using the methodology described in this report, 22% of overhead costs shou' be allocated to compliance and 17% of overhead costs should be allocated to fundraising.

In our preliminary work, several alternative methods were considered. The method described herein was selected because it utilizes acceptable accounting procedures, provides a systematic and rational allocation and is relatively easy to compute and implement. Other methods under consideration may have provided slightly more accurate estimates but would involve such lengthy accounting computations that insignificant increases in accuracy would be more than offset by the cost of gathering the information and applying the complex methodology.

The first step in determining the overhead allocation requires estimating the percentage of time spent by each state office employee on compliance and fundraising activity. Since it was impractical to make this determination for all states in which there are state field offices, a sample of four states was selected. The selection of states was based on the timing of the state primary or caucus and the level of campaign activity in the states, thus ensuring a representative sample on which to base later computations. The selected states were Ohio, New York, New Hampshire and Iowa. Exhibits I-IV summarize the compliance and fundraising time spent by individuals in these states, based on our discussions with the state desk people directing the campaign activities in the selected states.

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After estimating the percentage of time spent on exempt activity, the overall employee costs of compliance and fundraising can be easily determined by multiplying each employee's time percentage by the year-to-date salary in the state. Thus, compliance and fundraising costs as a percentage of total costs can be calculated for each of the four sample states, and the combination and averaging of these state figures provide percentages for allocating costs of an overhead nature which were incurred at the state level.

It has been our pleasure to perform this review. If we can be of further assistance, please call me at (212) 730-0600.

Very truly yours,

Hershel D. Sosnoff

Hershel D. Sosnoff
Partner

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KENNEDY FOR PRESIDENT [redacted]t 1

INDIVIDUAL TIME PERCENTAGES

IOWA

Employee	Fundraising %	Compliance %
Gluba	10	15
Murphy	10	15
Jochum	5	10
Wanning	25	0
O'Niel, S.	5	10
Sasso	15	15
Schaeffer, Jr.	5	10
Taylor	5	10
Tramontina	5	10
Tully	20	20
Zagnoli, T.	5	10
Van Beck, Jr.	5	10
Miller	0	100
Sands, C.	5	10
Schnapper	10	10
Corrigan	10	15
Hannigan	5	10
Landor	5	10
McDermott	5	10
Hood, V.	5	10
Saunders, H.	5	10
Kadish, S.	5	10
Schoenberg, J.	5	10
Evans, L.	5	10
Ford	10	15
Gelernter	5	40
Corrado, R.	5	10
Johnson, S.	5	10
Morin, R.	5	10
Tenly, P.	5	10
Pizzi, T.	10	15
Leontire, E.	5	10

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KENNEDY FOR PRESIDENT

EXHIBIT II

INDIVIDUAL TIME PERCENTAGES

NEW HAMPSHIRE

Employee	Fundraising %	Compliance %
Avellone	10	15
Casey	10	15
Powner	10	15
Dragotta	15	85
Dudley	90	10
Dunfey	10	15
Jenkinson	10	15
Koutsos	10	20
Pappas	10	15
Langan	10	15
Murray	10	15
Levey	10	15
Mulligan	10	15
Petrich	10	15
Murphy	10	15
Apgar	10	15
Okenica	10	15
Peterson	10	15
Rhodes	10	15
Roller	10	15
Symons, J.	25	20
Kanin	20	20
Dilworth	10	15
Bennett	10	15
Kidaloski	10	15
Butler	10	15
Hill	10	15
Kahan, A.	10	15
Callahan, C.	10	15
Cunningham, M.	10	15

KENNEDY FOR PRESIDENT

EXHIBIT III

INDIVIDUAL TIME PERCENTAGES

NEW YORK

Employee	Fundraising %	Compliance %
Walsh	0	10
Basser	10	10
Mercado	10	10
Kennedy	10	10
Gregory	10	10
Ruggiero	10	10
Nardone	10	10
Rosenthal	10	10
Soref	10	10
Willis	10	10
Waldt	10	10
O'Donnell	10	10
McFarland	10	10
Ickes	10	15
Daly	25	75

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KENNEDY FOR PRESIDENT

EXHIBIT IV

INDIVIDUAL TIME PERCENTAGES

OHIO

Employee	Fundraising %	Compliance %
Tully	30	20
Ventresca	30	20
Dragotta	20	80
Landor	20	20
Weeks	20	20

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Exhibit
Page 7 of

Fox & Company

Certified Public Accountants
1211 Avenue of the Americas
New York, New York
10036
(212) 730-0600

August 21, 1981

Mr. Jay Clevenson
Controller
Kennedy for President
1050 17th Street, N.W.
Washington, D.C. 20036

Dear Jay:

The purpose of this letter is to respond to certain questions which you indicated that the FEC audit staff raised in response to our letter of June 2, 1981. Paragraph headings below correspond to the specific questions that you indicated the audit staff wished addressed.

PROCEDURES

The interviews were conducted in May, 1981. It is my understanding that prior to the interviews, a general discussion was held with all participants where exempt costs were defined, and specific examples cited. During the interviews, each participant was asked to review listings of employees in his or her state and indicate if he or she knew the percentage of time spent by such individuals on exempt functions. If the individual interviewed was unable through personal knowledge to estimate the time devoted by specific individuals he was requested to make inquiry to the individuals involved. Specific situations were analyzed as our accountants aided KFP's staff in arriving at appropriate percentage figures. This technique to derive the percentage of time spent on specific activity is in accordance with generally accepted auditing standards.

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CLARIFICATION OF TERMS

Fundraising costs are any expenditures connected or associated with solicitation of contributions. These fundraising costs include, but are not limited to, costs of any mailings to solicit funds including time and material costs of preparing such mailings, costs associated with specific individuals assigned to pass out solicitation material and collect contributions (i.e., pass the hat) at rallies or speeches and costs associated with any events held for the purpose of attracting contributions. Overhead or indirect costs can also be included as fundraising if based on a systematic, rational allocation.

Compliance costs are costs incurred as a result of efforts to comply with the Federal Election Campaign Act, as amended. Examples are the record keeping function required to be maintained in each local field office and the record keeping function for each advance team which had its own checking account. This record keeping function included, among other things, the keeping of the individual check book, the collection of receipts and invoices, the filling out of the FEC expenditure form, and the keeping and reporting of an ongoing expenditure total at the state level for limitation purposes. In addition, a portion of rentals, equipment, and other overhead items should be attributed to compliance.

Overhead costs are defined as those costs not directly adding to or readily identifiable with a department or other cost center, or in the case of a political committee to a component or task of the committee. Since overhead costs cannot, as a practical matter, be traced directly to individual costing units (components) at the time the cost is incurred, an acceptable procedure is to accumulate such costs and subsequently spread them to the various components by allocation.

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Overhead items may be viewed as "nonproductive" factors which are necessarily incurred so that the productive aspects of an operation can be performed. Costs of providing a suitable work environment (rent, utilities, furniture, communication) are nonproductive in the sense that they do not directly add to a particular component, but they are necessary so that all components can be performed efficiently and an organization might function. Supervisory costs also do not directly add to a specific component but are deliberately incurred with the expectation of minimizing the direct labor costs through promotion of a tight-knit organization and elimination of waste. Hence, such costs of providing work environment and employee supervision (the common overhead costs) should not be viewed entirely as nonproductive. They are general costs of maintaining a business and must be allocated to components, as appropriate.

CONCLUSION

As indicated in our initial report, the method selected for determining percentage allocations of overhead costs to exempt components of the campaign was both "systematic and rational." In accounting terminology, systematic and rational is generally construed to be a higher standard than "reasonable."

I hope this clarifies any problems. If there are any questions please contact me.

Very truly yours,

Hershel D. Sosnoff
Member of the Firm

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Exhibit
Page 10 p

Fox & Company

Certified Public Accountants
1211 Avenue of the Americas
New York, New York
10036
(212) 730-0600

September 1, 1981

SEP 8 AM 11:47

Mr. Jay Stevenson
Controller
Kennedy for President
1050 17th Street, N.W.
Washington, D. C. 20036

Dear Jay:

Please note in my letter dated August 21, 1981, that I stated in the first sentence, under the paragraph headed PROCEDURES that "interviews were conducted in May, 1981." In fact, it should have read "May, 1980."

Please note the correction.

Sincerely,

Hershel Sosnoff

Hershel D. Sosnoff

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AGENDA DOCUMENT #X81-052

SENSITIVE

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

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August 18, 1981

MEMORANDUM

EXECUTIVE SESSION
AUG 25 1981

TO: THE COMMISSIONERS

THROUGH: B. ALLEN CLUTTER
STAFF DIRECTOR

FROM: BOB COSTA

SUBJECT: FINAL AUDIT REPORT -
THE KENNEDY FOR PRESIDENT COMMITTEE

Attached is the final audit report on the Kennedy for President Committee along with the legal analysis provided by the Office of General Counsel. Any findings referred to the Office of General Counsel are attached as exhibits 1-3. To facilitate discussion, the Committee's response to the interim audit report is attached as exhibit 4 and all changes and/or additions to the report based on the Committee's response or General Counsel's recommendations have been underlined. We recommend that this report be placed on the agenda for the scheduled Executive Session on August 25, 1981.

Since the Audit Division is not in agreement with the Counsel's Office concerning a number of matters discussed in the legal analysis each of these matters will be addressed individually below. If you have any questions concerning any of the matters discussed below, please contact Ray Lisi or Joe Stoltz at extension 3-4155.

Attachments as stated

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II.B. Missing Records (Audit Report, Page 5, Legal Analysis, Page 1)

Additional language has been added to the report incorporating the Office of General Counsel's comments.

B.2. Loan Records (Audit Report, Exhibit 2, Legal Analysis, Page 2)

The audit report recommends that questions concerning the adequacy of collateral for six loans and lack of documentation for two (2) loans be referred to the Office of General Counsel. The Counsel's Office agrees with the referral to their office of five loans 1/ for which the collateral listed on the loan documents apparently did not exist.

Regarding one of the remaining three loans, Counsel states that the referral, based on the fact that the collateral (the appraised value of artwork) equalled the amount of the loan principal, not be pursued since the only relevant questions for purposes of the Act are whether the loan is adequately secured and whether it was granted in the ordinary course of business for the lending instituion in question. They further state that the practices of other banks do not set the standards by which the legality of loans from other lending institutions will be measured.

The Audit Division feels that the standards for determining whether a loan is made in the ordinary course of business are clearly stated in the regulations. 11 C.F.R. 100.7(b)(11) states in part that a loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. As noted in the audit report, we do not feel that a loan collateralized by artwork with an appraised value equal to the principal of the loan offers sufficient protection to the bank in case of default and would not assure repayment.

1/ The legal analysis refers to only one loan for which the collateral may not have existed however in discussions with the Counsel's office they have agreed that all five loans should be referred.

Further, the Counsel's statements fail to take into account comments made by the Committee Treasurer that, "The 'appraised value' of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's 'worth' to an individual recipient, the value of an individual print to the Committee would be much less." (See Committee response, Page 15) The Audit staff believes that if this statement is accurate, the value of a series of prints in the hands of a lending institution would not be substantially greater. Hence a question of the adequacy of the collateral is raised.

In regards to the two remaining loans for which no loan documents were provided, Counsel has made no comment; however, since these loans were secured through the same bank as the loan noted above and those were the only loan documents which the Committee was unable to obtain, we recommend that they also be referred to the Counsel's Office for further investigation.

C. Allocation of Expenditures to States
(Legal Analysis Page 3; Audit Report Page 6)

The Counsel's Office has recommended that this section of the report be rewritten since the Committee's response was not organized in the same fashion as the interim report which made it difficult to integrate the response into the interim audit report structure.

A number of alternatives were discussed prior to a decision being reached on the format to be used in presenting the Committee's response and audit comments contained in this report. It has been standard practice in final audit reports to reiterate the findings and recommendations as they occurred in the interim audit report along with the Committee's response and any other facts pertinent to the situation followed by the Audit staff's final recommendations. This practice serves a twofold purpose:

1. It provides a public document containing a complete picture of the chain of events which culminate in the final recommendation:

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2. It guarantees the Committee being audited that the facts and the recommendations made in the interim report and to which they have responded remain intact.

We feel that the format is even more appropriate in a situation such as this where the Committee's response was both lengthy and detailed. In addition, several of the areas addressed in the Committee's response were not contained in the interim report therefore making it difficult to integrate them into the categories noted in the interim report. Additional language has been added to this section of the report which we feel further clarifies the chain of events.

4. Per Diem and Expense Reimbursements (Legal Analysis, Page 4, Audit Report, Page 8)

5. Outstanding Debt (Legal Analysis, Page 4, Audit Report, Page 8)

6. Other Vendor Payments (Legal Analysis, Page 4, Audit Report, Page 8)

Additional language has been added to the three sections of the report noted above incorporating the Office of General Counsel's comments.

1. Overhead Allocation (Legal Analysis, Page 4, Audit Report, Page 10)

In regard to this section of the report, the Counsel's Office believes the report should state that if the documentation supporting the Committee's calculation of the percentages used to allocate overhead costs to an exempt category are supplied to the auditors and the definitions of "fundraising" and "compliance" used by the Committee comport with the Act and the Commission's definitions of these terms, that the Committee's allocations should not be challenged as unreasonable. The Counsel's Office further states that if the percentages at issue were calculated on the basis of the personal knowledge of Committee staff, that the information be accepted without requiring the Committee to further prove the staff assertions and recollections. They support this position by pointing out that it is unclear what type and quantity of evidence would satisfy the standard of proof

in this regard and that in the case of the Carter-Mondale Committee portions of national salaries were allocated to exempt categories based on staff interviews which were accepted requiring no additional proof to substantiate the staff estimates.

The Audit staff agrees that if the Committee can provide the documentation from the accounting firm and that if the definitions of "fundraising" and "compliance" are consistent with those used in regard to other committees, that the allocations be deemed to be reasonable; however, we do not feel that we are limited only to accepting the Committee staff assertions and recollections and that we are prohibited from asking for additional information if deemed appropriate.

On Page six, paragraph two of the Analysis, Counsel states, "Assertions of other committees as to the amount of time spent by staff in various activities were accepted without requiring additional proof of those assertions." They cite as an example the Carter-Mondale audit whereby staff interviews were used to compute percentages for exempting portions of salaries.

There are a number of facts, however, which distinguish the Carter-Mondale situation from this one. In that instance the auditors had access to a report prepared by a CPA on loan to the Committee from an accounting firm which contained detailed computations and documentation to support the allocations made. The report was prepared early on in the campaign not after the activities had taken place as in the case of the Kennedy Committee. In addition, the auditors had access to payroll records which were also used in arriving at the percentages. The auditors also in some cases spoke directly with and interviewed the individuals whose time was being allocated. Based on this information adjustments were agreed upon between the Committee and the Audit staff and the allocation percentages were adjusted accordingly.

Therefore, it would appear to be consistent with past practice to request additional documentation beyond staff assertions in arriving at a decision as to the reasonableness and accuracy of the Committee's allocations.

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2. Interstate Travel and Communications (Legal Analysis, Page 7, Audit Report, Page 11)

The Office of General Counsel's comments have been incorporated into the audit report.

3. Media Expenditures (Legal Analysis, Page 7, Audit Report, Page 12)

The report has been redrafted to include the media totals based on the County Coverage reports and also notes the additional information needed from the Committee concerning certain media buys which are necessary to verify that the totals are correct.

4. National Press (Legal Analysis, Page 7, Audit Report, Page 14)

In this section of the analysis, the Counsel asks that we note in the report that we agree with the theory that reimbursed national press expenditures may be excluded from the overall and state spending limits. Language to that effect is now contained in the Audit Report. However, Counsel further states that they do not believe that "any additional information -- such as proof that an expenditure designated by the Committee as one for press was in fact so used -- should be required."

Here again as we stated in our comments on Overhead Allocations, we do not believe that we are precluded from requesting additional information from the Committee to support allocations made by the Committee. With regard to any expenditures subject to the limit which were subsequently reimbursed, the Audit staff has always requested and reviewed documentation which supports and verifies the transactions.

The Counsel further states that they agree with the Committee that "an employee's salary need not be allocated to a particular state to the extent that the staff member's time was spent on national press activities." The analysis cites the letter mailed to the Committee stating that "salaries of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work ... need not be allocated to that state." Counsel feels that ministering to the national press falls within this category in that it is not advance or field work.

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The Audit staff disagrees with Counsel's Office in this regard. We find no justification in the statute or regulations which exempts an individual's salary from any limitations based on the relationship of their work with the national press. The letter mailed to the Committee states "Expenditures for advance staff salaries should be attributed to each state in proportion to the time that the advance person spends working, either out of national headquarters or in the field, in connection with the campaign in such state (see AO 1979-73). Therefore, the salaries and related expenses of both advance personnel, and field staff (e.g., coordinators working in the state) must be allocated, even though the individuals involved may be assigned to the national headquarters for payroll purposes. In addition, any expenses incurred by the Candidate or by a spokesperson for the Candidate who is not on the national campaign staff (e.g., the Candidate's family) while in a particular state are allocable to the respective state. The Commission has, however, recently determined that the salaries and related expenses of national campaign staff members who travel to a particular state for a limited purpose not constituting advance or field work, but rather associated with the national campaign effort, need not be allocated to that state." Based on these statements, the test as to whether the expenditure is allocable or not is whether the expenditure was for services directed toward the national campaign rather than to the campaign in that particular state. The exemption allowed in the letter was clearly directed toward those individuals who are part of the campaign's national staff who traveled with the candidate, or to a state on national campaign business, and not as in this instance advance staff whose main purpose was to arrange candidate appearances and associated press coverage in a particular state.

5. Compliance and Fundraising (Legal Analysis, Page 9, Audit Report, Page 15)

In this section of the legal analysis, the Counsel's Office states that it has difficulty rejecting the Committee's allocation of various percentages of staff salary to the exempt categories of compliance and fundraising in view of the basis provided in the audit report. They further state that "the Committee is in the best position to determine how and to what extent staff time was spent on certain activities, and absent some indication that the Committee's assertions in this regard are not accurate representations of what actually occurred, we find no reason for not accepting what has been presented by Kennedy for President.

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The Audit staff must again disagree with the Counsel's reasoning as it relates to this matter. Although the first step in determining the accuracy and reasonableness of any allocation is to review the Committee's workpapers, we feel requesting further proof beyond just the assertion of Committee personnel is both necessary and justified.

The audit report has been revised to include a statement further explaining our reasons for not accepting the calculations and what additional information must be provided before we will adjust our original totals.

6. Advance Staff Personnel (Legal Analysis, Page 10, Audit Report, Page 16)

Counsel states that its comments contained in the analysis of the Compliance and Fundraising section immediately proceeding this section are equally applicable here.

Consistent with its prior comments concerning those allocations for which the Committee has not provided sufficient documentation, the audit report notes that no adjustment will be made to the Committee's allocable totals absent the presentation of adequate documentation supporting the allocations.

Timely Processing of Questionable Contributions (Legal Analysis, Page 10, Audit Report, Exhibit 3)

The Counsel's Office suggests that rather then referring this matter for compliance action that we recommend that the amount of funds that can not be verified by the Committee as coming from permissible sources be disposed of in any lawful manner by the Committee within the ninety day repayment period.

The audit report recommendation for referral of this matter to the Counsel's Office was not solely based on the fact that the Committee failed to maintain a written record noting the basis of illegality with respect to the contributions received as stated in the legal analysis. The Audit staff and the Committee still do not agree on the total dollar amount of

undocumented contributions remaining in the escrow account (see the Attachment to Exhibit 3). Since this is the final audit report we do not feel it appropriate nor consistent with past Commission actions in similar matters to issue a final audit report noting a Committee's non-compliance with a recommendation.

Receipt of Contributions Exceeding $1,000 Per Person
(Legal Analysis, Page 10, Audit Report, Exhibit 3)

This finding has been deleted from the audit report and is attached as Exhibit 3. The updated information requested by the Counsel's Office will be provided.

III.A. Determination of Net Outstanding Campaign Obligations
(Legal Analysis, Page 11, Audit Report, Page 20)

The changes recommended by the Counsel's Office have been incorporated into the audit report.

III.B.2. Payment of Parking Violations (Legal Analysis, Page 11, Audit Report, Page 23)

The noted paragraph has been deleted from the audit report and the appropriate regulation cite added.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

REPORT OF THE AUDIT DIVISION
ON THE
KENNEDY FOR PRESIDENT COMMITTEE

I. Background

A. Overview

This report is based on an audit of the Kennedy for President Committee ("the Committee"), to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The audit was conducted pursuant to Section 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037".

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The Committee registered with the Federal Election Commission on October 29, 1979 as the principal campaign committee of the Honorable Edward M. Kennedy, a Democratic candidate for the nomination to the office of the President of the United States. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from January 1, 1980 through August 31, 1980, the final coverage date of the last report filed at the time of the audit. 1/ The Committee reported a beginning cash balance of $409,168.91, total receipts of $11,804,166.54, total expenditures of $11,953,427.73, and a closing cash balance on August 31, 1980 of $259,907.72. As of August 31, 1980, the Committee reported expenditures of $9,782,864.70 subject to the overall expenditure limitation.

1/ In accordance with standard Audit Division practice, a review was made of the Committee's expenditures through December 31, 1980, to verify that each was a qualified campaign expense and to determine the accuracy of the Statement of Net Outstanding Campaign Obligations as of November 28, 1980. Although the Threshold Audit Report covered the period October 29, 1979 through December 31, 1979, the unavailability of records at that time necessitated that the majority of the tests conducted in this audit cover the period October 29, 1979, through August 31, 1980.

B. Key Personnel

The principal officers of the Committee during the period audited were Mr. Stephen E. Smith, Chairman, Ms. Carolyn A. Reed, Treasurer from inception to June 13, 1980, and Mr. William C. Oldaker, Treasurer from June 13, 1980 to the present.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation and analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations Relating to Title 2 of the United States Code

A. Reporting Errors and Omissions

Section 434(b)(1)(2) and (4) of Title 2 of the United States Code states that each report shall disclose the amount of cash on hand at the beginning of the reporting period; and for the reporting period and the calendar year, the total amount of all receipts and disbursements.

Section 434(b)(3) of Title 2 of the United States Code states, in part, that each report shall disclose the identification of each person who makes a contribution(s) to the committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such contribution.

Section 432(c)(1)(2) and (3) of Title 2 of the United States Code states, in part, that the treasurer of a committee shall keep an account of all contributions received, the name and address of any person who makes any contribution in excess of $50, together with the date and amount, and the identification of any person making a contribution(s) aggregating more than $200 during a calendar year, together with the date and amount.

1. Background

During the period audited, the Committee opened 200 bank accounts. Seven (7) of these accounts were maintained at the national campaign offices. The remaining 193 accounts included 63 accounts maintained at the state level, and 130 scheduling accounts. Scheduling accounts were used to fund specific events, and were separate from the funding of state offices.

The Committee's procedures provided for funding the state and scheduling accounts with transfers solely from the national accounts. All contributions received at the state and scheduling level were to be forwarded directly to the national office for deposit into a national account. Expenditure information for the state and scheduling accounts was forwarded to the national office for inclusion in the monthly reports. All expenditures from all accounts were to be itemized on Schedules B-P regardless of amount. Due to the fact that only $3,103.52 in unitemized expenditures were reported during the period October 29, 1979 through August 31, 1980, and that our tests identified expenditures not itemized that were in an amount in excess of $3,103.52, any disbursement not found itemized was considered an unreported disbursement.

2. Unreported Expenditures

a. National Accounts

Our review of the Committee's expenditure records for the period October 29, 1979 through August 31, 1980 revealed that 34 expenditures totaling $73,916.15 were not reported. The expenditures appeared to be for normal Committee operating expenses and the Audit staff found no apparent reason for this failure to report. Further, Committee officials were unable to determine the cause of this problem.

The interim audit report contained a recommendation that the Committee amend its reports to include the 34 expenditures noted above. On May 19, 1981, the Committee submitted an amended report covering calendar year 1980, itemizing 29 of the 34 expenditures, totaling $71,591.63. A Committee official stated that the remaining five (5) expenditures comprised the unitemized operating expenditure figure contained in the 1979 year end report. Based on the dollar amount, it is possible that four (4) of these expenditures comprised the unitemized operating expenditure figure on the 1979 year end report.

Recommendation

Since the Committee has materially complied with the recommendation, the Audit staff recommends that no further action be taken on this matter.

b. State and Scheduling Accounts

A review was made of the 193 state and scheduling accounts maintained by the Committee. The results of our tests disclosed a material error rate in the Committee's reporting of expenditures from these accounts.

During the audit fieldwork the Committee was in the process of reviewing their files and preparing amended expenditure schedules to include previously unreported state and scheduling expenditures. A comparison of our test results to the amended schedules indicated that the filing of the amended schedules would materially correct the Committee's reports. The amended schedules contained $220,526.54 in previously unreported activity.

The interim audit report contained a recommendation that the Committee file the amendment mentioned above. The Committee stated in its written response to the audit report that they had included in the 1980 amendment, filed on May 19, 1981, state and scheduling account expenditures totaling $207,409.04, which were previously unreported. Our review of the amendment disclosed that it actually included $210,153.89 in expenditures. The Committee explained that the discrepancy between the dollar amount of the state and scheduling account expenditures included in the comprehensive amendment filed and the proposed amendment originally reviewed by the Audit staff, was a result of the proposed amendment not reflecting all expenditure amount corrections. Upon receipt of the amendment, the test results were again compared and it was determined that the amendment as filed materially complies with the recommendation.

Recommendation

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

A. $9,300.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

B. a $9,181.46 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

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Recommendation II A.2b

The Audit staff recommends no further action on this matter.

3. Miscellaneous Adjustments

In addition to the matters noted above, our review of the Committee's available bank records and tests of the receipt and expenditure records revealed that the Committee's reported activity was misstated due to the following:

a. $9,000.00 of reported contributions which were returned by the bank due to insufficient funds improperly adjusted on Committee reports; and

b. a $9,181.66 overstatement of expenditures due to mathematical errors.

The interim audit report contained a recommendation that the Committee amend its reports to adjust for the reporting errors noted above. The amended reports filed by the Committee on May 19, 1981, included these adjustments.

Recommendation

The Audit staff recommends no further action in this matter.

B. Missing Records

Section 432(c) and (d) of Title 2 of the United States Code states, in part, that a treasurer of a political committee shall keep an account of all contributions received on behalf of such political committee, and any disbursements made, including a receipt, invoice, or cancelled check for each disbursement in excess of $200. The treasurer shall preserve all records required to be kept by this section and copies of all reports required to be filed by this subchapter for 3 years after the report is filed.

Section 104.14(b)(1) of Title 11 of the Code of Federal Regulations states, in part, that each person required to file any report or statement under this subchapter shall maintain records, including bank records, with respect to the matters required to be reported from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

In addition, Section 9033.1(a)(3) of Title 11 of the Code of Federal Regulations requires a candidate receiving matching funds to keep and furnish to the Commission any records, including bank records for all accounts.

In addition to numerous verbal requests, the Audit staff made eight (8) written requests, beginning on October 23, 1980, for the production of various missing bank records. These requests were presented to the Committee's staff who were available to the Auditors on a daily basis and were working with the records being requested. Due to the substantial delays the Auditors encountered in the receipt of many requested documents and records, particularly bank records, the Commission sent a letter to the candidate, on December 3, 1980, which requested cooperation from the candidate and Committee personnel concerning the production of these records. At the conclusion of the audit fieldwork, the Committee had still not obtained and provided all requested records pertaining to the bank accounts.

The final list of missing bank account records was given to the Committee and discussed with them on January 9, 1981. The list included twenty one bank accounts which were missing statements, cancelled checks, and/or deposit slips. These missing bank records were needed in order to verify reported figures and could have resulted in additional corrections to the Committee's reports. Committee officials stated that they would attempt to obtain the missing records and provide them for our review.

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The interim audit report contained a recommendation that the Committee provide the bank records for our review. Subsequent to the audit fieldwork the Committee provided records for 18 of the 21 bank accounts. For two (2) of the bank accounts the records which were not provided consisted of cancelled checks associated with three (3) bank statements. The remaining one (1) account was lacking one (1) bank statement. It should be noted, however, that the Audit staff was able to include the expenditures connected with these accounts in the overall expenditure review of the state and scheduling accounts. For two (2) of these accounts, the Committee provided letters sent to the banks requesting these records.

Recommendation

Since the Committee has provided the majority of the records requested, the Audit staff recommends that no further action be taken on this matter.

C. Allocation of Expenditures to States

Sections 441a(b)(1)(A) and 441a(c) of Title 2 of the United States Code provides, in part, that no candidate for the office of President of the United States who is eligible to receive and has received matching funds may make expenditures in any one state aggregating in excess of the greater of 16 cents multiplied by the state voting age population or $200,000.00, adjusted by the Consumer Price Index.

Section 106.2(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect to a particular State shall be allocated to that State.

In addition, Section 106.2(b) and (c) of Title 11 of the Code of Federal Regulations states, in part, that expenditures for staff, media, printing and other services used in a campaign in a specific State shall be attributed to that State, and that expenditures by a Presidential Candidate for use in two (2) or more States, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures.

A review of the Committee's system for allocating expenditures to states revealed a number of areas where allocations were not performed. An extensive review was made of all expenditures relating to the states of New Hampshire and Iowa since these were the only states where the limitations were approached.

The Committee maintained monthly state allocation reports which contained a listing by state of all expenditures allocated to the states from the national operating accounts and state and scheduling accounts. A comparison of the allocation reports to the FEC Forms 3Pc, "Allocation of Primary Expenditures by State for a Presidential Candidate", filed by the Committee from inception through August 31, 1980 revealed more expenditures reported on the Forms 3Pc than contained on the allocation reports. Committee personnel were unable to provide the Audit staff with workpapers to support the reported 3Pc totals nor could they provide an explanation for the differences. Various expenditure testing performed on the allocation reports verified that, with the exception of specific categories of expenditures noted below, the allocation of expenditures contained on the allocation reports were substantially correct. Therefore, the allocation report totals were used as a base to which additions and/or adjustments to the expenditure totals for New Hampshire and Iowa were made.

In addition to the national accounts, the Committee maintained 14 New Hampshire accounts (all in New Hampshire) and 23 Iowa accounts (22 in Iowa and one (1) in Nebraska) from which expenditures were made but were not allocated. Reconciled totals from these accounts were added to the state allocation report totals to yield a grand total of $227,736.65 allocable to New Hampshire and $421,376.94 allocable to Iowa.

The interim audit report also identified the following categories of expenditures as containing errors or omissions requiring adjustments to the above totals for New Hampshire and Iowa.

1. March and April, 1980, Expenditures

A review of the state allocation reports revealed that the Committee did not allocate any expenditures made from the national operating accounts during the months of March and April, 1980. A review of the check copies which contained the Committee's state allocation codes for that time period was performed to identify expenditures relating to the New Hampshire and Iowa campaigns. The results of that review required additional allocations of $34,786.01 to New Hampshire and $8,917.22 to Iowa.

2. Media

The Committee did not allocate any expenditures from its national operating accounts to its media firm for the purchase of radio, television, or newspaper advertising even though the media firm had supplied the Committee with detailed information with which to do so. The documentation supporting the allocations maintained by the media firm was reviewed by the Audit staff. The review disclosed allocations of $48,347.81 to New Hampshire and $85,668.81 to Iowa.

3. Payroll

The Committee did not allocate to the respective states either the salaries of individuals who, according to payroll registers, were assigned to state offices (field personnel) or individuals who were assigned to specific events in one (1) or more states (advance personnel). In addition, neither unemployment taxes nor the employer's portion of FICA taxes were allocated. The Audit staff identified total payroll related expenses (gross payroll, unemployment taxes, and employer's FICA) of $83,506.34 allocable to New Hampshire and $127,327.08 to Iowa.

4. Per Diem and Expense Reimbursements

A review of per diem and expense reimbursement payments and the documentation maintained by the Committee (i.e., reimbursement request forms with attached invoices and receipts, indicating a destination) supporting these expenditures identified an additional $2,432.38 allocable to New Hampshire and $2,852.09 to Iowa.

In addition to the above, the Audit staff identified $20,084.24 in expenditures which were not adequately documented to allow an allocation determination. These expenditures were supported solely by a cancelled check which did not identify the state(s), if any, to which the expenditures were allocable nor were these expenditures allocated to any state by the Committee. Per diem payments accounted for $18,840.00 and expense reimbursements for the remaining $1,244.24.

5. Outstanding Debt

A review of the Committee's Statement of Net Outstanding Campaign Obligations as of November 28, 1980, and the Committee's list of accounts payable and billings and invoices supporting these payables, identified outstanding debts totaling $3,242.18 which were related to the Committee's New Hampshire campaign and $10,970.84 to Iowa.

6. Other Vendor Payments

An analysis of other vendor payments and the documentation maintained supporting these payments (i.e., including bills, invoices, and check stubs containing the Committee's allocation codes) from the operating accounts and a review of expenditures from September 1, 1980 through November 30, 1980, identified additional amounts of $28,171.79 allocable to New Hampshire and $47,287.44 allocable to Iowa.

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The interim audit report included a final summary of Committee expenditures allocable to New Hampshire totaling $428,223.16 and Iowa totaling $704,400.43.

The Audit staff recommended in the interim audit report, that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect these adjustments within 30 days of receipt of the report. In addition, a recommendation was made that the Committee provide the Audit staff with sufficient documentation to allow an allocation determination for those expenditures noted as not adequately documented in II.C.4. above. With respect to other state allocation errors, a recommendation was made that no action be taken since it would have no effect on the Committee's compliance with those state limitations.

In its response to the interim audit report received on May 19, 1981, the Committee provided documentation verifying that the expenditures noted in II.C.4. were not allocable to either New Hampshire or Iowa. The Committee also stated that its method of analyzing state by state expenditures was to review, with the assistance of two (2) accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purpose of influencing the nomination in that particular state and then if all or any of the expenditure could be allocated to an exempt expenditure category.

The Committee provided the Audit staff with a computer printout which included all expenditures which were noted in the interim audit report as being allocable to New Hampshire and Iowa. Each expenditure on the printout was allocated into one (1) or more exempt (not subject to the expenditure limit) or non-exempt (subject to the expenditure limit) categories as follows:

Non-Exempt Category

1. Primary

Exempt Category

1. Compliance
2. Fundraising
3. Phone/Travel-Interstate
4. National Press
5. Other

Due to the methodology employed by the Committee in preparing its response, the expenditure categories presented by the Committee do not correspond to those contained in the interim audit report. Therefore, the remainder of the staff's analysis addresses the categories presented by the Committee.

1. Overhead Allocation

In its response the Committee stated: "During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditures in a manner consistent with salary allocation."

The Committee asked a public accounting firm to develop the methodology and establish the percentage to be used in allocating costs to exempt functions. The firm used a sample of four (4) states 2/ from which it computed a weighted average percentage of fundraising and compliance time. The Committee stated that the selection of the states was on a judgemental basis and the information pertaining to each employee was based on interviews with the official who directed the campaign activity in that state. Using this procedure the firm determined that 17% of payroll costs relates to fundraising and 22% relates to compliance.

Although it appears justifiable that a portion of overhead and payroll related costs can be charged to exempt categories, we have difficulty accepting the reasonableness of the calculation based on the limited information which has been provided concerning the procedures used.

All that has been provided by the Committee is a letter from the accounting firm explaining in general terms the procedure it followed to arrive at the percentages. The letter states that the amount of compliance and fundraising time spent by individuals in the four states was determined through discussions with the state desk people directing the campaign activity in that state. Workpapers prepared by the accounting firm supporting the discussions and calculations noted in the letter were not available for the Audit staff's review at the time the Committee's response was received. In the absence of these workpapers the Audit staff has no information concerning the questions asked of the campaign officials interviewed, how the interviewers defined "compliance" and "fundraising", on what basis the persons interviewed assigned percentages to each staff members' activities, or any other records

2/ The four (4) states were New Hampshire, Iowa, New York, and Ohio.

(i.e. time sheets, job descriptions, etc.) which were used as a basis for determining the percentages. In addition, the Committee has not provided the definition of the type of expenditures to which the overhead percentages would be applied. Further, the Committee stated in its response that they recognized the need for establishing these percentages during the campaign; however, the Audit staff was provided no evidence or information to indicate that the information used by the accounting firm was obtained during the campaign. The timing of the interviews is an important factor to take into consideration when determining the reasonableness of the resulting percentages, because the calculations were based on a single individual's recollection of activities.

It should also be noted that although the letter states that the method used by the accounting firm was systematic, rational, easy to compute, and less costly than other slightly more accurate methods, the letter does not address the regulatory test of reasonableness. Therefore, absent the submission of documentation demonstrating the reasonableness and accuracy of the allocations, the Audit staff has made no adjustments to the amounts allocable to New Hampshire or Iowa on the basis of the Committee's response in this area.

2. Interstate Travel and Communications

In its response the Committee stated "The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2(c)(2) to the national expenditure limitations."

The Committee provided the Audit staff with workpapers which they stated would support the Committee's allocation of long distance telephone charges to an exempt category. The workpapers indicate that all calculations for determining the amount of long distance telephone charges allocated to an exempt category for New Hamsphire 3/ were based on reviewing two (2) telephone bills. The workpapers state that 62% of the total amount of all telephone bills were long distance and that 27% of the long distance calls were out of state. The 27% was then applied to all phone charges for New Hampshire, both those made at campaign headquarters and those contained on hotel bills and expense reimbursement forms, and the resulting amount allocated to an exempt expenditure category. The Audit staff is unable to verify the accuracy of these percentages since the Committee provided only the summary pages for the telephone bills which did not include the itemized listing of phone calls. Further, it would appear that if the percentage calculations are correct, a sample consisting of two (2) selected telephone bills is not statistically valid.

3/ No records were provided for the Iowa computations.

The Commission, in a meeting on June 9, 1981, determined that only long distance telephone charges originating in a particular state made within that state or to another state, other than national headquarters, were required to be allocated. Letters were mailed to the affected presidential candidate committees on July 2, 1981, notifying the committees of the new determinations concerning the allocation of the telephone charges. The letter also stated that the committees had 30 days from receipt of the letter, to submit to the Audit Division an amended state allocation schedule, thereby reducing the amount previously allocated for such expenditures. The committees were also instructed to provide computational schedules including copies of bills, expense vouchers, or any other documentation supporting such an amendment. The Committee received the letter by certified mail on July 7, 1981. Since the Committee has not provided the Audit staff the documentation requested in the letter, no change to the total amount allocated in the interim report has been made.

The Audit staff has adjusted the totals allocable to New Hampshire and Iowa for other interstate charges (interstate travel and delivery services) for which adequate documentation was provided.

3. Media Expenditures

In its response the Committee stated that it had reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by the vendor (which was found to be acceptable by the Audit staff during the fieldwork) was incorrect. 4/ They further stated: "The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV station to allocate the cost of a broadcast." However, other than a letter from their media firm explaining that they had recalculated the media costs based on "County Coverage Reports (CCR)" rather than on the basis of "Area of Dominant Influence (ADI)" 5/ no other workpaper supporting the reallocation of media expenditures was supplied to

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4/ As noted earlier in this report, although provided with the media allocation totals by their media firm the Committee had not allocated any media costs.

5/ The Area of Dominant Influence (ADI) is a geographic design which defines each television market, exclusive of another, based on measurable viewing patterns. County Coverage Reports detail for every county, net weekly circulation (number of different households viewing the station in a week), for every station, whether the county is within or outside the station's ADI.

the Audit staff with the response. The letter from the media firm does not provide an explanation of the method used for determining the number of eligible voters in the County Coverage Reports.

At the time the Committee's response was received they indicated that the reduction of total media expenditures allocable to New Hampshire and Iowa contained on the computer printout was an estimate and that the media firm had not completed their calculations.

On June 11, 1981, the Committee provided the final figures for the media allocations. The Audit staff does not object to the use of the CCRs for the allocation of media expenditures; however, based on the review of these allocations and the supporting documentation, the Audit staff noted the following:

1. It appeared that the Committee's media vendor simply applied New Hampshire and Iowa CCR percentages to those media buys previously allocated to these states under ADI but did not (re)allocate to these states any buys previously not allocated under ADI which would be required under CCR. There are 10 out-of-state stations which overlap New Hampshire according to CCR data. The Committee made media buys at five (5) of these stations for which no (re)allocations have been made. 6/ The dates of these buys are not known to the Audit staff at this time to verify that the buys were all subsequent to the New Hampshire primary and would, in fact, not require such an allocation.

2. $1,450 in media buys at one (1) of the Burlington, Vermont TV stations referred to above were reviewed during the audit fieldwork that were denoted "N.H. primary". These expenditures did not require an allocation to New Hampshire under the ADI method but most likely would on the basis of CCR. The Committee's revised figures did not include any allocation to New Hampshire for these purchases.

3. On July 8, 1981, the Committee provided the Audit staff with schedules indicating that refunds from various New Hampshire and Iowa stations had been received and that $5,327.86 and $3,502 should be deducted from the New Hampshire and Iowa allocations, respectively. These schedules were dated November 18, 1980 while the media firm's CCR reallocations were dated May 18 and 21, 1981. Therefore, it appears that the refunds are calculated under ADI percentages while the time buys are now (re)allocated under CCR percentages.

6/ Two (2) of these were Springfield, Massachusetts stations, two (2) were Burlington, Vermont, and one (1) was New Bedford, Massachusetts.

The above matters have been discussed with the Committee's controller who requested clarification and/or additional information from their media firm representative. With respect to item number 1, he (the media firm representative) stated that the reallocation was done "from scratch" and that all buys at the five (5) stations with a New Hampshire overlap were subsequent to the New Hampshire primary.

With respect to item number 2, he advised that his assistant may have missed the Burlington, Vermont buys. A copy of the invoice in question was provided to the Committee's controller who was to forward it to the media representative. The Committee's controller stated that any necessary corrections would be provided to the Audit staff.

With respect to item number 3, he agreed that the refunds would require an allocation adjustment calculated on the basis of CCR percentages.

Due to (1) the possible omission of the Burlington, Vermont media buys from the Committee's reallocations, (2) the timing of the Massachusetts and Vermont primaries (March 4) in relation to the New Hampshire primary (February 26) and that the media firm asserts that no Massachusetts or Vermont buys were prior to February 26, and (3) the fact that the Committee's revised media allocations are again subject to change (on the basis of eligible Democratic votership), no changes have been made to the Audit staff's original media allocations, except for minor revisions resulting from other updated information.

4. National Press

The Committee stated in its response that each expenditure preliminarily allocated to New Hampshire or Iowa was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. They further stated that the Committee's method of billing the press (225% of first class air fare) was reviewed and approved by the Commission during an enforcement proceeding. The Committee believes that many of the expenditures allocated to New Hampshire and Iowa were for services provided to the national press. Since the costs of these services were included in the basis for the 225% charge and subsequently reimbursed to the Committee, they therefore should not be allocated to the states' limits.

Although the Audit staff does not disagree with the concept that expenditures for services provided to members of the press which are subsequently reimbursed by the press need not be charged to any limitation, the Committee has not provided any information to show a relationship between any particular expenditure or group of expenditures which they have charged to exempt National Press and the activities of the national press. Additionally, the Committee has not produced evidence that any particular expenditures or group of expenditures have been reimbursed through charges to national press. Furthermore, in its response to the Commission's inquiries during the enforcement proceeding, Committee officials indicated that the charge to the press for traveling with the candidate was always initially based on 225% of first class airfare but was often adjusted downward once the total cost of the trip was determined. Of the four (4) examples of campaign flights provided to the Commission by the Committee during the proceeding the highest billing rate reported by the Committee was approximately 150% of the first class airfare.

The Committee has also stated that the salaries of various staff persons who devoted all or a part of their time to the national press likewise should not be allocated to an individual state but should be treated as a national non-allocable expenditure.

The Audit staff finds no statutory or regulatory basis for exempting these expenditures. Further, no definition of these activities has been offered by the Committee nor have any worksheets or other documents supporting this allocation been presented to the Audit staff.

The Audit staff has not adjusted any of the amounts allocable to New Hampshire and Iowa in the area of national press based on the Committee's response.

5. Compliance and Fundraising 7/

The Committee stated in its response that it had identified each individual's time, or a percentage of an individual's time, that was spent on recordkeeping or compliance activity and charged that portion of the person's payroll to an exempt category. In addition, for each person who was identified as working on a particular fundraising event the portion of their time spent on that event was charged to an exempt category. They further stated that overhead expenses were isolated and a percentage formula was applied to all overhead expenses allocating a reasonable amount to legal, accounting and fundraising. A review of the computer printout

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7/ Section 1 of the Committee's response contains an explanation of the derivation of the percentages used in the Committee's calculation of the allocable totals in Subsection 5 Compliance and Fundraising and a portion of Subsection 6 Advance Staff Personnel.

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supplied with the Committee's response indicates that a portion of each field staff person's salary was allocated to exempt compliance and fundraising based on the percentage determined by the method discussed in Section 1. above (Overhead Allocations).

Other than the overhead expenditures which could be clearly identified by reviewing the documentation supporting them, the Committee did not provide any documentation supporting their calculations for allocating expenditures to exempt categories based on time spent on recordkeeping, compliance, or fundraising activities. Absent documentation supporting the Committee's derivation of percentages applied to allocations in these areas, no adjustments have been made to the allocable totals.

6. Advance Staff Personnel

The Audit staff included in the interim audit report an allocation for a portion of the payroll of advance staff personnel based on the number of days the individual had spent in New Hampshire or Iowa which was determined from a review of per diem and expense reimbursements. The Committee stated in its response that it had recomputed this amount using a seven day work week as opposed to the five day work week used by the Audit staff in its calculation. Since it does appear reasonable that advance staff would be required in many cases to work a seven day week the Audit staff has reviewed and accepted the Committee's adjustment and adjusted the allocation total accordingly.

The Committee further stated that since the nature of advance work involved a significant expenditure of time on compliance and fundraising activities and supporting the national press corps the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person.

A review of the computer printout supplied by the Committee reveals that the Committee has allocated a portion of each advance person's salary to an exempt category based on what appears to be the following percentages:

National Press	33%
Compliance	10-20%
Fundraising	10-17%

The Committee has not provided any information as to how these percentages were derived, in general or for any one (1) individual, nor have they been able to provide any justification for these percentages.

Other than the adjustment allowing for a seven day work week, no change has been made to the amounts originally allocated for advance staff personnel.

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The Audit staff's review of the Committee's response and accompanying documentation described above resulted in $385,851.07 in expenditures allocable to New Hampshire and $636,456.32 to Iowa.

Recommendation

Since the Audit staff's allocation totals result in a matching fund repayment determination (see Section III.B.1.), pursuant to 11 C.F.R. Section 9038.2(b) the candidate may submit additional legal or factual materials to demonstrate that the allocations are not required within 30 days of receipt of this report. For a comparison of the Committee and Audit staff allocation totals see Attachment 1.

new wording

D. Contributions From Other Political Committees

Section 434(b)(3)(B) of Title 2 of the United States Code requires a committee to disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

Section 432(c)(4) of Title 2 of the United States Code states, in part, that the treasurer of a political committee shall keep an account of the identification of any political committee which makes a contribution, together with the date and amount of any such contribution.

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000. In addition, Section 431(11) defines, in part, the term "person" to include a partnership, committee, association, corporation, or any other organization or group of persons.

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000.

1. Itemization of Contributions from Political Committees

A review of reports on file at the Commission revealed that 28 political committees reported making 31 contributions to the Committee totaling $30,322.00 which were not itemized on the Committee's disclosure reports. The Committee maintained copies of the transfer checks for seven (7) of these contributions.

The Audit staff recommended that the Committee file amended reports itemizing these contributions. On May 19, 1981, the Committee filed comprehensive amendments itemizing these contributions.

Recommendation

The Audit staff recommends no further action on this matter.

2. Excessive Contributions from Registered Committees

A review of the Committee's receipt records revealed that the Committee received contributions from one multicandidate committee which exceeded the limitation by $4,875.00. In addition, the Audit staff identified contributions in excess of $1,000 from two (2) political committees that apparently were not qualified as multicandidate committees as defined by Section 441a(a)(4). The excessive portion of the contributions from the two (2) non-qualified committees totaled $3,702.60.

The Audit staff recommended that the Committee refund the excessive portions of these contributions. On June 15, 1981, the Committee provided a copy of the check used to refund the $4,875 to the multicandidate committee. For the excessive contribution from one (1) of the apparent non-qualified committees, the Committee provided a copy of the check to document that the excessive portion was contributed to a charitable organization since the committee is no longer in existence. For both refunds, a Committee official agreed to provide copies of the cancelled checks upon receipt from the bank.

For the remaining apparent non-qualified committee, the Committee treasurer stated that the contributing committee had informed him that they had achieved multicandidate status prior to making the contribution. A review of records on file at the Commission indicates that the committee met the requirements for obtaining multicandidate status on April 8, 1980 which was four (4) days after the contribution was made.

Recommendation

Since the excessive contributions received from two (2) of the committees have been disposed of properly, the Audit staff recommends that no further action be taken.

Further, the Audit staff is of the opinion that the multicandidate committee's qualifying four (4) days after contributions exceeding $1,000 were made is immaterial and recommends that no further action be taken on this matter.

new wording 2 5 2 7 2 2 1 6 5

E. Undisclosed Debt

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

Section 104.11 of Title 11 of the Code of Federal Regulations details the reporting requirements for debts and obligations. Those which remain outstanding shall be continuously reported until extinguished. A debt, obligation, or other 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 the obligation is incurred whichever comes first. Any loan, debt, or obligation, the amount of which is over $500 shall be reported as of the time of the transaction.

In examining the Committee's reported outstanding debts at November 30, 1980, the Audit staff identified a total of $177,149.32 in debts which were not disclosed by the Committee. In addition, it was determined that the Committee's disclosed debts at November 30, 1980 were overstated by $34,749.27.

Of the $177,149.32 in undisclosed debts, $136,592.65 were supported by unpaid bills, invoices, etc.

In the interim audit report the Audit staff recommended that the Committee amend their December Monthly report and subsequent reports to the extent affected, to accurately reflect the outstanding debts as of November 30, 1980. On May 19, 1980, amended reports were filed substantially correcting the understatement.

Recommendation

The Audit staff recommends that no further action be taken on this matter.

F. Matters Referred to the Office of General Counsel

Certain other matters noted during the audit were referred to the Commission's Office of General Counsel on February 9, 1981 and June 25, 1981.

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III. Findings Related to Title 26 of the United States Code Determination of Net Outstanding Campaign Obligations and Repayment to the U.S. Treasury

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) and (b) of Title 11, Code of Federal Regulations, requires that the candidate submit a statement of net outstanding campaign obligations (NOCO) which contains, among other items, the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, an estimate of necessary winding down costs, and the total of the fair market value of capital assets on hand, within 15 days of the candidate's date of ineligibility.

Section 9038(b)(1) of Title 26 of the United States Code provides that if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under Section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of the excess payments.

On August 13, 1980, Senator Edward M. Kennedy's candidacy terminated for the purpose of incurring qualified campaign expenses. 8/

At the conclusion of the audit fieldwork, the Committee had filed NOCO statements covering the period from August 13, 1980 through December 26, 1980. To facilitate the verification of the Committee's net outstanding campaign obligations, the NOCO statement as of November 28, 1980 was audited. The Audit staff made necessary adjustments to this statement to properly reflect the candidate's cash position as of November 28, 1980, and to correct misstatements of accounts payable and the Committee's estimate of winding down costs (see Attachment 2).

8/ Commission regulations at 11 C.F.R. Section 9032.6 provide that the date on which a party nominates its candidate for President is the end of the matching payment period for a candidate seeking the Presidential nomination of that party. 11 C.F.R. Section 9033.5(c) provides that the last day of the matching payment period is the date of ineligibility for candidates who have not previously been determined ineligible pursuant to 11 C.F.R. Section 9033.5(a) or (b). Since the Democratic Party nominated its Candidate for President on August 13, 1980, that date is the date of Senator Kennedy's ineligibility.

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Various artists produced original works of art which could be reproduced and used by the Committee as inducements in the solicitation of contributions. It was further determined that the Committee had negotiated bank loans secured by a number of these prints. The Committee has not recognized art prints as a capital asset(s) in any NOCO statement filed to date. Due to the effect on matching fund entitlement that the consideration of art prints as a capital asset(s) could have, the Audit staff requested that the Committee furnish an inventory of art prints on hand at November 28, 1980, as well as an accounting of all prints disposed of between the ineligibility date and November 28, 1980. This information was to be used to determine the inventory on hand at the candidate's date of ineligibility. On January 28, 1981, the Committee presented a memorandum to the Audit staff which stated that, as of November 28, 1980, there were 6,525 art prints on hand. However, the information contained in this memorandum was not sufficient to calculate the inventory at the candidate's ineligibility date.

In the interim audit report, the Audit staff recommended that the Committee obtain and submit a written independent appraisal of the fair market value of the art prints and provide an inventory of prints on hand at August 13, 1980. In the Committee's response to the interim audit report, received on May 19, 1981, the Committee treasurer stated that there were 6,904 prints on hand at August 15, 1980. The Committee, however, did not provide the fair market value appraisal of the artworks because (the Committee) "believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least $10,000." Further the response states: "The request is inappropriate because there is no basis on which to determine the 'fair market value' of the artwork for purposes of 11 C.F.R. Section 9034.5(c), 26 U.S.C. Section 9034."

The Committee treasurer also cited Advisory Opinion Request 1980-136 in which the Commission was unable to decide whether the Committee could lawfully use the artwork to settle debts and stated: "...without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible."

Finally, the Committee treasurer asserted that the artwork should not be treated as a "capital asset" since it cannot be readily converted to cash or used in debt settlement due to restrictions placed on its sale or disposition. He concluded that "the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair."

As of November 28, 1980, the Committee's reported net outstanding campaign obligations as adjusted totaled $1,134,566.51. Based on that amount, the Committee received a matching fund payment of $29,004.47. Therefore, as of that date, the candidate had received no matching fund payments in excess of his entitlement. However, this determination may be subject to change based on the effect that the inclusion of art prints as an asset may have on the Committee's financial position.

Recommendation

The Audit staff recommends that, until such time that the Commission approves or proposes permissible alternatives as to the disposition or liquidation of the artwork, no further action can be taken on this matter.

B. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2) of Title 26 of the United States Code provides that if the Commission determines that any amount of any payment made to a candidate from the matching payment account was used for any purpose other than: to defray the qualified campaign expenses with respect to which such payment was made; or to repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses; it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9032(9)(A) and (B) of Title 26 of the United States Code and Section 9032.9(a) of Title 11 of the Code of Federal Regulations defines a qualified campaign expense as a purchase, payment, distribution, loan, advance, deposit, or gift of money or of anything of value incurred by a candidate, or by its authorized committee, in connection with his campaign for nomination or election; and neither the incurring nor payment of which constitutes a violation of any law of the United States or the state in which the expense is incurred or paid.

1. Expenditures in Excess of State Limitations

As previously discussed in Finding II.C., the Audit staff identified expenditures in excess of the state limitations in New Hampshire and Iowa.

On April 9, 1981, the Commission approved the Audit staff's recommendation that the Committee be requested to demonstrate, within 30 days of receipt of the interim audit report, that these state expenditure limitations had not been exceeded. Further, absent such a showing, a determination would be made regarding an amount required to be repaid to the U.S. Treasury.

The Audit staff reviewed the Committee's response to the interim audit report, and the documentation which accompanied it, and made revisions to the amounts allocable to the New Hampshire and Iowa state limits. The revised summary of Committee expenditures allocable to New Hampshire and Iowa is presented below:

	New Hampshire	Iowa
Committee Allocation Reports	$ 210,884.64	$ 380,792.10
March and April Expenditures	34,425.68	8,917.22
Media	52,151.20	80,390.69
Salaries	73,211.98	111,039.94
Per Diem and Expense Reimbursements	1,913.60	2,852.09
Outstanding Debts	3,242.18	10,970.84
Other Vendor Payments	10,021.79	41,493.44
Total	$ 385,851.07	$ 636,456.32
State Limitations	(294,400.00)	(489,881.00)
Amount in Excess of Limitation	$ 91,451.07	$ 146,575.32

Recommendation

The Audit staff recommends that these expenditures totaling $238,026.39 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

2. Payment of Parking Violations

During the conduct of various audit procedures, the staff identified Committee payments totaling $141.50 for parking tickets received during the campaign. The entire $141.50 was expended prior to the date of ineligibility.

Recommendation

The Audit staff recommends that these expenditures totaling $141.50 be considered non-qualified campaign expenses, and the value be repaid in full to the U.S. Treasury within 90 days of receipt of this report.

Repayment Summary

Finding III.B.1.	Expenditures in Excess of State Limitations	$238,026.39
Finding III.B.2.	Payment of Parking Violations (pre-ineligibility)	$ 141.50
Total		$238,167.89

Pursuant to Section 9038.2 of the Code of Federal Regulations, the amounts noted above in the Repayment Summary, totaling $238,167.89, are repayable to the United States Treasury within 90 days of receipt of this report. If the candidate disputes the Commission's determination that a repayment is required, he may submit in writing within 30 days of receipt of this report, legal or factual materials to demonstrate that a repayment is not required.

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Attachment 1

Comparison of Allocation Totals

New Hampshire

	Audit Verified	Committee Reallocation	Difference
Committee Allocation Reports	$210,884.64	$158,176.01	$ 52,708.63
March & April Expenditures	34,425.68	19,678.47	14,747.21
Media	52,151.20	46,021.85	6,129.35
Salaries	73,211.98	46,138.74	27,073.24
Per Diem & Expense Reimbursement	1,913.60	1,086.13	827.47
Outstanding Debts	3,242.18	2,740.08	502.10
Other Vendor Payments	10,021.79	5,670.94	4,350.85
Total	$385,851.07	$279,512.22	$106,338.85

Iowa

	Audit Verified	Committee Reallocation	Difference
Committee Allocation Reports	$380,792.10	$258,320.27	$122,471.83
March & April Expenditures	8,917.22	5,889.15	3,028.07
Media	80,390.69	85,180.86	(4,790.17)
Salaries	111,039.94	74,981.10	36,058.84
Per Diem & Expense Reimbursement	2,852.09	1,775.03	1,077.06
Outstanding Debts	10,970.84	8,942.24	2,028.60
Other Vendor Payments	41,493.44	38,198.22	3,295.22
Total	$636,456.32	$473,286.87	$163,169.45

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Attachment 2

Kennedy For President Committee
Statement of Net Outstanding Campaign Obligations

November 28, 1980

	As Stated		Adjusted by Audit		
Assets					
Cash	$ 168,566		$ 149,781.27	1/	
Accounts Receivable (net)	10,000		10,000.00		
Capital Assets	-0-			4/	
		$ 178,566			$ 159,781.27
Obligations					
Accounts Payable for Qualified Campaign Expenses	$ 664,800		$ 646,638.78	2/	
Estimated Wind Down Costs 11/28/80 to 5/15/81 (Projected Termination Date)	181,000	3/	149,700.00	3/	
Bank Notes Payable	484,897		484,897.00		
Accrued Interest	13,112	$1,343,809	13,112.00		$1,294,347.78
Net Outstanding Campaign Obligations - Deficit		$1,165,243			$1,134,566.51 4/

1/ Cash in bank was adjusted to accurately reflect the candidate's cash position at 11/28/80.

2/ The Committee's accounts payable balance was adjusted by eliminating undocumented payables totaling $46,479.70 (11 C.F.R. Section 9033.1(a)(1)(i)), and adding documented payables not included in the Committee's balance totaling $61,758.08. Included in the documented payables is a $21,502 contingent liability currently in dispute with the creditor.

3/ The Committee inadvertantly omitted an estimate of wind down costs on the original 11/28/80 NOCO statement. The Committee corrected this oversight by letter indicating that the subsequent NOCO statement of December 15, 1980 included wind down costs which totaled $181,000.00. This amount was adjusted by disallowing a $15,000 postage and handling estimate for mailing gifts to campaign staff and volunteers which does not meet the definition of a wind down cost (11 C.F.R. Section 9034.4(c)), and to correct a $16,300 addition error in totaling the various components of wind down costs.

4/ Exclusive of a valuation of art prints as assets.

Exhibit 1

Unreported Receipts

A review of funds deposited into the state and scheduling accounts revealed that 72 deposits made to 23 accounts, totaling $52,602.79, were not comprised of funds transferred from the national accounts. The Committee did not maintain any records which indicated the source of these funds nor were the receipts reported on the Committee's disclosure reports. Committee officials stated that they would attempt to determine the source of the funds.

The interim audit report contained a recommendation that the Committee identify the source of these funds and amend its reports to include the $52,602.79 in receipts previously not reported. In response to that recommendation, the Committee provided legible copies of deposit tickets and contributor checks which identified the source of the funds for $38,019.22. The Committee also provided copies of deposit tickets for an additional $9,249.50, however, the accompanying copies of the microfilmed bank documents (copies of checks and lists of receipts) were not legible. The Committee did not provide any records pertaining to the remaining $5,334.17, however, copies of letters requesting these records from the appropriate banks were provided.

The Audit staff determined, after reviewing the documents noted above, that the Committee has not included in its reports $17,500.49 out of the $52,602.79 in unreported receipts. At least half of this $17,500.49 is comprised of deposits for which the Committee had documentation.

Recommendation

The Audit staff recommends that the Committee's material non-compliance with the finding be referred to the Office of General Counsel.

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Loan Records

During the fieldwork, the Audit staff requested that the Committee provide for review copies of executed notes, loan agreements, collateral agreements and security agreements for loans reported by the Committee. The Committee's reports disclosed 24 loans totaling $2,647,500.00. At that time the Committee provided sufficient documentation to support one (1) loan. Additionally, partial supporting documentation was provided for three (3) other loans. The remainder of the documents maintained by the Committee were copies of loan agreements and notes which were not signed by the Committee and/or bank officials. Further, the Committee did not disclose on Schedule C-P the collateral and/or the security for 12 of the 24 loans.

Committee officials stated that they would provide the Audit staff with the loan records and amend their reports accordingly.

The interim audit report recommended that the Committee provide copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as noted above. In addition, the interim audit report recommended that the Committee file amendments disclosing the nature of the obligations, including collateral and/or security for 12 of the 24 loans.

Subsequent to the audit fieldwork, the Committee provided the requested documentation or other bank documents which contained the necessary information for 21 of the 23 loans. For four (4) of the 21 loans, the documentation provided was loan history records which included the amount and date of the loan, the rate of interest, the specifics of the security, and a record of payment. The Committee did not provide documentation for the remaining two (2) loans, which totaled $15,000.

Additionally, the Committee submitted amended Schedules C-P on May 19, 1981. These schedules included a description of the security for 11 of the 12 loans originally lacking adequate disclosure. However, the description of the security for three (3) of these loans does not agree with the security disclosed on the bank documents provided for our review. In two (2) cases, art prints pledged as collateral for the loans were not disclosed as part of the security. In the third case, the Committee disclosed "proceeds from fundraising solicitations" as security, whereas the bank documents indicated that the security for the loan was matching funds.

Notwithstanding the minor discrepancies noted above, the Committee has materially complied with the interim audit report recommendation for production of the documents and disclosure of the loans. However, a review of the loan documents provided has raised a number of questions concerning the collateral on the loans. It appears that artwork was pledged as collateral on loans that may not have been in existence (a series of prints had not been printed), or may not have been in the Committee's possession. The collateral listed on documents relating to five (5) loans included works of art from six (6) artists (either the original or a series of prints). However, evidence of the existence of this collateral was not found in the Committee's records. These records consisted of the Committee's brochure which identified artwork used as incentives for individual contributions and the Committee's inventory of artwork on hand as of August 13, 1981. Therefore, the Audit staff was unable to evaluate the adequacy of the collateral for these loans. For one (1) of the five (5) loans discussed above, a Committee official stated that the prints were not produced, however, the Committee owned the original work of art and maintained the right to produce the prints.

In the Committee's response concerning the placing of a value on the artwork for purposes of determining Committee net outstanding campaign obligations, officials have stated: "The 'appraised value' of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's 'worth' to an individual recipient, the value of an individual print to the Committee would be much less. An indication of the magnitude of the reduction in value involved is that, in those cases where artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 of the artwork's 'appraised value'." However, for one (1) loan the appraised value of the artwork pledged as collateral was equal to the amount of the loan principal ($240,000). Approximately five (5) months after the loan was negotiated additional artwork was pledged as collateral. The appraised value of the additional collateral was $154,000; however, this artwork is included in the discussion above concerning whether the collateral existed at the time it was pledged. Two (2) other loans obtained through the same bank were also reported as being secured with artwork, however, these are the two (2) loans noted above for which no documentation was presented.

Since the Committee has not provided documentation for two (2) of the loans and the collateral for the third loan does not appear to offer sufficient protection to the bank in the case of default by the Committee, the Audit staff feels that it is necessary to obtain additional information from the bank in order to determine whether the loans were made in the normal course of business.

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Recommendation

Since questions remain concerning the collateral on the above mentioned eight (8) loans, the Audit staff recommends that this matter be referred to the Office of General Counsel.

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Review of Receipts

Section 441a(a)(1)(A) of Title 2 of the United States Code states, in part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election to Federal office which, in the aggregate, exceed $1,000.

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation, to make a contribution or expenditure in connection with any election to any political office. It further states that it is unlawful for any political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or any officer of any corporation or national bank to consent to any contribution or expenditure by the corporation or the national bank.

Section 103.3(b) of Title 11 of the Code of Federal Regulations states, in part, that contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository and reported. A statement noting that the legality of the contribution is in question shall be included in the report, and best efforts made to determine legality. When the legality of the contribution cannot be determined, refunds shall be made within a reasonable time and the current report shall be amended to reflect the Committee's response.

1. Timely Processing of Questionable Contributions

The Committee maintained a separate checking account, known as the escrow account, for depositing contributions which needed further documentation to confirm their legality. Funds in the escrow account were not expended for campaign purposes until their legality was determined, at which time they were transferred to the operating account.

During the threshold audit, it was determined that the Committee's written procedures for processing questionable contributions deposited into the escrow account were not followed by Committee personnel. The threshold report of the Audit Division included a recommendation that the Committee follow its written procedures as well as revise those procedures to include a written record noting the basis for the appearance of illegality of the contributions.

During the post primary audit, there appeared to be no change in the Committee's method of processing contributions deposited into the escrow account.

According to the Committee's bank records, the balance in the escrow account at January 1, 1980 was $120,542.06. During the period January 1 through August 31, 1980, receipts totaling $172,796.50 were deposited into the escrow account and $243,960.51 was disbursed, leaving a balance at August 31, 1980 of $49,378.05. The Audit staff was able to verify that $236,608.65 was transferred from the escrow account to the Committee's operating account. Also, cancelled checks for contribution refunds totaling $3,815.00 were reviewed by the Audit staff.

The "escrow check log", the Committee's record of deposits into the escrow account, showed a balance at August 31, 1980 of $59,260.48. The records maintained by the Committee do not contain sufficient detail to explain either the discrepancy between the bank balance and escrow check log balance or the source of the contributions making up the $49,378.05 bank balance. As best could be determined by the records provided, contributions making up this balance could have been in the account, in some cases, for as long as eight (8) months.

In its interim audit report, the Audit staff recommended that the Committee determine the source and legality of the $49,378.05 remaining in the escrow account at August 31, 1980 and refund to the original contributors any contributions confirmed to be from impermissable sources. It further recommended that if the source of any contributions could not be identified, the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign or candidate. The Audit staff also recommended that the Committee provide copies of cancelled checks for all contribution refunds made during the period January 1, 1980 to August 31, 1980.

On May 19, 1981 and July 27, 1981, the Committee presented to the Audit staff documentation verifying transfers totaling $20,640 in permissable contributions to the operating account. Documentation was also provided verifying that $3,272.00 was comprised of funds from impermissable sources which the Committee intended to contribute to charity. In addition, cancelled checks for all contribution refunds (except 12 outstanding checks totaling $1,140) were made available for review by the Audit staff. The Committee adjusted the account by $1,348.00 for NSF check charges which were erroneously charged to the account and bank charges of $29.57. The Committee did not provide documentation adequately identifying the source of the remaining $25,644.48 in the escrow account. For a detailed analysis of the deficiencies in the Committee's response see Attachment to Exhibit 3.

Recommendation

It is the opinion of the Audit staff that the Committee has not materially complied with the recommendations outlined in the interim audit report. Therefore, the Audit staff recommends that this matter be referred to the Office of General Counsel.

2. Receipt of Contributions Exceeding $1,000 per Person

During the threshold audit fieldwork, the Audit staff made the Committee aware that the absence of procedures for handling possible excessive contributions could result in a material problem as the campaign progressed. In the threshold report of the Audit Division the Audit staff made a recommendation that the Committee develop procedures to identify and refund excessive contributions in a timely manner.

During the post primary audit, a review of the Committee's contribution records and reports filed for the period revealed 269 contributors who had contributed $121,468.83 in excess of their allowable limitations. Throughout the period audited, the Committee had attempted to contact the contributors to determine whether a portion of their contributions could be attributed to a spouse. However, as of the close of the audit fieldwork, no evidence was available to allow for such an attribution for any of the contributors noted above.

The Audit staff recommended in the interim audit report that the Committee present documentation that the contributions are not excessive, have been legally attributed, or the excessive portions have been refunded to the original contributors.

On May 19, 1981, the Audit staff received the Committee's response to the interim audit report in which the Committee stated:

1. $92,301.83 of the excessive portion of contributions was in fact not excessive for one of the following reasons:

   a. computer error/duplicate line items;

   b. NSF checks not deleted from the computer master file;

   c. the excessive portion was refunded subsequent to the close of the audit fieldwork;

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d. the contribution was from a different person but incorrectly attributed to the (excessive) contributor; or

e. an amount equal to or greater than the excessive portion was attributed to another contributor and has been confirmed either in writing or by phone.

2. The Committee is attempting to obtain documentation from 49 contributors to substantiate that $17,523 in excessive contributions are not excessive, and

3. $12,585 in apparent excessive contributions inadvertantly accepted is being returned to 32 contributors.

The Audit staff reviewed the documentation supplied by the Committee to support the above and verified that $75,316.83 in excessive contributions (pertaining to 164 contibutors) was resolved due to NSF checks not deleted from the master file, contributions attributed to the wrong contributor, duplicate computer line items and documented attributions to other contributors.

In summary, the Audit staff determined that there remain 122 contributors who contributed $48,817 in excess of their allowable limitations. 1/ This $48,817 is comprised primarily of (1) contributions identified as being returned but for which evidence of the refund has not been provided, (2) attributions confirmed by telephone, and (3) those contributions pending confirmation.

Recommendation

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

1/ This includes five (5) contributors who became excessive as a result of the attributions mentioned in the previous paragraph.

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Attachment to Exhibit 3

ANALYSIS OF COMMITTEE RECONCILIATION OF ESCROW ACCOUNT

		Committee Reported	Audit Verified Amount
Bank Balance at August 11, 1980		$49,378.05	$49,378.05
Undocumented expenditures during period 9/1/80 - 3/31/81 1/		(12,090.00)	(10,870.00)
Bank Balance at March 11, 1981		37,288.05	
Committee adjustments			
Redeposited check 2/	(1,000.00)		
Outstanding checks 3/	(3,140.00)		(1,140.00)
NSF checks erroneously charged to escrow account 4/	1,348.00		1,348.00
Escrow transfer 5/	(3,000.00)		
Miscellaneous bank charges	(29.57)	(3,821.57)	(29.57)
		33,466.48 6/	
Permissable contributions to be transferred to the operating account 7/		(13,530.00)	(9,770.00)
Unidentified deposit donated to charity 8/		(3,000.00)	
Amount from prohibited sources to be donated to charity 9/		(3,522.00)	(3,272.00)
Balance (undocumented contributions remaining in the escrow account) 10/		$13,434.48	$25,644.48

1/ The Committee submitted documentation confirming the legality of $10,870.00 of this amount which has been transferred to the operating account.

2/ No documentation concerning this check has been provided.

3/ This amount comprises 12 checks which have been outstanding for over one year.

4/ These NSF checks were charged against the escrow account prior to August 11, 1980. The escrow account has been reimbursed by the operating account for these charges.

5/ The Committee has not identified this transfer.

6/ The Committee submitted a computer print-out of contributors' names and contributions totaling this amount.

7/ The Committee submitted documentation confirming the legality of $9,770.00 of this amount.

8/ The Committee has not provided sufficient information to identify this deposit.

9/ Contributions comprising $250 of this amount had already been refunded in February and April 1980.

10/ The Committee has not presented documentation confirming the legality of this amount.

KENNEDY FOR PRESIDENT COMMITTEE

1000 Sixteenth Street, N. W.
Washington, D. C. 20036

May 18, 1981

Chairman John W. McGarry
Federal Election Commission
1325 K Street, N. W.
Washington, D. C.

RE: Interim Report of the Audit Division
on the Kennedy for President Committee

Dear Chairman McGarry:

This letter will address the issues raised in the Commission's Interim Audit Report on the Kennedy for President Committee following the format set out in its report.

In response to the report the Committee has taken the following actions in order to comply fully with the letter and the spirit of the Federal Election Campaign Act:

1. The Committee has prepared and filed a Comprehensive Amendment as of November 30, 1980, correcting the technical reporting errors and omissions which were cited in the Commission's report.

2. The Committee has conducted an exhaustive search of its records to determine the nature, extent and identification of all deposits which were made into state and other local accounts, and where required, the Committee has reported all such deposits in the Comprehensive Amendment.

3. During the past several weeks the Committee has reviewed all of the contributions which the Commission felt might represent excessive contributions. In reviewing the Commission's schedule of such contributions it became apparent that a large number of those, in fact, were not excessive. The most common error arose from the Committee's computer entry system which often would enter a contribution from the same individual in the same amount several times. Further, the computer from time to time through entry error, aggregated contributions from individuals living in the same household with similar first names and the same family name.

4. The Committee devoted substantial resources to studying expenditures in New Hampshire and Iowa which may have exceeded the limitations of 26 U.S.C. Section 9035. For the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining

what expenditures should be allocated as applying against a state expenditure limit. The Commission's regulations set forth a "reasonable basis" standard for allocations, and in particular, 11 C.F.R. Section 106.2 sets forth a regulatory scheme for the allocation of expenditures among states by candidates for presidential nomination.

The standards, although somewhat vague, were applied in 1976 without apparent difficulty. It appears, however, that the Commission has changed its position in 1980 shifting the burden to the candidate to prove that any method of allocation was reasonable in contrast to the standard used in 1976 that placed on the Commission the burden of proving that the allocation was in fact unreasonable. The Committee believes that any method of allocation between states which is reasonable should be accepted by the Commission, and if, in the future, the Commission desires to regulate this area in a more specific manner, it should do so through the regulatory framework set up under the statute not retrospectively through the audit process.

The Committee's method in analyzing its state expenditures in Iowa and New Hampshire was to examine each expenditure made on an individual basis to determine whether or not the individual expenditure should be allocated to the particular state in whole or in part. The bulk of the work in this area was performed by independent auditors working for two national accounting firms. A more specific description of the Committee's analysis of expenditures made in Iowa and New Hampshire will be set out later in this letter.

COMMITTEE RESPONSE

Following are the Committee's specific responses to the interim report's findings and recommendations, numbered to correspond to your report.

II. Audit Findings & Recommendations Relating to Title 2 of the U.S.Code

FEC Auditors' Recommendations

"The Audit staff recommends that . . . . the Committee:

1) amend their reports to include the 34 expenditures totalling $73,916.15 made from national accounts previously unreported;
2) amend their reports to include the $220,526.54 in expenditures drawn on state and scheduling accounts and not previously reported;
3) identify the source of the funds and amend their reports to include the $52,602.79 in receipts comprising the deposits to the 23 state and scheduling accounts previously not reported;
4) amend their reports to increase unitemized receipts by $9,000.00 to correct the error made in attempting to adjust for contributions returned by the bank for insufficient funds; and
5) amend their reports for mathematical errors which caused a $4,141.44 overstatement in total expenditures."

The Committee, through its Comprehensive Amendment, has corrected all of the aforementioned reporting errors and currently reported any items which were previously omitted. Further, the Committee has refiled the November 30, 1980 Year End 1980, and March 31, 1981 reports correcting past reporting errors described in the Audit Report. Specifically:

1) The Committee has included in its 1980 Comprehensive Amendment, 34 expenditures totalling $73,916.15 made from national accounts which were previously inadvertently unreported (Exhibit A);

2) The Committee also included in the 1980 Comprehensive Amendment, state and scheduling account expenditures totalling $207,409.04 which were not previously reported. The discrepancy between this amount and the $220,526.54 reflected in the Auditors' recommendation results because the auditors arrived at their total by reviewing a draft of the Comprehensive Amendment. The draft did not properly reflect expenditure amount corrections. The 1980 Comprehensive Amendment, as filed, reflects amount corrections by reporting the actual amount of the expenditure while simultaneously deducting the amount originally reported (Exhibit A).

3) The Committee has provided the auditors with records of 67 deposits totalling $49,718.16 as outlined in Attachment 2 of the Interm Report:

The Committee has amended its reports to reflect receipts in 20 of the state and scheduling accounts listed in Attachment 2 of the interim report (Exhibit A), except in cases where the documentation was illegible. Despite repeated efforts by the Committee, documentation for the following five deposits has not been obtained:

Bank	Date	Amount
Bank of Maine	2/14/80	$ 200.00
	7/15/80	70.68
	7/01/80	913.00
Merchants National Bank	4/21/80	320.00
Berlin City Bank	Unknown	1,380.50
Total		$2,984.18

B. MISSING RECORDS

1. Bank Accounts Records

"The Audit staff recommends that the Committee provide for our review . . . . the bank records outlined on Attachment 3."

The Committee has provided records from 21 banks as requested by the Audit Staff but the Committee to date has been unable to obtain the records required from the following three banks. Further efforts are being made to obtain these records:

State	Bank
Vermont	Merchants National
Rhode Island	Columbus National Bank
Maine	Bank of Maine

The Audit Staff indicated a failure on the part of the Committee to furnish missing bank records and loan documentation despite repeated requests to Committee Officials for such information. From the facts available to Committee Officials, this statement appears to be incorrect. Although Committee Officials were aware of the Auditors' interest in obtaining the missing bank records, no formal requests were received by the Treasurer or Chairman of the Committee. Upon the first informal request by the Audit Staff, the Committee Staff sent letters to the various banks requesting photocopies of all missing documentation, but as the Commission is well aware, banks may be quite slow in responding to such requests. The Committee made repeated requests of banks that failed to respond and to date, all but the three banks noted above have responded. The Committee has furnished the Audit Staff with all the records in its possession and included in the 1980 Comprehensive Amendment any receipts ascertained to have been previously unreported.

2. Loan Records
FEC Auditor's Recommendation

"The Audit Staff recommends that the Committee provide for our review . . . . . copies of executed notes, loan agreements, collateral agreements, security agreements and any other documents relating to all loans negotiated by the Committee, excluding those documents received as indicated on Attachment 4. In addition, the Audit Staff recommends that the Committee file an amendment to disclose the nature of the obligations, including collateral and/or security for the 12 loans".

The Committee wishes to direct the Commission's attention to the fact that neither the statute nor the Commission regulations require the Committee to keep executed copies of loan agreements or executed notes. The Committee has attempted to obtain copies of all the original loan agreements and executed notes from the various banks. Wherever the Committee has been unable to obtain a copy of the original papers from a bank, the Committee has requested a letter from the president or loan officer of the lending bank specifying the terms of the agreement or note.

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It was the Committee's practice during the campaign to prepare various loan documents and have the Committee's Treasurer or Chairman sign the papers. These were then copied at the Committee's headquarters with the originals being forwarded to the bank. Once the bank was in receipt of these documents, it executed and retained the originals. Therefore, in most cases the copies signed only by the Committee's Treasurer of the loan documents were in the Committee's possession.

The Committee has provided the Commission's auditors with copies of all executed notes, loan agreements, collateral agreements, security agreements requested (See Attachment B), except those concerning the following loans which have been documented in a different fashion.

Bank/Lender	Date	Amount
Chemical Bank NY	11/16/79	$ 200,000
	11/23/79	100,000
	11/27/79	100,000
	11/30/79	200,000
	12/03/79	100,000
	12/04/79	100,000
	02/11/80	100,000
	03/14/80	100,000
District of Columbia	11/05/79	$160,000
National Bank	11/28/79	90,000
Washington, D. C.	04/07/80	5,000
	04/22/80	10,000

In the Committee's Comprehensive Amendment, the Committee has disclosed all of the securities and collateral for the various loans which were made to the Committee (See Attachment A).

C. ALLOCATION OF EXPENDITURES TO STATES
FEC Auditor's Recommendation

"The Audit staff recommends that the Committee adjust their accounting records to reflect the amounts allocable to the two (2) states noted above, and file amendments to reflect their adjustments. . . . In addition, we recommend the Committee provide the Audit staff with sufficient documentation to allow an allocation determination to be made for those expenditures noted in II.C.4. above".

The Committee has adjusted its accounting records to reflect the amounts allocable to Iowa (Exhibit C), and New Hampshire (Exhibit D) and has amended its last three required reports to reflect adjustments. The Committee has ready for inspection all documentation for the allocations in Iowa and New Hampshire.

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Again, for the record, the Committee would like to note that many questions have been raised regarding the Commission's current procedures for determining what expenditres should be allocated as applying against a state expenditure limit. The Commission's regulations 11 C.F.R. Section 104.10 and 106.1 (a) set forth the "reasonable basis" standard for allocations, and 11 C.F.R. Section 106.2 sets forth a regulatory scheme for all allocation of expenditures among states by candidates for presidential nomination.

11 C.F.R. Section 106.2 states in relevant part:

(a) Expenditures made by . . . an authorized committee which seeks to influence the nomination . . . shall be allocated to that State . . .

(b) Expenditures for administrative, staff, and overhead cost directly relating to national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.

(c) An expenditure . . . for use in two or more States, which cannot be attributed in specific amounts to each State, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditures (Emphasis added).

(1) Expenditures for . . . television. . distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience. . . of voter age which can reasonably be expected to be influenced by these advertisements (Emphasis added).

(2) Expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

As stated above, the standards, although somewhat vague, were applied in 1976 without apparent difficulty. It is clear under the standard applied for the 1976 elections and the Commission's regulations, that the Committee followed reasonable methods in allocating expenditures between various states, national and exempt accounts.

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The Committee's method of analyzing state by state expenditures in the cases of Iowa and New Hampshire was to review, with the assistance of two accounting firms, each individual expenditure potentially allocable to Iowa or New Hampshire determining whether or not the expenditure should be allocated to the particular state. In reviewing these expenditures, the Committee at first determined whether or not the expenditure was made for the purposes of influencing the nomination in that particular state. For example, if the voucher indicated that it was a per diem payment made to an individual from an Iowa State Account for a per diem in New York, the per diem was allocated to New York.

OVERHEAD ALLOCATION

During the campaign, the Committee recognized the necessity of developing a methodology for establishing the portion of payroll related costs to be allocated to exempt expenditures. These percentages would also be applied to overhead costs, thus allocating a portion of overhead costs to exempt expenditure in a manner consistent with salary allocation.

In order to implement a reliable allocation policy, the Committee asked the independent auditing firm of Fox & Company to develop a methodology and establish percentages to be used in allocating costs to exempt functions.

Fox & Company computed a weighted average percentage of fundraising and compliance time for each state using a sample of four states, thus computing an average to be applied to all states. The computation involved totalling the detail estimates provided by state coordinators for the four sample states to obtain the percentage of exempt costs.

The selection of four states by Fox & Company was judgmentally based on various levels of campaign activity and based on the timing of the state campaigns, in an attempt to insure a representative sample. Percentages were assigned to employees in each state based on interviews with state campaign officials, selected because they directed the campaign activity in each state.

Using the methodology and procedure previously described, Fox & Company determined that 17% of payroll costs relates to fundraising and 22% relates to compliance.

INTERSTATE TRAVEL AND COMMUNICATIONS

The Committee isolated all interstate travel, interstate Federal Express or other types of delivery service, and interstate communications, and allocated these pursuant to 11 C.F.R. 106.2 (c) (2) to the national expenditure limitations.

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MEDIA EXPENDITURES

The Committee reviewed all of its media expenditures in Iowa and New Hampshire and determined that the previous allocation method used by its vendor had been incorrect. The Committee used a new allocation formula based on the number of eligible Democratic voters which, by industry standards, were in the viewing area, and possible viewers of a particular TV Station to allocate the cost of a broadcast (Exhibit F).

NATIONAL PRESS

Further, each expenditure which the FEC Auditors preliminarily allocated to Iowa or New Hampshire, was reviewed to determine whether or not the expenditure was a reimbursable expenditure from the National Press. The Committee's billing of the National Press has already been reviewed by the Commission, through an enforcement proceeding. The Committee's basis for charging National Press 225% of the cost of a first class air fare was approved by the Commission in that investigation. The Commission determined that these charges, which covered, among other things, air travel and various ground services that were provided by the Committee, were permitted under the FECA. These services included transportation to and from the airport, baggage handling, typewriters in press rooms, telephone, coffee and refreshments, station wagons and vans in motorcades. In cases where transportation was needed from town to town, buses were supplied without additional cost to the National Press. In conjunction with these services to the National Press, campaign staff was also assigned to the National Press travelling with the candidate.

An attempt has been made to isolate all of these costs and to identify the various staff persons who devoted all or a portion of their time to the National Press. It is clear that since these expenditures were related to the National Press, they should not be allocated to an individual state, but should treated as National Expenditures. (Cf. 11 C.F.R. Section 9004.6 and Explanation and Justification).

COMPLIANCE AND FUNDRAISING

Further, the Committee ascertained each individual or percentage of an individual's time that was devoted to record keeping or compliance activity, and identified these expenditures as being exempt from the state limits. (Cf. 11 C.F.R. Section 100.8 (b)(15)).

In addition, each individual who had specific responsibilities for fund raising at an event was identified and a portion of their time was attributed to the fund raising event. Overhead expenses were isolated and a percentage formula was applied to all overhead expenses allocating out a reasonable amount for legal, accounting and fundraising. (Cf. 11 C.F.R. Section 100.8(b)(21)).

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ADVANCE STAFF PERSONNEL

The Audit Staff provided the Committee with workpapers supporting their determination of the amount of advance staff payroll of $ 26,613 and $ 38,188 allocable to Iowa and New Hampshire. The Audit Staff determined their allocations by first computing the daily salary for each advance person, assuming a five day work week. The daily salary was then multiplied by the number of days the advance person spent in the State to arrive at the total allocation per person.

The Committee reviewed the work records of its advance personnel and ascertained that during the campaign period they worked on a seven day work week and therefore determined their daily salary based on a seven day week and not the five day week used by the Committee Auditors in the interim report.

Recognizing that the advance staff worked seven days per week during the campaign and made several trips in and out of a given State during the campaign, the Committee has used the following procedure to allocate advance staff salaries.

The daily salary for each individual was computed based upon a seven day week. This daily salary was multiplied by the number of days each advance person spent in the State, excluding all travel days, to arrive at the maximum amount allocable to the State if the advance person spent most of his time involved in influencing the election in that State.

Since the nature of advance work involved significant expenditure of time supporting national press corps, compliance, and fundraising activity, the maximum amount computed for each advance person was allocated to the various categories based upon the percentage of time spent on exempt activities by each advance person. The Committee determined that $14,806 of advance salaries was allocable to Iowa and $20,324 to New Hampshire.

ALLOCATION SUMMARY

When these adjustments were taken into account as indicated on the attached Exhibits C and D, the total expenditure in Iowa was $ 451,803 and $ 267,223 in New Hampshire. It is the Committee's firm belief that the methods used in determining these allocated amounts were reasonable and within the Commission's guidelines and regulations.

These revised allocations are reflected in the 1980 Comprehensive Amendment.

D. REVIEW OF RECEIPTS

1. Timely Processing of Questionable Contributions

FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee attempt to determine the source and legality of the $49,378.05 . . . . . remaining in the escrow account. Any contributions confirmed to be from impermissible sources should be refunded to the original contributors and copies of the cancelled checks (front and back) provided to the Audit Staff.

If the source of any of the contributions cannot be identified, the Audit Staff recommends that the Committee use the contributions for any lawful purpose unrelated to any Federal election, campaign, or candidate.

The Audit Staff also recommends that . . ., the Committee provide copies of cancelled checks not already provided (front and back) for all contribution refunds made during the period January 1, 1980 through August 31, 1980."

The Committee has reconciled the escrow accounts and provided an inventory of its current composition (Exhibit E). One deposit of $3,000 could not be identified and has been donated to a qualified charity under 26 U.S.C. 501 (c)(3) (Exhibit G).

The Committee is attempting to determine the legality of a number of escrowed items and is in the process of contacting each person who is indicated as the donor. The Committee has refunded to the original contributor or donated to charity, all contributions from possibly impermissible sources (Exhibit I).

2. Receipt of Contributions Exceeding $1,000 per Person

FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee present documentation that the contributions are not excessive, have been legally attributed, or the excessive portions have been refunded to the original contributors."

The Committee has determined that $82,301.83 in contributions were not excessive.

The Committee is returning to 32 contributors $ 12,585 of what appears to be excessive contributions inadvertently accepted (Exhibit H).

The Committee is still attempting to obtain documentation from 49 contributors with contributions totalling $ 17,523.00 which will substantiate that the contributions are not excessive.

E. CONTRIBUTIONS FROM OTHER POLITICAL COMMITTEES

1. Itemization of Contributions from Political Committees

2. Excessive Contributions from Registered Committees
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee either provide evidence that the contributions noted in (1) above were not received or file amended reports itemizing the contributions. In addition, the Audit Staff recommends that the Committee refund the excessive portion of the contributions noted in (2) above."

The Committee has, through its Comprehensive Amendment, itemized 27 contributions totalling $ 30,319 from political committees which may not have been itemized in previous reports. A $3.00 amount from the Kennedy for President Committee is an internal transfer. As to the excessive contribution in the amount of $4,875, this was inadvertently transferred from the Carter/Kennedy Unity Dinner Committee and has been returned. The second purported excessive contribution in the amount of $3,702.60, does not appear to the Committee to be excessive since it was made by a qualified multi-candidate committee.

F. UNDISCLOSED DEBT
FEC Auditors' Recommendation

"The Audit Staff recommends that . . . the Committee amend their December Monthly Report to accurately reflect the outstanding debts as of November 30, 1980, and amend subsequent reports to the extent that they are affected by those changes."

The Committee has refiled its December Monthly Report to accurately reflect the outstanding debt as of November 30, 1980, and has refiled subsequent reports to the extent necessary (Exhibit A).

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III. Findings Related to Title 26 of the United States Code
Determination of Net Outstanding Campaign Obligations
and Repayment of the U. S. Treasury

A. Determination of Net Outstanding Campaign Obligations
FEC Auditors Recommendation

"The Audit Staff recommends that the Committee obtain a written independent appraisal as to the fair market value of the art prints as of August 13, 1980, as well as a correct inventory of items on hand as of that date and submit this information to the Audit Staff . . . "

The Committee provided the requested inventory (Attachment K), but believes it inappropriate for the Committee to incur the expense of an additional appraisal which would run at least $10,000. The standard fee for such an appraisal is 1% of the appraisal value. The request is inappropriate because there is no basis on which to determine the "fair market value" of the artwork for purposes of 11 C.F.R. Section 9034.5 (c), 26 U.S.C. Section 9034.

Background

The Federal Election Campaign Act exempts individual volunteer services from the definition of "contribution", 2 U.S.C. Section 431 (8)(B)(i) (Supp. III 1979). Pursuant to this provision the Commission determined that no contribution results where an artist donates his or her services to a political committee by creating works of art that the committee then "sells", or more precisely, uses as inducement for contributions, Advisory Opinion 1979-35. Any amounts paid by a person who receives such artwork, are considered contributions to the Committee, Advisory Opinion 1980-34.

Relying on the Commission's interpretation, a number of noted artists volunteered their services to the Kennedy for President Committee to create limited edition original works of art which the Committee could use to raise funds. The Committee paid for the materials used and other expenses of production while the artists donated their services. The artwork consisted of limited edition lithographs and serigraphs. 7,222 pieces were created, of which 6,904 remained in the Committee's possession on August 15, 1980 (See Exhibit K).

Use of the Artwork

The Committee used the artwork in three ways: 1) The artwork was used as an inducement for contributions. The artwork could not be "sold" in the conventional sense because the Commission's ruling that amounts paid for it would be considered contributions limited its marketability. The Committee did not assign a price to any of the items. Although promotional literature indicated each piece's "appraised" value, contributors were often given works of art with a higher appraised value than their contributions. Also the amount contributed for any particular piece varied. 2) The artwork was

used as collateral for a number of bank loans. It was appraised in connection with the negotiation of these loans, with the values for individual pieces ranging from $225 to $1,200. (See Exhibit K). Only 1/3 of this "appraised value" was acceptable to the banks as an estimate of the work's value as collateral, however. (The Commission determined in MUR 1195 that there was no reason to believe the use of the artwork as collateral for loans violated the Act). 3) After the end of the campaign, much of the artwork was given to campaign workers and other persons who had been especially helpful to the campaign in appreciation of their assistance.

The Committee sought an Advisory Opinion on whether it could use the artwork in settlement of debts. (AOR 1980-136) The Commission was unable to decide whether such use violated the Act.

(a) Lack of Basis to Determine "Fair Market Value"

Commission regulations do not define the term "fair market value". Since "fair market value" is a term of art for tax purposes, it is appropriate to construe the Commission's use of the term in a manner consistent with the Internal Revenue Code. Cf. 2 U.S.C. Section 438 (f) (Supp. III 1979).

Valuation of assets often occurs in connection with Federal gift taxes. Tax on a gift of property is imposed based on its "fair market value" on the date of the gift. See 26 C.F.R. Section 25.2512-1. "Fair market value" is defined as:

> (T)he price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.

Similar definitions apply in the context of income tax and estate tax. See 26 C.F.R. Sections 2.2002-1, 2031-1 (1980).

It is well settled that restrictions on the sale or disposition of property must be taken into account in determining its "fair market value". See R. Stephens, G. Maxfield & S. Lind, Federal Estate and Gift Taxation, Section 2512, 10.01 (2)(b) (1978 & Suppl 1980). The question often arises in the case of restrictions on the sale or disposition of stock in closely held corporations. See Spitzer v. Commissioner, 153 F. 2d 967 (8th Cir. 1946); James v. Commissioner, 148 F.2d 236 (2d Cir 1945); Commissioner v. McCann, 146 F.2d 385 (2d Cir. 1944). Where such restrictions, or other characteristics, make stock unmarketable, these factors must be taken into account in determining fair market value. See Koffler v. Commissioner, 37 T.C.M. 697 (1978).

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Applying these principles to the question of determining "fair market value" for purposes of calculating net outstanding campaign obligations (NOCO), some difficulties immediately appear. The Commission has imposed a direct restriction of the sale of donated artwork -- any sale must be subject to the contribution limits of the Act, even if potential buyers are not informed that the proceeds of the sale will go to a political committee. See Advisory Opinion 1980-34; Advisory Opinion 1979-35. This restriction depresses value in two ways. First, the purchase price must not exceed $1,000 (unless a group of individuals engaged in a joint purchase). Second, the universe of potential buyers is decreased by excluding those persons who have already given the maximum amount as well as those persons who may wish to own the artwork but do not want to be a contributor to the committee "selling" it. 1/

Even if a discount might be calculable for the restrictions imposed on the"sale" or disposition of the artwork; calculations of fair market value is made impossible by the fact that the Commission has not stated what other legal uses may be made of the artwork. For example, the Commission was unable to decide whether the artwork may be used in debt settlement. See Response to Advisory Opinion Request 1980-136. Without a clear definition of what may and may not be done with the artwork, calculation of its value to the Committee is impossible.

1/ Another difficulty is that the artwork is often given as an inducement for contributions much less than the work's "appraised value". Also, the artwork may be given away at no charge as a means of showing appreciation to campaign workers or to other persons who have been especially helpful.

(b) Cost as Value

The Committee bore the complete expense of production of the artwork including paper, printing, services of production personnel, etc. The total cost to the Committee was approximately $90,000. Another possible basis of valuing the artwork, therefore, would be to use the amount actually invested in it by the Committee. This would comport with the approved method for valuing inventories for tax purposes under the Internal Revenue Code. See 26 C.F.R. Section 1.471-2(c) (1980). Viewing the artwork as inventory rather than a capital asset would be much more realistic in view of the similarity between a commercial dealer holding goods for sale and the Committee's holding the artwork as an inducement for contributions. The artwork was not produced for investment purposes. From the beginning, the Committee intended to distribute in return for contributions. Treating the artwork as inventory would place it properly in the same category as other fundraising items such as books, records, and T-shirts.

(c) The Artwork is Not a "Capital Asset"

Commission regulations define "capital asset" for "Net Outstanding Campaign Obligations" as "any property which has remaining useful life exceeding 1 year from the candidate's ineligibility, provided that the fair market value at the date of ineligibility exceeds $500, (emphasis added). 11 C.F.R. Section 9034.5 (c) (1980). It is impossible to calculate the artwork's fair market value for NOCO purposes (see above discussion). Since there is no basis on which to determine that the value of any of the prints exceeds $500, it should not be held to be a "capital asset".

If one attempts to calculate the "fair market value" of the artwork for NOCO purposes based on its "appraised value", the discounting required to take account of the restrictions imposed on the Committee's use of the artwork would certainly bring the "value" of any particular print below $500. The "appraised value" of the artwork is the retail value of each print, sold individually, after the entire series has been sold. While this may be an appropriate approximation of each print's "worth" to an individual recipient, the value of an individual print to the Committee would be much less.

This is true even in the absence of sales restrictions. The Committee, in order to market the prints commercially, would have to "job-out" the artwork to a number of galleries, with attendant commissions and transaction costs, or would have to "wholesale" it, requiring a significant discount. An indication of the magnitude of the reduction in value involved is that, in those cases in which artwork was used as collateral for bank loans, loans were only given to the amount of 1/3 the artwork's "appraised value". Since the highest "appraised value" for any piece was $1,200, 1/3 of "appraised value" formula used by the banks demonstrates that no work exceeds $500 in value, even before discounting for restrictions on sale and disposition.

Not treating the artwork as a "capital asset" also agrees with the purposes of including only capital assets in the NOCO calculation. Capital assets are included on the assumption that such assets can be readily converted into cash or used in debt settlement. Because of the restrictions on its sale or disposition, the artwork cannot be considered readily convertible into cash in the same manner as, for example, an automobile owned by the Committee. Furthermore, the Commission's previous inability to determine whether the artwork may be used in debt settlement makes an ex post facto determination that the artwork was so usable on the date of ineligibility grossly unfair.

B. Apparent Unqualified Campaign Expenses
FEC Auditors' Recommendation

> "Absent a showing to the contrary. . . the Audit Staff will recommend to the Commission that these expenditures totalling $348,342.59 be determined as non-qualified campaign expenses, and be repaid in full to the United States Treasury."

As above stated, the Committee has analyzed each item making up the Commission Auditors total expenditures for Iowa and New Hampshire. The Committee allocated $451,803 to Iowa, and $267,223 to New Hampshire. (Exhibits L & M). The limit in Iowa was $489,881 and in New Hampshire $294,400. Therefore, the Committee believes it did not have expenditures in excess of the limits.

Sincerely,

William C. Oldaker
Treasurer

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

August 6, 1981

MEMORANDUM

TO: Robert J. Costa

THROUGH: B. Allen Clutter
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Report of the Audit Division on the Kennedy for President Committee - A-943

The Office of General Counsel has received the audit division's draft of the final audit report for the Kennedy for President Committee. The General Counsel's Office, having reviewed the final audit report for legal sufficiency, makes the following comments with respect to those sections of the audit report noted. 1/

II. Audit Findings and Recommendations Relating to Title 2 of the United States Code

B. Missing Records

This portion of the report should briefly address (at page 5) the contention of the Kennedy for President Committee ("Committee" or "KFP") that "no formal requests [for missing records] was received by the Treasurer or Chairman of the

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1/ For those sections of the Report not mentioned in this analysis, it can be assumed that the General Counsel's Office does not feel there is a problem with the legal sufficiency of those portions of the report.

Committee." In that such formal requests, culminating in a Commission letter to the candidate himself, were in fact communicated to the Committee, and, in that the Committee response will be availabe to the public, we suggest that the audit report should, to the extent possible, contain a refutation of those allegations made by the Committee in its response.

B. 2. Loan Records

This section of the final audit report recommends that two loans to KFP using art work as collateral be the subject of a referral to this office for compliance action. With respect to one of these loans, the basis for the auditors' recommendation is that, according to a Committee official, the art prints pledged as collateral for a bank loan and identified on the security agreement between the Committee and the lending institution, was not in existence at the time the agreement was entered into by the parties. Rather, only the original work of art which would be used to produce the prints in question was in existence at the time, with ownership and reproduction rights vested in the Committee. However, under the Copyright Act of 1978, the right of ownership in a given work of art - i.e. an art print- does not convey the right of ownership to any reproduction of that work. Such rights of reproduction must be expressly assigned, and will not be inferred. Thus, unless the security agreement expressly conveyed the rights of reproduction for the work of art which was to be used to make the prints, as well as the prints themselves, those reproduction rights would not be transferred to the lendor upon a Committee default on the loan. The security agreement apparently made no mention of reproduction rights, probably because it assumed the prints already existed and did not remain to be produced. Nor did the agreement make mention of how the costs of reproduction would be defrayed. Therefore, the Office of General Counsel agrees with the auditors that there may be a question as to the legality of this loan -- specifically, as to whether it was adequately secured to assure repayment -- and that this matter should be referred for possible compliance action.

The other matter involving a loan which the auditors feel should be referred to this office, concerns the use of art work with an appraised value of $240,000 as collateral for a loan in that same amount. The auditors question whether collateral which has the same appraised value as the principal of a loan can serve as adequate security for that loan, especially in light of the practice of other banks to require security of this type valued at three times the amount of the

principal as collateral for a loan. However, the only relevant questions for purposes of the Act are whether the loan is adequately secured and whether it was granted in the ordinary course of business for the lending institution in question. It is our position that the practices of other banks, while perhaps supplying evidence in determining what adequate security and "ordinary course" may be, does not set the standards by which the legality of loans from other lending institutions will be measured.

Moreover, other loans secured by collateral with a value of even less than the loan principal have not been deemed by the Commission to be "out of the ordinary course" or under-collateralized. See e.g. MUR 1195 (No reason to believe loan not made in ordinary course or inadequately secured where collateral for loan was future expectancy of matching funds.) Thus, in this instance where the appraised value equaled to the amount of the loan, we do not think this matter should be referred to our office.

C. Allocation of Expenditures to States

Before providing specific comments concerning the various subparts of this section of the report, the Office of General Counsel notes that this section is not as clear or understandable to the reader as we would hope a public document such as this would be. This is due to the fact that the Committee's response is not organized in the same fashion as the interim audit report but rather overlaps, and in some cases falls between, the categories set forth in that report, thereby making it difficult for the auditors to integrate the KFP response into the interim audit report structure. The result, however, is a report with two parallel subsections dealing with allocation of expenditures, neither of which seems to address or really relate to the points raised in the other subsection.

In order to remedy this problem, the Office of General Counsel suggests that this section of the report be redrafted into one set of categories (instead of two - the auditors' and KFP's), with each containing the Commission's position (as set forth by the interim audit report), the Committee's contentions, and, finally, the auditors' response to those contentions. To the extent this requires some regrouping or modification of the headings of the interim audit subsections, or the addition of categories not contained in the interim report, the Office of General Counsel feels this would be an acceptable

departure from the normal procedure followed in drafting a final audit report, in that it would serve the more necessary function of creating an integrated whole.

4. Per Diem and Expense Reimbursements

The first paragraph of this section should contain a footnote or some other indication of the basis of the auditors' determination that the additional per diem and expense reimbursements set forth should have been allocated to New Hampshire and Iowa. Specifically, examples of the types of indicators in the documentation that the auditors relied on -- such as the Committee's own coding system, travel voucher statements as to personnel destinations, receipts from the state in question -- ought to be identified. This will enable the audit report to stand on its own as a "record" of what was before the Commission when it made its repayment determination, should the Committee challenge that determination in the court of appeals.

5. Outstanding Debt

Again, this portion of the report should reflect that the source of the auditors' determination that the expenditures in the amounts noted were allocable to New Hampshire and Iowa was based on the Committee's own computer print-out of expenditures. This print-out designated the state the expense should be allocated to when paid; and, after verifying the accuracy of these Committee designations with supporting documentation, the auditors' adopted these figures in allocating previously unallocated expenditures to Iowa and New Hampshire. As previously stated, the suggested insertion will create a more complete record for any possible appellate action, as well as emphasizing that the auditors are not creating their own figures in this area but rather are merely adopting the Committee's own allocation system which the Committee failed to reflect in its reports.

6. Other Vendor Payments

The comments made with respect to the subsection immediately preceding this one also apply to paragraph one of this subsection.

[Audit Reply to Committee Response:] I. Overhead Allocation

This subsection of the final audit report deals with the allocation system offered as an alternative by the Committee in its response to the allocation figures contained in the interim audit report. The Committee maintains that a certain percentage of state "overhead" costs can reasonably be attributed to the

exempt categories of fundraising and compliance and (therefore need not be allocated to a state), in that an equivalent percentage of staff time spent in the offices located in the states was spent on these exempt activities.

In discussions with the auditors, it seems that the audit division does not dispute the reasonableness of this theory; in fact, some other committees used this same theory to determine a percentage of national costs which would be attributable to exempt categories and thereby permissably excluded from their overall spending limitations. Rather, the problem the auditors have with the Committee procedure is that no work papers of the accounting firm which derived the percentages were provided for audit review. The auditors do not know, for instance, if percentages were derived by actual staff accounts and review of time sheets, or were merely "guestimates" by certain individuals who were not even present in the field offices during the relevant time periods. Nor is there any indication of the scope of the category the Committee has defined as "overhead" expenditures, nor the definitions applied by the accounting firm in determining whether staff time was directed to "compliance" or "fundraising". Therefore, it is understandable that the auditors do not feel they can state for public review that this proposed alternative allocation system by the Committee has been verified and is reasonable, and thus cannot depart from the recommendations of the interim report. 2/ The Office

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2/ The Committee contends that the use, in itself, of an outside auditing firm to compute these figures is prima facie evidence of the reasonableness of the allocation derived, especially in light of the presence of a letter from a firm partner stating the method used by the firm was "rationale". That the firm which computed these figures provides a self-serving statement that the methodology used by it was rational can hardly be said to be dispositive of the issue of the reasonableness of the allocations prepared by it. This is not the situation where a company prepared financial statement is reviewed by an outside auditing firm, whereby that firm's "independent" opinion concerning the financial statement, using long established generally accepted accounting principles as a standard, is given great (although not determinative) weight. There is no independent review in this situation -- the firm giving the opinion made the computations in question. Furthermore, there are no standards set forth by the accounting industry with respect to procedures to be followed in determining allocation figures for purposes of chapter 9s of the Internal Revenue Code.

of General Counsel does believe, however, that the audit reply to this portion of the KFP response should make it clear that if the aforementioned documentation is provided, and if the definitions of "fundrasing" and "compliance" used comport with the Act and the Commission's definitions of these terms, the Committee allocation will not be challenged as unreasonable. 3/

The General Counsel's Office also believe that if the percentages at issue were calculated on the basis of the personal knowledge of Committee staff, that that information be accepted without requiring the Committee to further prove the staff assertions and recollections. Assertions of other committees as to the amount of time spent by staff in various activities were accepted without requiring additional proof of those assertions. 4/ Also, it is unclear exactly what type and quantity of evidence would satisfy the standard of proof in this regard. 5/ Accordingly, this office suggests that any references in the report to the insufficiency of Committee documentation, or the necessity of further information or proof in this regard (such as the last sentence of the second paragraph on page fourteen) should be deleted from the report, as well.

3/ Similarly, the ~~fourth~~ paragraph of page 10 should be modified to indicate that rather than finding the Committee allocation system as less than reasonable, the auditors simply cannot verify the reasonableness of this newly adopted system absent a review of the documentation supporting those figures. The Office of General Counsel also believes that the reference, contained in the last paragraph of this subsection, to the unavailability of an opinion from the Committee's outside accounting firm as to the reasonableness of its calculations, should also be deleted from the report. See n. 2, supra.

4/ For example, in the audit of the Carter-Mondale Committee portions of national salaries, permissably exempted by that committee, were computed based on Carter-Mondale staff interviews. In accepting the committee figures so derived no additional proof was required of the committee to substantiate these staff estimates.

5/ For instance, would an affidavit from the staff member in question or his/her supervisor suffice, or would only formal time cards or sheets meet this requirement?

2. Interstate Travel and Communications

The Office of General Counsel suggests that this section contain some reference to your letter to KFP advising the Committee that long distance calls from state to national offices could be exempted from state allocations. The Committee should be directed to that portion of the letter which set forth a 30 day period from KFP's receipt of the letter in which to amend any affected reports accordingly, and to provide all computational schedules, including copies of relevant bills.

3. Media Expenditures

It is our understanding that since the referral of this report, the auditors have obtained some of the applicable County Coverage Reports ("CCR"). After conducting some preliminary calculations based on the CCR's obtained, the auditors have confirmed that certain CCR figures were used by the Committee in determining allocation of media expenditures for New Hampshire and Iowa, but that the formula used also relied in part on ADI figures. The audit staff has also indicated to Office of General Counsel staff that in the auditors opinion a media allocation formula may appropriately rely upon CCR figures just as it may rely on ADI figures; however, the two systems of determining media coverage may not be mixed in one formula to derive a single allocation figure for media in a particular state.

The auditors have stated that, in light of their newly acquired information, this section of the report will be redrafted. In so doing, the auditors should fully explain how they were able to determine the CCR figures were improperly applied by the Committee in its allocation formula. The redrafted version should also state that if CCR figures are correctly applied, the figures derived will be considered to be a reasonable allocation of media expenditures. Finally, we suggest that the auditors obtain the CCRs to make the necessary verification, as was done with those situations in other campaigns where ADI figures were used. This should not pose a problem in that we have already obtained some of the relevant CCRs.

4. National Press

The Office of General Counsel understands that the auditors do not have a problem with the theory put forth by the Committee, that the excess over airfare costs received by KFP from national press personnel can reasonably be applied as a reimbursement

for other KFP expenditures actually incurred by the Committee for services and items used solely by the press, and that the total amount of this "reimbursement" may be exempted from state (and overall) expenditure limitations. We suggest that the report not the auditors' general agreement with the theory, while stating that the problem lies in the inability to verify the Committee figures absent an accounting of monies received from the press, the surplus of that amount over total airfare costs incurred for the press, and the aggregate amount of expenditures (other than airfare) incurred on the press's behalf in the states in question, as well as the documentation supporting those computations.

In addition, the Office of General Counsel does not believe that any additional information -- such as proof that an expenditure designated by the Committee as one for press was in fact so used 6/ -- should be required. Therefore, we suggest that the report not indicate that such proof is a prerequisite to accepting KFP's allocation in this regard as reasonable.

The Office of General Counsel also agrees with the Committee that an employee's salary need not be allocated to a particular state to the extent that that staff member's time was spent on national press activities. Your recent letter to the Committee states that "salaries . . . of national campaign staff members who travel to a particular state for a limited purpose not constituing advance or field work, . . . need not be allocated to that state." (emphasis added). Ministering to the national press falls within this exception, in that it is not advance or field work. Accordingly, this section of the audit report should be revised. 7/

6/ Again, we note the standard of proof question raises some problems. For instance, would a notation on a bill that it was "for press" suffice or would press affidavits be necessary? As long as we have not ascertained any conflicting evidence, we believe that the Committee's statement as to the purpose of the expenditure is acceptable.

7/ The Office of General Counsel feels that the auditors may require the Committee to define the parameters of its category "national press activities" before accepting the Committee's figures excepting these salary costs as reasonable. However, as previously noted, this office believes it is and inconsistent with prior practice to require the Committee to submit further "proof" of the Committee estimates, based on staff interviews, of employee time spent on national press activities. See the discussion in this analysis contained under the heading titled "Overhead Allocation", supra.

5. Compliance and Fundraising

Again, this Office has some difficulty in rejecting the Committee's allocation of various percentages of staff salary to the exempt categories of compliance and fundraising in view of the basis provided in the audit report. As previously noted, proof of the accuracy of such figures has not been requested of other committees, and, the report does not identify what sort of documentation would suffice to meet this requirement. The Committee is in the best position to determine how and to what extent staff time was spent on certain activities, and absent some indication that the Committee's assertions in this regard are not accurate representations of what actually occurred, we find no reason for not accepting what has been presented by KFP. See nn. 6 and 7, supra, and the relevant text accompanying those notes.

Of course, if the auditors are merely requesting to review the Committee's computational schedules and other work papers supporting these figures before verifying the reasonableness thereof, and if this was required in every other instance where a committee presented allocation figures excluding expenditures (or percentages of expenditures) based on the theory that a portion of staff time was spent an exempt or national activities, the auditors have appropriately refused to adjust the figures in the interim audit report in the manner KFP seeks. However, the report should explicitly designate that this is the type of supporting documentation necessary before the auditors will concur in the reasonableness of the Committee allocations. 8/

8/ We also note that this section appears to repeat or concern issues discussed in the section titled "Overhead Allocation". To the extent these two sections are referring to identical figures and procedures, these two subparts should be combined into one sub-section, or, at minimum, their relation to each other must be clearly set forth. It is understandable that the report was drafted in this manner, in that that is how these subjects are presented by the Committee. However, the auditors need not feel compelled to adhere to the structure of the KFP response, and should not hesitate to abandon it and substitute the division's own organizational structure, for the sake of providing a report that is clear to the reader and can stand on its own without recourse to further explanation.

6. Advance Staff Personnel

The comments contained in the section of this legal analysis immediately preceding this one, are equally applicable here. Likewise, some sort of restructuring or redrafting to indicate more clearly how this subsection interrelates with the other subsections contained in this portion of the report is necessary. See n. 8, supra. In addition, if the above suggestions of the Office of General Counsel are accepted, the figures in the recommendation portion of this section of the report may require some readjustment, as well.

D. Review of Receipts

1. Timely Processing of Questionable Contributions

The report recommends that this matter be referred for a compliance action against KFP for violation of 11 C.F.R. § 103.3(b)(1) by failing to retain a written record noting the basis for the appearance of illegality with respect to contributions deposited in the KFP escrow account set up pursuant to that regulation. The Office of General Counsel suggests that rather than referring such a minor technical violation, thereby requiring deletion of this section of the audit report, that the audit report instead recommend that the amount of funds that can't be verified by the committee as coming from permissable sources be disposed of in any lawful manner by the Committee within the ninety day repayment period (along with a copy of the cancelled check(s) verifying the transfer(s)).

The Office of General Counsel also suggests that some of the discrepancies in audit and Committee figures found in Attachment 2, page 3 be clarified to explain the reasons for these differences. Specifically, the $12,090 KFP figure might contain a footnote noting for the record that, while the Committee has paid this amount out of the escrow account, it has offered no information as to the source or legality of these funds. Similarly, footnote 3, rather than referring generally to the insufficiency of information should specify that no cancelled check verifying that this donation was in fact made has been submitted by KFP.

2. Receipt of Contributions Exceeding $1000 Per Person

The Office of General Counsel understands that the auditors are still receiving information from the Committee in an attempt

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to reattribute certain contributions or otherwise confirm their legality. It is assumed that this Office will be provided an update to that effect simultaneous with the referral of this matter to this Office.

III. A. Determination of Net Outstanding Campaign Objections

This Office concurs with the auditors that no action can be taken against the Committee, and that no adjustments can be made on the Committee's NOCO statement with respect to the art work inventory KFP had on hand at the date of Senator Kennedy's ineligibility. In order to be of assistance to the Commission in making its determination as to whether the works of art are capital assets, and if so, the fair market value thereof, the Office of General Counsel will prepare and circulate a separate memorandum to the Commission on this subject.

This Office would like to suggest that two minor additions to Attachment 2 (NOCO Statement), however, be included in the report. The first concerns footnote 2, which should cite 11 C.F.R. § 9033.1(a)(1)(i) in referring to those accounts payable insufficiently documented by the Committee. The second addition suggested would be to footnote 3 wherein the auditors reject as winding down costs certain postage expenses of the Committee. This footnote should contain a citation to the regulatory definition of winding down costs and a brief explanation as to why the Committee expenditures in question do not meet that definition.

B. Apparent Non-Qualified Campaign Expenses

1. Expenditures in Excess of State Limitations

If any of the Office of General Counsel positions with respect to Finding II. C. of the report are accepted, the figures listed in this portion of the report will require readjustment.

2. Payment of Parking Violations

The second paragraph of this section of the report should be deleted, as there is no evidence the Committee could present which would show that the $141.50 paid in parking violations were qualified campaign expenses. See 26 U.S.C. § 9032(9)(A). As written, this paragraph of the report creates an (erroneous) inference that there might exist evidence to that effect, but that the Committee failed to provide it. Also, we suggest that this section cite to the relevant regulatory provision. (11 C.F.R. § 9032.9(a)(3)).

Received
8/21/81

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 1981

MEMORANDUM

TO: Robert J. Costa

THROUGH: B. Allen Clutter
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Report of the Audit Division on the Kennedy for President Committee - A-943

The Office of General Counsel has received the audit division's draft of the final audit report for the Kennedy for President Committee. The General Counsel's Office, having reviewed the final audit report for legal sufficiency, makes the following comments with respect to those sections of the audit report noted. 1/

II. Audit Findings and Recommendations Relating to Title 2 of the United States Code

B. Missing Records

This portion of the report should briefly address (at page 5) the contention of the Kennedy for President Committee ("Committee" or "KFP") that "no formal requests [for missing records] was received by the Treasurer or Chairman of the

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principal as collateral for a loan. However, the only relevant questions for purposes of the Act are whether the loan is adequately secured and whether it was granted in the ordinary course of business for the lending institution in question. It is our position that the practices of other banks, while perhaps supplying evidence in determining what adequate security and "ordinary course" may be, does not set the standards by which the legality of loans from other lending institutions will be measured.

Moreover, other loans secured by collateral with a value of even less than the loan principal have not been deemed by the Commission to be "out of the ordinary course" or under-collateralized. See e.g. MUR 1195 (No reason to believe loan not made in ordinary course or inadequately secured where collateral for loan was future expectancy of matching funds.) Thus, in this instance where the appraised value equaled to the amount of the loan, we do not think this matter should be referred to our office.

C. Allocation of Expenditures to States

Before providing specific comments concerning the various subparts of this section of the report, the Office of General Counsel notes that this section is not as clear or understandable to the reader as we would hope a public document such as this would be. This is due to the fact that the Committee's response is not organized in the same fashion as the interim audit report but rather overlaps, and in some cases falls between, the categories set forth in that report, thereby making it difficult for the auditors to integrate the KFP response into the interim audit report structure. The result, however, is a report with two parallel subsections dealing with allocation of expenditures, neither of which seems to address or really relate to the points raised in the other subsection.

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exempt categories of fundraising and compliance and (therefore need not be allocated to a state), in that an equivalent percentage of staff time spent in the offices located in the states was spent on these exempt activities.

In discussions with the auditors, it seems that the audit division does not dispute the reasonableness of this theory; in fact, some other committees used this same theory to determine a percentage of national costs which would be attributable to exempt categories and thereby permissably excluded from their overall spending limitations. Rather, the problem the auditors have with the Committee procedure is that no work papers of the accounting firm which derived the percentages were provided for audit review. The auditors do not know, for instance, if percentages were derived by actual staff accounts and review of time sheets, or were merely "guestimates" by certain individuals who were not even present in the field offices during the relevant time periods. Nor is there any indication of the scope of the category the Committee has defined as "overhead" expenditures, nor the definitions applied by the accounting firm in determining whether staff time was directed to "compliance" or "fundraising". Therefore, it is understandable that the auditors do not feel they can state for public review that this proposed alternative allocation system by the Committee has been verified and is reasonable, and thus cannot depart from the recommendations of the interim report. 2/ The Office

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Received 8/12/81

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Moreover, other loans secured by collateral with a value of even less than the loan principal have not been deemed by the Commission to be "out of the ordinary course" or under-collateralized. See e.g. MUR 1195 (No reason to believe loan not made in ordinary course or inadequately secured where collateral for loan was future expectancy of matching funds.) Thus, in this instance where the appraised value equaled to the amount of the loan, we do not think this matter should be referred to our office.

C. Allocation of Expenditures to States

Before providing specific comments concerning the various subparts of this section of the report, the Office of General Counsel notes that this section is not as clear or understandable to the reader as we would hope a public document such as this would be. This is due to the fact that the Committee's response is not organized in the same fashion as the interim audit report but rather overlaps, and in some cases falls between, the categories set forth in that report, thereby making it difficult for the auditors to integrate the KFP response into the interim audit report structure. The result, however, is a report with two parallel subsections dealing with allocation of expenditures, neither of which seems to address or really relate to the points raised in the other subsection.

In order to remedy this problem, the Office of General Counsel suggests that this section of the report be redrafted into one set of categories (instead of two - the auditors' and KFP's), with each containing the Commission's position (as set forth by the interim audit report), the Committee's contentions, and, finally, the auditors' response to those contentions. To the extent this requires some regrouping or modification of the headings of the interim audit subsections, or the addition of categories not contained in the interim report, the Office of General Counsel feels this would be an acceptable

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departure from the normal procedure followed in drafting a final audit report, in that it would serve the more necessary function of creating an integrated whole.

4. Pier Diem and Expense Reimbursements

The first paragraph of this section should contain a footnote or some other indication of the basis of the auditors' determination that the additional per diem and expense reimbursements set forth should have been allocated to New Hampshire and Iowa. Specifically, examples of the types of indicators in the documentation that the auditors relied on -- such as the Committee's own coding system, travel voucher statements as to personnel destinations, receipts from the state in question -- ought to be identified. This will enable the audit report to stand on its own as a "record" of what was before the Commission when it made its repayment determination, should the Committee challenge that determination in the court of appeals.

5. Outstanding Debt

Again, this portion of the report should reflect that the source of the auditors' determination that the expenditures in the amounts noted were allocable to New Hampshire and Iowa was based on the Committee's own computer print-out of expenditures. This print-out designated the state the expense should be allocated to when paid; and, after verifying the accuracy of these Committee designations with supporting documentation, the auditors' adopted these figures in allocating previously unallocated expenditures to Iowa and New Hampshire. As previously stated, the suggested insertion will create a more complete record for any possible appellate action, as well as emphasizing that the auditors are not creating their own figures in this area but rather are merely adopting the Committee's own allocation system which the Committee failed to reflect in its reports.

6. Other Vendor Payments

The comments made with respect to the subsection immediately preceding this one also apply to paragraph one of this subsection.

[Audit Reply to Committee Response:] 1. Overhead Allocation

This subsection of the final audit report deals with the allocation system offered as an alternative by the Committee in its response to the allocation figures contained in the interim audit report. The Committee maintains that a certain percentage of state "overhead" costs can reasonably be attributed to the

exempt categories of fundraising and compliance and (therefore need not be allocated to a state), in that an equivalent percentage of staff time spent in the offices located in the states was spent on these exempt activities.

In discussions with the auditors, it seems that the audit division does not dispute the reasonableness of this theory; in fact, some other committees used this same theory to determine a percentage of national costs which would be attributable to exempt categories and thereby permissably excluded from their overall spending limitations. Rather, the problem the auditors have with the Committee procedure is that no work papers of the accounting firm which derived the percentages were provided for audit review. The auditors do not know, for instance, if percentages were derived by actual staff accounts and review of time sheets, or were merely "guestimates" by certain individuals who were not even present in the field offices during the relevant time periods. Nor is there any indication of the scope of the category the Committee has defined as "overhead" expenditures, nor the definitions applied by the accounting firm in determining whether staff time was directed to "compliance" or "fundraising". Therefore, it is understandable that the auditors do not feel they can state for public review that this proposed alternative allocation system by the Committee has been verified and is reasonable, and thus cannot depart from the recommendations of the interim report. 2/ The Office

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2/ The Committee contends that the use, in itself, of an outside auditing firm to compute these figures is prima facie evidence of the reasonableness of the allocation derived, especially in light of the presence of a letter from a firm partner stating the method used by the firm was "rationale". That the firm which computed these figures provides a self-serving statement that the methodology used by it was rational can hardly be said to be dispositive of the issue of the reasonableness of the allocations prepared by it. This is not the situation where a company prepared financial statement is reviewed by an outside auditing firm, whereby that firm's "independent" opinion concerning the financial statement, using long established generally accepted accounting principles as a standard, is given great (although not determinative) weight. There is no independent review in this situation -- the firm giving the opinion made the computations in question. Furthermore, there are no standards set forth by the accounting industry with respect to procedures to be followed in determining allocation figures for purposes of chapter 96 of the Internal Revenue Code.

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of General Counsel does believe, however, that the audit reply to this portion of the KFP response should make it clear that if the aforementioned documentation is provided, and if the definitions of "fundrasing" and "compliance" used comport with the Act and the Commission's definitions of these terms, the Committee allocation will not be challenged as unreasonable. 3/

The General Counsel's Office also believe that if the percentages at issue were calculated on the basis of the personal knowledge of Committee staff, that that information be accepted without requiring the Committee to further prove the staff assertions and recollections. Assertions of other committees as to the amount of time spent by staff in various activities were accepted without requiring additional proof of those assertions. 4/ Also, it is unclear exactly what type and quantity of evidence would satisfy the standard of proof in this regard. 5/ Accordingly, this office suggests that any references in the report to the insufficiency of Committee documentation, or the necessity of further information or proof in this regard (such as the last sentence of the second paragraph on page fourteen) should be deleted from the report, as well.

3/ Similarly, the ~~fourth~~ paragraph of page 10 should be modified to indicate that rather than finding the Committee allocation system as less than reasonable, the auditors simply cannot verify the reasonableness of this newly adopted system absent a review of the documentation supporting those figures. The Office of General Counsel also believes that the reference, contained in the last paragraph of this subsection, to the unavailability of an opinion from the Committee's outside accounting firm as to the reasonableness of its calculations, should also be deleted from the report. See n. 2, supra.

4/ For example, in the audit of the Carter-Mondale Committee portions of national salaries, permissably exempted by that committee, were computed based on Carter-Mondale staff interviews. In accepting the committee figures so derived no additional proof was required of the committee to substantiate these staff estimates.

5/ For instance, would an affidavit from the staff member in question or his/her supervisor suffice, or would only formal time cards or sheets meet this requirement?

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2. Interstate Travel and Communications

The Office of General Counsel suggests that this section contain some reference to your letter to KFP advising the Committee that long distance calls from state to national offices could be exempted from state allocations. The Committee should be directed to that portion of the letter which set forth a 30 day period from KFP's receipt of the letter in which to amend any affected reports accordingly, and to provide all computational schedules, including copies of relevant bills.

3. Media Expenditures

It is our understanding that since the referral of this report, the auditors have obtained some of the applicable County Coverage Reports ("CCR"). After conducting some preliminary calculations based on the CCR's obtained, the auditors have confirmed that certain CCR figures were used by the Committee in determining allocation of media expenditures for New Hampshire and Iowa, but that the formula used also relied in part on ADI figures. The audit staff has also indicated to Office of General Counsel staff that in the auditors opinion a media allocation formula may appropriately rely upon CCR figures just as it may rely on ADI figures; however, the two systems of determining media coverage may not be mixed in one formula to derive a single allocation figure for media in a particular state.

The auditors have stated that, in light of their newly acquired information, this section of the report will be redrafted. In so doing, the auditors should fully explain how they were able to determine the CCR figures were improperly applied by the Committee in its allocation formula. The redrafted version should also state that if CCR figures are correctly applied, the figures derived will be considered to be a reasonable allocation of media expenditures. Finally, we suggest that the auditors obtain the CCRs to make the necessary verification, as was done with those situations in other campaigns where ADI figures were used. This should not pose a problem in that we have already obtained some of the relevant CCRs.

4. National Press

The Office of General Counsel understands that the auditors do not have a problem with the theory put forth by the Committee, that the excess over airfare costs received by KFP from national press personnel can reasonably be applied as a reimbursement

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for other KFP expenditures actually incurred by the Committee for services and items used solely by the press, and that the total amount of this "reimbursement" may be exempted from state (and overall) expenditure limitations. We suggest that the report not the auditors' general agreement with the theory, while stating that the problem lies in the inability to verify the Committee figures absent an accounting of monies received from the press, the surplus of that amount over total airfare costs incurred for the press, and the aggregate amount of expenditures (other than airfare) incurred on the press's behalf in the states in question, as well as the documentation supporting those computations.

In addition, the Office of General Counsel does not believe that any additional information -- such as proof that an expenditure designated by the Committee as one for press was in fact so used 6/ -- should be required. Therefore, we suggest that the report not indicate that such proof is a prerequisite to accepting KFP's allocation in this regard as reasonable.

The Office of General Counsel also agrees with the Committee that an employee's salary need not be allocated to a particular state to the extent that that staff member's time was spent on national press activities. Your recent letter to the Committee states that "salaries . . . of national campaign staff members who travel to a particular state for a limited purpose not constituing advance or field work, . . . need not be allocated to that state." (emphasis added). Ministering to the national press falls within this exception, in that it is not advance or field work. Accordingly, this section of the audit report should be revised. 7/

6/ Again, we note the standard of proof question raises some problems. For instance, would a notation on a bill that it was "for press" suffice or would press affidavits be necessary? As long as we have not ascertained any conflicting evidence, we believe that the Committee's statement as to the purpose of the expenditure is acceptable.

7/ The Office of General Counsel feels that the auditors may require the Committee to define the parameters of its category "national press activities" before accepting the Committee's figures exempting these salary costs as reasonable. However, as previously noted, this office believes it is and inconsistent with prior practice to require the Committee to submit further "proof" of the Committee estimates, based on staff interviews, of employee time spent on national press activities. See the discussion in this analysis contained under the heading titled "Overhead Allocation", supra.

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5. Compliance and Fundraising

Again, this Office has some difficulty in rejecting the Committee's allocation of various percentages of staff salary to the exempt categories of compliance and fundraising in view of the basis provided in the audit report. As previously noted, proof of the accuracy of such figures has not been requested of other committees, and, the report does not identify what sort of documentation would suffice to meet this requirement. The Committee is in the best position to determine how and to what extent staff time was spent on certain activities, and absent some indication that the Committee's assertions in this regard are not accurate representations of what actually occurred, we find no reason for not accepting what has been presented by KFP. See nn. 6 and 7, supra, and the relevant text accompanying those notes.

Of course, if the auditors are merely requesting to review the Committee's computational schedules and other work papers supporting these figures before verifying the reasonableness thereof, and if this was required in every other instance where a committee presented allocation figures excluding expenditures (or percentages of expenditures) based on the theory that a portion of staff time was spent an exempt or national activities, the auditors have appropriately refused to adjust the figures in the interim audit report in the manner KFP seeks. However, the report should explicitly designate that this is the type of supporting documentation necessary before the auditors will concur in the reasonableness of the Committee allocations. 8/

8/ We also note that this section appears to repeat or concern issues discussed in the section titled "Overhead Allocation". To the extent these two sections are referring to identical figures and procedures, these two subparts should be combined into one sub-section, or, at minimum, their relation to each other must be clearly set forth. It is undertstandable that the report was drafted in this manner, in that that is how these subjects are presented by the Committee. However, the auditors need not feel compelled to adhere to the structure of the KFP response, and should not hesitate to abandon it and substitute the division's own organizational structure, for the sake of providing a report that is clear to the reader and can stand on its own without resort to further explanation.

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6. Advance Staff Personnel

The comments contained in the section of this legal analysis immediately preceding this one, are equally applicable here. Likewise, some sort of restructuring or redrafting to indicate more clearly how this subsection interrelates with the other subsections contained in this portion of the report is necessary. See n. 8, supra. In addition, if the above suggestions of the Office of General Counsel are accepted, the figures in the recommendation portion of this section of the report may require some readjustment, as well.

D. Review of Receipts

1. Timely Processing of Questionable Contributions

The report recommends that this matter be referred for a compliance action against KFP for violation of 11 C.F.R. § 103.3(b)(1) by failing to retain a written record noting the basis for the appearance of illegality with respect to contributions deposited in the KFP escrow account set up pursuant to that regulation. The Office of General Counsel suggests that rather than referring such a minor technical violation, thereby requiring deletion of this section of the audit report, that the audit report instead recommend that the amount of funds that can't be verified by the committee as coming from permissable sources be disposed of in any lawful manner by the Committee within the ninety day repayment period (along with a copy of the cancelled check(s) verifying the transfer(s)).

The Office of General Counsel also suggests that some of the discrepancies in audit and Committee figures found in Attachment 1A be clarified to explain the reasons for these differences. Specifically, the $12,090 KFP figure might contain a footnote noting for the record that, while the Committee has paid this amount out of the escrow account, it has offered no information as to the source or legality of these funds. Similarly, footnote 3, rather than referring generally to the insufficiency of information should specify that no cancelled check verifying that this donation was in fact made has been submitted by KFP.

2. Receipt of Contributions Exceeding $1000 Per Person

The Office of General Counsel understands that the auditors are still receiving information from the Committee in an attempt

to reattribute certain contributions or otherwise confirm their legality. It is assumed that this Office will be provided an update to that effect simultaneous with the referral of this matter to this Office.

III. A. Determination of Net Outstanding Campaign Objections

This Office concurs with the auditors that no action can be taken against the Committee, and that no adjustments can be made on the Committee's NOCO statement with respect to the art work inventory KFP had on hand at the date of Senator Kennedy's ineligibility. In order to be of assistance to the Commission in making its determination as to whether the works of art are capital assets, and if so, the fair market value thereof, the Office of General Counsel will prepare and circulate a separate memorandum to the Commission on this subject.

This Office would like to suggest that two minor additions to Attachment 2 (NOCO Statement), however, be included in the report. The first concerns footnote 2, which should cite 11 C.F.R. § 9033.1(a)(1)(i) in referring to those accounts payable insufficiently documented by the Committee. The second addition suggested would be to footnote 3 wherein the auditors reject as winding down costs certain postage expenses of the Committee. This footnote should contain a citation to the regulatory definition of winding down costs and a brief explanation as to why the Committee expenditures in question do not meet that definition.

B. Apparent Non-Qualified Campaign Expenses

1. Expenditures in Excess of State Limitations

If any of the Office of General Counsel positions with respect to Finding II. C. of the report are accepted, the figures listed in this portion of the report will require readjustment.

2. Payment of Parking Violations

The second paragraph of this section of the report should be deleted, as there is no evidence the Committee could present which would show that the $141.50 paid in parking violations were qualified campaign expenses. See 26 U.S.C. § 9032(9)(A). As written, this paragraph of the report creates an (erroneous) inference that there might exist evidence to that effect, but that the Committee failed to provide it. Also, we suggest that this section cite to the relevant regulatory provision. (11 C.F.R. § 9032.9(a)(3)).

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