FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 2154

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 31, 1985

MEMORANDUM:

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: FINAL AUDIT REPORT - REAGAN-BUSH '84 (Primary)

Attached please find the above subject final audit report for your review and analysis. Also attached at Exhibit A is a matter regarding the allocation of production costs between the candidate's primary and general election campaigns. The Audit staff has reviewed all materials made available in response to the recommendations contained in the interim audit report, however, sufficient information is not available with which to calculate a final figure concerning the additional reimbursement due the primary committee from the Reagan-Bush '84 General Election Committee ("the GEC"). Therefore, in my opinion, this matter should not be included in the final audit report, but rather be referred to your office for appropriate action.

An additional matter included at Exhibit B dealing with the receipt and subsequent transfer of excessive portions of contributions to the GEC's legal and compliance fund is being referred to your office in accordance with the Commission approved Materiality Thresholds.

In accordance with the Commission's Revised Sunshine Procedures, I have attached two Sunshine Recommendation forms which contain my recommendations concerning the material contained in the attached packet. Specifically, with respect to the matters contained in the proposed final audit report, it is my opinion that the report (including the attachments thereto) should be discussed in open session. With respect to the matters contained in Exhibit A and Exhibit B (including the attachments thereto), it is my opinion that these matters should be considered by the Commission in Executive Session. The Executive Session consideration should occur prior to the Open Session consideration of the report in order to allow sufficient time for possible revisions to the document to be discussed in Open

Session. For example, the Commission may decide to include the material contained in Exhibit B as a finding in the final audit report instead of referring the matter to your office for possible compliance action.

Should you have any questions concerning the material contained in the report/Exhibits, please contact Steve Sanford or Ray Lisi. Should you have any questions regarding the Sunshine recommendations, please let me know.

Attachments:
Proposed Final Audit Report on Reagan-Bush '84
Exhibit A: Media Production Costs
Exhibit B: Receipt of Excessive Contributions

Date & Time Transmitted ____________________

TO: The Commissioners

FROM: Office of the Staff Director

SUBJECT: Final Audit Report - Reagan-Bush '84

DEADLINE: ____________________

Sunshine Recommendation

A. x Open Session B. ____ Executive Session because

____ Discussion would involve compliance matters which would be confidential under 2 U.S.C. § 437g. (11 CFR § 2.4(a)(1) and (2)).

____ Matter relates solely to the Commission's internal personnel decisions, or internal rules and practices. (11 CFR § 2.4(b)(1)).

____ Report contains privileged or confidential financial or commercial information. (11 CFR § 2.4(b)(2)).

____ Discussion would involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person. (11 CFR § 2.4(b)(3)).

____ Disclosure would constitute a clearly unwarranted invasion of privacy. (11 CFR § 2.4(b)(4)).

____ Discussion involves investigatory records compiled for law enforcement purposes, and production would disclose investigative techniques. (11 CFR § 2.4(b)(5)).

____ Premature disclosure would be likely to have considerable adverse effect on the implementation of a proposed Commission action. (11 CFR § 2.4(b)(6)).

____ Matter specifically concerns the Commission's participation in a civil action or proceeding, or an arbitration. (11 CFR § 2.4(b)(7)).

Robert J. Costa

for the Staff Director

FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
REAGAN-BUSH '84

I. Background

A. Overview

This report is based on an audit of Reagan-Bush '84 ("the Committee") to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and the Presidential Primary Matching Payment Account Act. The audit was conducted pursuant to 26 U.S.C. § 9038(a) 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, 26 U.S.C. § 9039(b) and 11 C.F.R. § 9038.1(a)(2) state, in relevant part, that the Commission may conduct other examinations and audits from time to time as it deems necesssary.

The Committee registered with the Federal Election Commission on October 17, 1983. The Committee maintains its headquarters in Washington, D.C.

The audit covered the period from the Committee's inception, October 17, 1983, through August 31, 1984, the last day covered by the most recent report filed with the Commission at the time of the audit. In addition, certain financial activity was reviewed through January 15, 1985. The Committee reported an opening cash balance of $-0-, total receipts of $27,682,289.68, total disbursements of $25,817,114.96 and a closing cash balance of $1,865,174.72 on August 31, 1984. Under 11 C.F.R. § 9038.1(c)(4) additional audit work may be conducted and addenda to this report issued as necessary.

This report is based upon documents and working papers which support each of the factual statements. They form part of the record upon which the Commission based its decisions on the matters in the report and were available to Commissioners and appropriate staff for review.

B. Key Personnel

The Treasurer of the Committee is Angela M. Buchanan Jackson.

C. Scope

The audit included such tests as verification of total reported receipts, disbursements and individual transactions; review of required supporting documentation; analysis of Committee debts and obligations; review of contribution and expenditure limitations; and such other audit procedures as deemed necessary under the circumstances.

II. Finding and Recommendation Related to Title 2 of the United States Code

A. Matters Referred to the Office of General Counsel

Certain matters noted during the audit were referred to the Commission's Office of General Counsel.

III. Findings and Recommendations Related to Title 26 of the United States Code

A. Apparent Non-Qualified Campaign Expenses

Section 9038(b)(2)(A) of Title 26, United States Code states 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, it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

The Commission, in a Notice of Proposed Rulemaking published in the Federal Register on June 28, 1984, set forth a pro-rata formula which would base repayments for non-qualified campaign expenses on the proportion of federal funds to total funds received by the candidate. The text of the regulation along with the Explanation and Justification were published in the Federal Register on August 22, 1984 and transmitted to Congress. On March 5, 1985 the revised regulations were resubmitted for publication. The proposed regulations were before the Congress for 30 legislative days as of May 20, 1985, and approved by the Commission for publication in final form on June 11, 1985.

The formula and the appropriate calculation with respect to the Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified Through Date of Ineligibility (8/22/84)}\,\underline{1}/}{\text{Numerator + Private Contributions Received Through 8/22/84}}$$

$$\frac{\$10,100,000}{\$26,904,069.30} = .375408$$

Thus, the repayment ratio for non-qualified campaign expenses is 37.5408%.

1. Apparent Payment of General Election Expenses

The term "qualified campaign expense" is defined at 26 U.S.C. § 9032(9) as a purchase, payment, advance, or gift of money or anything of value incurred by a candidate or by his authorized committee, in connection with his nomination for election (emphasis added).

The Committee made expenditures for voter registration and other political activities totaling $2,136,898.83 which appeared to benefit the candidate's general election campaign only; and were not made in connection with his campaign for nomination for election. Included in this amount is $64,615 in Committee expenditures which were reimbursed by the Reagan-Bush '84 General Election Committee (See footnotes 2/ and 3/ of Attachment 1). The expense authorization request forms prepared for three (3) of these expenditures indicate that the amounts are to be charged to the general election budget.

a. Voter Registration

Voter registration expenses totaling $1,847,776.54 were identified by the Audit staff during a review of expenditures (See Attachment 1). Payments were made to computer firms, list suppliers, mailing firms, consultants, phone companies, communications firms, telemarketing companies, and individuals. According to documents contained in Committee files, these vendors provided lists of individuals and performed services related to the identification and registration of individuals who indicated support for the candidate. The amounts identified by the Audit staff represent only payments for goods and services used in a state after the date of that state's primary or caucus. Payments for voter registration services used in a state prior to the caucus or primary were not included.

1/ The Candidate's date of ineligibility was determined in accordance with 11 C.F.R. § 9033.5(c).

A portion of this amount ($182,968.16) represents the non-fundraising portion of expenses made in connection with a nationwide voter registration drive on Saturday, June 23, 1984. The drive was held in several hundred locations around the country. Volunteers were assembled in each location and shown a videotape of the candidate urging the volunteers to go out and register voters for the general election. The volunteers then canvassed neighborhoods to identify unregistered supporters of the candidate. The focus of the effort (as reflected in a manual given to organizers, circulars given to participants, a sample press release prepared for the media, and a videotaped pep talk by the candidate sent to each location) was the mass registration of new voters who supported the candidate. However, the drive did include a fundraising appeal as a secondary purpose. As a result, the Committee charged 25% or $60,989.39 of the event cost to the fundraising exemption pursuant to 11 C.F.R. § 100.8(21). In order to determine the appropriateness of this charge, the Audit staff verified that the Committee had received $58,477.27 in contributions solicited during the drive.

b. Other Political Activities

Expenditures made by the Committee, totaling $289,122.29, were identified by the Audit staff as apparently related to the general election campaign (See Attachment 2). According to documentation reviewed by the Audit staff, most of these expenditures represent polling expenses for surveys which began after most, if not all, of the primaries and caucuses had been held. The remainder of the amount represents political consulting work performed with respect to a specific state after the respective primary or caucus.

The Treasurer responded that the Committee was aware these expenditures would be questioned but felt that the expenditures were clearly made for the purpose of influencing the candidate's nomination. The expenditures were incurred prior to the nomination date and were made to demonstrate the candidate's continuing support and leadership role in his party and the nation. The expenditures were also made to show that the candidate could represent the party in the general election and convince convention delegates to support the candidate.

In the Commission approved interim report, the Audit staff recommended that within 30 days of receipt of the report, the Committee submit evidence to demonstrate that the $2,136,898.83 in expenses for voter registration and other political activities were made in connection with the candidate's nomination and are therefore qualified campaign expenses. The interim report further stated that absent such a showing the Audit staff intended to recommend that the Commission make an initial determination that the amount ($2,136,898.83) representing the value of general election expenses be viewed as non-qualified campaign expenses and a pro-rata portion, $802,208.92 ($2,136,898.83 x .375408) be repaid to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2).

The Committee's response argues that expenses incurred after the date of delegate selection in a state merit no closer examination than expenses incurred prior to that date. In support of this position the Committee presents three arguments as follows:

1. The Statutory Definition of Qualified Campaign Expense Requires Only That the Expense Be Incurred Prior To the Date of the Candidate's Nomination.

The Committee contends that Congress did not intend to require more than "...that the expense be incurred prior to the date of nomination or that Congress intended to authorize the Commission to evaluate the sufficiency of the nexus between the expenses and the campaign for nomination." The Committee cites legislative history wherein it is stated that candidates are permitted full flexibility and discretion in their election efforts, subject only to limitation on the dollar amounts of expenditures and contributions. While the Audit staff acknowledges the concerns voiced in the legislative history cited by the Committee as well as the Commission's accordance of wide discretion to candidates in how to conduct their publicly-funded campaigns, the Commission also has the responsibility to insure that compliance with the Act's spending limitations is achieved. To permit candidates to exercise such wide discretion that primary election funds could be spent to further the candidate's general electon effort would nullify the very limits established by Congress (see 26 U.S.C. §§ 9004(b) & 9035(a) and 2 U.S.C. §§ 441a(b)(1)(A) and (B)).

2. The Staff's Request Conflicts With The Commission's Policy of Restraint In Its Review of Candidates' Spending Decisions

The Committee also contends that the Audit staff's request (that the Committee demonstrate that the expenses in question are not general election expenses) is in conflict with the Commission's policy of restraint in its review of candidates' spending decisions. Although as discussed above, the Commission has accorded wide discretion to candidates in how they conduct their publicly-funded campaigns, the Commission is required by the Act to conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who receive payments under section 9037 (26 U.S.C. § 9038(a)).

In addition, the Commission's regulations at 11 C.F.R. § 9033.11(a) require that each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 C.F.R. § 9032.9. Further, the candidate shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate or his or her authorized committee(s). The Committee's comments in this area are not persuasive.

3. Expenditures Made After The Delegate Selection Process Has Been Completed Are Entitled To The Same Deference As Those Made Before

Finally, the Committee has provided a lengthy discussion concerning the nomination process in an attempt to show that expenditures made after the delegate selection process in a state has been completed are entitled to the same deference as those made before. In essence, the Committee sets forth, in support of its position, an overview of the various provisions of State law regarding the amount of discretion accorded to delegates to the national nominating convention in voting for their choice for the nominee of the party. The Committee contends that a large portion of the delegates at any convention are not bound to any particular candidate. Hence, their selection at the conclusion of a state's primary caucus or convention cannot have the importance that the Audit staff seeks to accord it.

It appears that the Committee has elected to comment only on whether expenses incurred after a state's primary election or causus is completed are per se non-qualified campaign expenses. The interim report's discussion was focused on what appeared to be expenses which benefitted the candidate's general election campaign since the registration of voters in states where the primary/caucus had occurred could only result in their votes being cast with respect to the general election with little, if any, benefit accruing to the primary campaign. Deference was accorded to the Committee in that expenses for activities (some of which were identified as voter registration) incurred prior to the date of the primary/caucus in a state were viewed by the Commission as qualified campaign expenses.

The Committee has argued that the expenses in question were qualified campaign expenses for the primary campaign since incurred prior to the date of nomination. The Audit staff acknowledges the fact that the expenses in question were incurred prior to the date of nomination; however in our opinion the Committee has not demonstrated that these expenses were incurred in connection with the candidate's primary election campaign. Rather, the expenses incurred with respect to the registration of voters in states where the primary/caucus had already occurred can only influence the election in which the voters may exercise their franchise which in this case is in the general election.

Recommendation

On ____________________ the Commission made an initial determination that the $2,136,898.93 in expenses for voter registration and other political activities were general election expenses and that that amount be viewed as non-qualified campaign expenses and the pro-rata portion, $802,208.92 be repaid to the U.S. Treasury pursuant to 26 U.S.C. § 9038(b)(2).

B. Statement of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the 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 and an estimate of necessary winding down costs within 15 days of the candidate's date of ineligibility.

In addition, 11 C.F.R. § 9038.3(c)(1) requires a candidate whose net outstanding campaign obligations reflect a surplus on the day of ineligibility to repay to the Secretary within 30 calendar days of the ineligibility date an amount which represents the amount of matching funds contained in the surplus.

On September 21, 1984, the Committee repaid $344,893.24 to the U.S. Treasury representing a pro rata share of the estimated surplus on the Candidate's date of ineligibility (August 22, 1984). The Audit staff reviewed records and documentation supporting the Committee's calculations. Depicted on page 10 is a NOCO statement prepared by the Audit staff, which reflects certain adjustments to the original NOCO filed by the Committee (adjustments are based on the Audit staff's review of actual financial activity through January 15, 1985). On February 6, 1985, the Committee's Deputy Treasurer agreed that the audited NOCO statement accurately reflected the Committee's financial position as of August 22, 1984.

Although the calculated surplus indicates that the Committee's September 21, 1984, payment was excessive ($344,893.24 - $270,978.57 = $73,914.67), the Audit staff recommends that no adjustment be made at this time due to the possible adjustment to the NOCO as described in footnote c/. Follow-up fieldwork will be performed to verify actual expenses and addenda to this report will be prepared as necessary.

REAGAN-BUSH '84

Audit Analysis of Committee's NOCO Statement
As of August 22, 1984 a/

ASSETS			
Cash in Bank		$2,656,049.92	
Accounts Receivable		953,415.41	
Contributions received post 8/22/84 b/		38,808.72	
Accrued Interest		21,975.12	
TOTAL ASSETS			$3,670,249.17
OBLIGATIONS			
Accounts Payable		$2,326,295.66	
Income Taxes		222,129.34	
ESTIMATED WINDING DOWN COSTS (1/15/85 TO 7/31/85)			
Legal Fees	$300,000.00		
Accounting Fees	65,000.00		
Rent and Storage	25,000.00		
General Expenses	10,000.00		
TOTAL ESTIMATED WINDING DOWN COSTS	$400,000.00	400,000.00	
TOTAL OBLIGATIONS			2,948,425.00
NET OUTSTANDING CAMPAIGN OBLIGATIONS - SURPLUS AS OF AUGUST 22, 1984 c/			$ 721,824.17
AMOUNT REPAYABLE, (SURPLUS MULTIPLIED BY REPAYMENT RATIO) d/			$ 270,978.57

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a/ August 22, 1984, is the date determined by the Commission to be the Candidate's date of ineligibility for purposes of incurring qualified campaign expenses.

b/ Includes contributions received after 8/22/84 but dated prior to 8/23/84.

c/ Since certain estimates were used in computing this amount, the Audit staff will review the Committee's reports and records to compare the actual figures with the estimates and prepare adjustments if necessary. For example, the amount could change based on our review of the Committee's actual winding down costs.

d/ For calculation of the repayment ratio see discussion of apparent Non-Qualified Campaign Expenses under Finding III.A. on page 3.

REAGAN-BUSH '84
PAYMENTS FOR VOTER REGISTRATION EXPENSES 1/ INCURRED AFTER STATE'S PRIMARY OR CAUCUS

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
FLORIDA	**March 13, 1984**					
Computerized Telemarketing		16155	6-28-84	6-25-84	$ 40869.82	Voter Registration
" "		17277	7-20-84	6-25-84	9588.89	calls per Contract
" "		17486	7-24-84	6-25-84	2802.34	dated 6-25-84
" "		18559	8-9-84	6-25-84	20500.00	
Computerized Telemarketing		19091	8-17-84	6-25-84	29572.89	
Direct Mail Systems		14333	5-14-84	5-16-84	3262.50	Voter Registration
" " "		15373	6-14-84	5-16-84	9562.50	development project
" " "		15760	6-20-84	5-16-84	9520.00	per contract
" " "		16612	7-3-84	5-16-84	3000.00	dated 5-16-84
" " "		17949	7-31-84	5-16-84	11703.00	
" " "		18287	8-6-84	5-16-84	9187.50	
" " "		19928	8-84	5-16-84	551.40	
" " "		15159	6-84	5-16-84	1986.00	
" " "		16143	6-84	5-16-84	1732.50	
" " "		16145	6-84	5-16-84	1965.00	
" " "		16612	7-3-84	5-16-84	1059.62	
Direct Mail Systems		15696	6-84	5-16-84	742.39	
Hinton-Wesson		15700	6-20-84	5-2-84	27976.00	Prospective Voter
"		15701	6-20-84	5-2-84	7254.40	calls per contract
"		18294	8-6-84	5-2-84	12486.00	dated 5-2-84
Hinton-Wesson		14328	5-10-84	5-2-84	20000.00	
FMG Telecomputer		13529	4-26-84	4-2-84	18800.00	Voter Registration calls per 4-2-84 contract
FMG Telecomputer		19088	8-17-84	8-84	1225.87	Orange County FLA test calls
Marion Bailey		13621	4-14-84	4-9/12-84	574.34	Travel Reimbursements
" "		13720	5-3-84	4-15/20-84	652.88	for Florida Voter
Marion Bailey		19772	9-3-84	8-12/24-84	1672.54	program
					$ 247978.38	

1/ Items listed herein were generated from a comprehensive review of large expenditures comprising more than 80% of the dollar volume of total committee activity.

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
NEW JERSEY	**June 5, 1984**					
Direct Communications		17279	7-20-84	7-6-84	$ 16250.00	Voter Registration
" "		17280	7-20-84	7-6-84	16250.00	calls in New Jersey
" "		18561	8-9-84	7-6-84	13000.00	per Contract Addendum
Direct Communications		18897	8-15-84	7-6-84	94250.00	dated 7-6-84
Universal Data		17290	7-20-84	6-11-84	6597.33	Computerized cards for
Universal Data		18925	8-15-84	8-6-84	15000.00	Registration effort
U.S. Postmaster		18593	8-8-84	8-6-84	1170.00	Postage for Voter Registration
State account			8-3-84	8-84	50.00	State account - June 84
					$ 162567.33	
ALABAMA	**March 13, 1984**					
U.S. Postmaster		18908	8-15-84	8-20-84	$ 3000.00	Postage for Voter Program
FMG Telecomputer		13529	4-26-84	4-2-84	23500.00	Voter Registration
" "		100050	6-26-84	4-2-84	23500.00	calls per Contract
" "		17271	7-20-84	4-2-84	27416.00	dated 4-2-84
" "		17272	7-20-84	4-2-84	27416.00	
" "		17951	7-31-84	4-2-84	26551.36	
FMG Telecomputer		19088	8-17-84	4-2-84	7135.85	
					$ 138519.21	
GEORGIA	**March 13, 1984**					
Computerized Telemarketing		100027	5-4-84	5-2-84	$ 10250.00	Voter Registration
" "		14329	5-17-84	5-2-84	10250.00	calls per 5-2-84
" "		15181	6-7-84	5-2-84	14041.07	Contract
Computerized Telemarketing		15767	6-20-84	5-2-84	20217.71	
FMG Telecomputer		13046	4-12-84	4-2-84	37600.00	Voter Registration
" "		13529	4-26-84	4-2-84	37600.00	calls per 4-2-84
FMG Telecomputer		18894	8-15-84	4-2-84	1809.76	Contract
					$ 131768.54	

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
LOUISIANA	**May 19, 1984**					
Direct Communications		14804	5-31-84	5-25-84	28750.00	Voter Registration
" "		15706	6-13-84	5-25-84	31250.00	calls per Contract
" "		100051	6-26-84	5-25-84	30000.00	dated 5-25-84
" "		16619	6-28-84	5-25-84	1600.00	
" "		18561	8-9-84	5-25-84	25000.00	
Direct Communications		19936	9-10-84	5-25-84	2391.67	
. S. Postmaster		15698	6-20-84	6-25-84	3000.00	Postage for Voter Programs
					$ 121991.67	
KENTUCKY	**May 12, 1984**					
Direct Mail Systems		15374	6-14-84	5-16-84	$ 9011.88	Voter Registration Development per 5-16-84 Contract
Direct Mail Systems		18288	8-6-84	5-16-84	20478.00	
Hinton-Wesson		15165	6-7-84	6-4-84	23500.00	Voter Registration
"		17275	7-20-84	6-4-84	11750.00	per Contract dated
"		17276	7-20-84	6-4-84	23040.34	5-2-84 with work
Hinton-Wesson		19182	8-17-84	6-4-84	6674.00	begun 6-4-84
Campaign Mail and Data		16323	6-29-84	6-18-84	4315.35	Voter Registration Brochure
U. S. Postmaster		15713	6-20-84	6-29-84	11550.00	Voter Registration Postage
U. S. Postmaster		19104	8-17-84	8-20-84	3400.55	Voter Registration Postage
25 Individuals		Various	Various	9/84 - 10/84	7543.50	Payments to Voter Registration Workers
					$ 121263.62	
NORTH CAROLINA	**May 8, 1984**					
FMG Telecomputer		15160	6-7-84	5-30-84	$ 15700.00	List Rental
" "		16916	7-12-84	6-21-84	23500.00	Voter Registration
" "		17476	7-24-84	7-18-84	8460.00	calls made after
" "		17477	7-24-84	7-18-84	8460.00	primary
" "		18905	8-15-84	7-18-84	10500.00 3/	
" "		100094	8-2-84	8-1-84	37750.00 2/	
" "		100104	8-17-84	8-15-84	10412.50	
FMG Telecomputer		19088	8-17-84	8-15-84	3140.60	
					$ 117923.10	

2/ Reimbursed by Reagan-Bush '84 General Election Committee
3/ $7500 of this amount reimbursed by Reagan-Bush '84 General Election Committee

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
TEXAS	May 5, 1984					
Campaign Mail and Data		14334	5-17-84	5-15-84	$ 5770.00	Vice President Voter
" " " "		14553	5-24-84	5-15-84	10834.60	Project begun 5-15-84
" " " "		14554	5-24-84	5-15-84	2752.52	
Campaign Mail and Data		14555	5-24-84	5-15-84	2350.58	
U. S. Postmaster		100102	8-16-84	8-17-84	11200.00	Postage for Voter
U. S. Postmaster		100103	8-16-84	8-17-84	21500.00	Programs
Communications Specialists		15704	6-20-84	5-14-84	4363.12	Brochure and
" "		17278	7-20-84	6-27-84	4451.76	doorhangers shipped
" "		18560	8-9-84	7-84	8136.91	after the primary
" "		19511	8-30-84	8-84	32544.93	
" "		20573	9-25-84	8-84	6824.53	
" "		15703	6-20-84	5-16-84	1010.10	
" "		15702	6-20-84	5-16-84	798.96	
" "		16639	7-84	7-84	870.01	
" "		17487	7-84	7-84	266.44	
Communication Specialists		19456	8-84	8-84	444.29	
FMG Telecomputers		18905	8-15-84	7-84	1668.12	Texas Registration calls
From State Account		Various	Various	After 5-18-84	3322.00	
					$ 119108.87	
VIRGINIA	March 26, 1984					
Campaign Mail and Data		19184	8-17-84	8-84	$ 24498.17	List for Registration
FMG Telecomputer		13046	4-12-84	4-2-84	20366.00	Voter Registration
" "		13837	5-9-84	4-2-84	20336.00	calls per Contract
" "		100053	6-26-84	4-2-84	13087.73	dated 4-2-84
" "		16915	7-12-84	4-2-84	15980.00	
" "		17159	7-18-84	4-2-84	1929.59	
FMG Telecomputer		18894	8-15-84	4-2-84	3037.42	
Election Computer Services		13989	5-10-84	5-2-84	1101.14	Computer Sort-Voter Lists
Election Computer Services		17950	7-31-84	7-25-84	90.00	Postage
					$ 100426.05	

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
TENNESSEE	**May 1, 1984**					
Computerized Telemarketing		17485	7-24-84	7-84	$ 25359.73	Voter Registration calls
Computerized Telemarketing		18559	8-9-84	7-84	6594.03	made in July
Capital Telemarketing		17165	7-18-84	7-84	12540.00	Voter Registration
" "		19886	9-5-84	7-84	20682.45	calls made after
Capital Telemarketing		20621	9-28-84	7-84	159.80	Primary
U. S. Postmaster		19096	8-17-84	8-28-84	50.00	Postage
Approximately 25 Individual & Groups		Various	Various	8-84	18577.95	Payments for Voter Registration Workers
					$ 83963.96	
MISSISSIPPI	**April 14, 1984**					
Direct Mail Systems		15372	6-14-84	6-84	$ 3684.92	Voter Registration
" " "		19928	8-84	8-84	838.30	program begun after
Direct Mail Systems		16144	6-84	6-84	747.62	caucus
Capital Telemarketing		15707	6-20-84	6/84 - 7/84	7125.00	Voter Registration
" "		16620	7-9-84	6/84 - 7/84	11400.00	calls which
" "		17164	7-18-84	6/84 - 7/84	9728.76	begun after caucus
" "		17166	7-18-84	6/84 - 7/84	81.50	
" "		18909	8-15-84	6/84 - 7/84	2366.07	
" "		20621	9-28-84	6/84 - 7/84	159.80	
Capital Telemarketing		21029	10-16-84	6/84 - 7/84	121.65	
FMG Telecomputer		16125	6-28-84	6/84 - 7/84	786.86	Voter Registration
" "		16124	6-28-84	6/84 - 7/84	5454.66	calls begun after
FMG Telecomputer		18894	8-15-84	6/84 - 7/84	531.23	caucus
South Central Bell		18907	8-15-84	6/84 - 7/84	18000.00 2/	Phone bank for Voter Registration
					$ 61026.37	

2/ Reimbursed by Reagan-Bush '84 General Election Committee

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
WASHINGTON STATE	**March 13, 1984**					
Pacific Northwest Bell		14924	6-4-84	4/84 - 8/84	$ 516.50	Voter Registration
" " "		14926	6-4-84	4/84 - 8/84	289.94	phone banks set-up
" " "		14928	6-4-84	4/84 - 8/84	204.14	this state well
" " "		14950	6-4-84	4/84 - 8/84	252.92	after the primary
" " "		14951	6-4-84	4/84 - 8/84	134.43	or caucus
" " "		14952	6-4-84	4/84 - 8/84	1109.23	
" " "		16178	6-28-84	4/84 - 8/84	1985.31	
" " "		16315	6-29-84	4/84 - 8/84	296.57	
" " "		16317	6-29-84	4/84 - 8/84	1453.37	
" " "		16342	6-29-84	4/84 - 8/84	471.34	
" " "		16343	6-29-84	4/84 - 8/84	296.61	
" " "		16365	6-29-84	4/84 - 8/84	1944.42	
" " "		16366	6-29-84	4/84 - 8/84	533.12	
" " "		16367	6-29-84	4/84 - 8/84	420.41	
" " "		18558	8-9-84	4/84 - 8/84	604.09	
Pacific Northwest Bell		19437	8-28-84	4/84 - 8/84	554.16	
Payroll		Various	Various	4/84 - 8/84	37580.53	phone banks payroll
					$ 48647.09	
OREGON	**May 15, 1984**					
Hinton-Wesson		16923	7-12-84	6-84	$ 24680.50	Voter Registration
Hinton-Wesson		18294	8-6-84	6-84	2851.51	calls in Oregon after primary
Election Computer Services		20352	9-18-84	5/84 - 6/84	375.00	Voter Registration
" " "		14314	5-17-84	5/84 - 6/84	18991.46	work after primary
Election Computer Services		18566	8-9-84	5/84 - 6/84	62.00	
					$ 46960.47	
SOUTH CAROLINA	**March 10, 1984**					
Bryant Seaman		993	3-21-84	3-20-84	$ 6673.60	Voter Registration
" "		15179	6-7-84	5-25-84	10672.00	work done afer
Bryant Seaman		13372	4-23-84	4-11-84	18000.00	3-10 Primary
State Account		Various	Various	4/84 - 8/84	1994.00	State Account items after 3-10 primary for Voter Registration
					$ 37339.60	

STATE/VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
CALIFORNIA	June 5, 1984					
American Petition Consultants		18928	8-15-84	7/84 - 8/84	$ 15001.00	Voter Registrations at 1.75 each
NEW HAMPSHIRE	February 28, 1984					
New Hampshire Republican State Committee		979	3-7-84	3/84	$ 12000.00	Purchase of Voter list after primary
New Hampshire Republican State Committee		14744	5-31-84	3/84	2000.00	
					$ 14000.00	
IOWA	February 20, 1984					
Republican State Central Committee		18577	8-9-84	8/84	$ 7577.00	Iowa phone bank after caucuses
ARIZONA	May 5, 1984					
FMG Telecomputer		14317	5-17-84	5/84	$ 6267.00	Voter Registration after caucus
State Account			6-28-84	6/84	40.00	
					$ 6307.00	
NEW MEXICO	June 5, 1984					
Data Company Inc.		18295	8-6-84	7/84 - 8/84	$ 1456.17	Mail for Voter Registration after primary
Data Company Inc		18515	8-9-84	7/84 - 8/84	1568.13	
FMG Telecomputer		18894	8-15-84	7/84 - 8/84	1584.26	Voter Registration calls after primary
					$ 4608.56	

VENDOR	PRIMARY OR CAUCUS DATE	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
NATIONAL EFFORT AFTER LAST PRIMARY OR CAUCUS	**June 5, 1984**					
Thornbury Direct		17167	7-18-84	6/84 - 7/84	$ 22862.82	Church Voter Registration done after all primaries and caucuses
" "		18910	8-15-84	6/84 - 8/84	19148.93	
" "		19097	8-17-84	6/84 - 8/84	29034.51	
" "		21035	9-84	6/84 - 8/84	52.26	
Thornbury Direct		17496	7-84	6/84 - 7/84	604.19	
Marion Bailey		21021	10-16-84	6/84 - 8/84	337.01	National Voter Registration calls
Ellen Conaway		Various	Various	6/84 - 8/84	4425.84	Travel reimbursement for Voter Registration
U.S. Postmaster		18038	8-1-84	7-84	1365.00 2/	Postage
					$ 77830.56	
REAGAN ROUND-UP	**June 23, 1984**					
Various		Various	Various	6-23-84	$ 182968.16	Nationwide Voter Registration drive held after all primaries and caucuses
GRAND TOTAL					$1847776.54	

2/ Reimbursed by Reagan-Bush '84 General Election Committee

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REGAN-BUSH '84
POLITICAL EXPENSES BENEFITTING
GENERAL ELECTION CAMPAIGN ONLY

VENDOR	CHECK NUMBER	CHECK DATE	CONTRACT OR SERVICE DATE	AMOUNT	PURPOSE
Decision/Making/Information	14174	5-17-84	5-14-84	$ 10150.00	Polling - Start up
" " "	14884	6-4-84	5-31-84	12000.00	Polling - Start up
" " "	14885	6-4-84	5-31-84	15000.00	Polling - Start up
" " "	14886	6-4-84	5-31-84	17000.00	Polling - Start up
" " "	15318	6-12-84	6-11-84	25000.00	Polling - Data base
" " "	15319	6-12-84	6-11-84	20000.00	Polling - Research
" " "	15320	6-12-84	6-11-84	11000.00	Polling - Minorities
" " "	17392	7-23-84	7-12-84	10000.00	Polling - Targeting
" " "	17393	7-23-84	7-12-84	10000.00	Polling - On Line Access
" " "	17394	7-23-84	7-12-84	26000.00	Polling - Mapping
" " "	17413	7-23-84	7-12-84	4800.00	Polling - 20 Questions
" " "	17946	7-31-84	7-30-84	26700.00	Polling - Targeting
" " "	18233	8-6-84	8-6-84	52050.00	Polling - Mapping
" " "	18257	8-6-84	7-30-84	10000.00	Polling - NJ, TX, CA, TN
" " "	20402	9-18-84	7-30-84	3000.00	Polling - Cook County
				$ 252700.00	
Ed Nichols Associates	13750	5-3-84	4/84	$ 17155.63	Iowa Mailing after February caucus
Robert Gouty Company	13260	4-19-84	4-15-84	$ 1666.66	Consulting - Illinios after March Primary
" " "	14417	5-24-84	5-15-84	2000.00	
" " "	16502	7-9-84	6-15-84	2000.00	
Robert Gouty Company	19585	8-30-84	7-15-84	4000.00	
				$ 9666.66	
Warren Tompkins	13537	4-26-84	4/84	$ 2000.00	Consulting - South Carolina begun after March Primary
" "	14698	5-31-84	5/84	2000.00	
" "	15988	6-30-84	6/84	2000.00	
" "	17642	7-26-84	7/84	2000.00	
Warren Tompkins	19453	8-24-84	8/84	1600.00	
				$ 9600.00	
			TOTAL	$ 289122.29	

Date & Time Transmitted ____________

TO: The Commissioners

FROM: Office of the Staff Director

SUBJECT: Exhibits - Final Audit Report - Reagan-Bush '84

DEADLINE: ____________

Sunshine Recommendation

A. ____ Open Session B. __X__ Executive Session because

__X__ Discussion would involve compliance matters which would be confidential under 2 U.S.C. § 437g. (11 CFR § 2.4(a)(1) and (2)).

____ Matter relates solely to the Commission's internal personnel decisions, or internal rules and practices. (11 CFR § 2.4(b)(1)).

____ Report contains privileged or confidential financial or commercial information. (11 CFR § 2.4(b)(2)).

____ Discussion would involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person. (11 CFR § 2.4(b)(3)).

____ Disclosure would constitute a clearly unwarranted invasion of privacy. (11 CFR § 2.4(b)(4)).

____ Discussion involves investigatory records compiled for law enforcement purposes, and production would disclose investigative techniques. (11 CFR § 2.4(b)(5)).

__X__ Premature disclosure would be likely to have considerable adverse effect on the implementation of a proposed Commission action. (11 CFR § 2.4(b)(6)).

____ Matter specifically concerns the Commission's participation in a civil action or proceeding, or an arbitration. (11 CFR § 2.4(b)(7)).

Robert J Costa

for the Staff Director

Media Production Costs

Section 9034.5(a) of Title 11 of the 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.

The Regulations, at 11 C.F.R. § 106.1(a) require that expenditures made on behalf of more than one candidate shall be attributed to each candidate in proportion to the benefit reasonably expected to be derived.

Background

The Committee contracted with Tuesday Team, Inc., (TTI), to handle the production and time buying for commercials to be aired during both the primary and general election campaigns. There was a separate contract for each election campaign. The Committee wired funds to TTI which, with the exception of the $1,000,000 fee payment, were either deposited in the TTI production account or the media (time buying) account established by TTI to transact the business relative to the contract with the Committee. TTI in turn made payments to vendors for the expenses related to production of commercials and the purchase of advertising space.

Certain production costs, identified by the Committee as relating to commercials to be aired during both the primary and general election campaigns, were viewed by the Committee as allocable between the primary and general election campaigns. On September 10, 1984, the Committee was reimbursed $304,389.50 by the Reagan-Bush '84 General Election Committee ("the GEC"). The Committee indicated that this amount represented 50% of total production costs associated with certain commercials. The Committee's Deputy Treasurer stated that this allocation was based on the fact that the same commercials were produced for use in both the primary and general election campaigns.

The auditors made numerous requests for documentation supporting the 50% allocation before, during, and after our review of TTI media records in New York City on December 18 - 19, 1984; however, such information was not made available. During the February 12, 1985 exit conference, the Deputy Treasurer informed the auditors that on the previous day, the Committee had refunded $162,807 to the GEC based on a further analysis of production costs and use of campaign commercials. This amount is included in the NOCO Statement under Accounts Payable. The Deputy Treasurer said he would supply information supporting his calculations in a few days. On February 25, 1985, the Deputy Treasurer supplied the Audit staff with schedules (Attachment 1) indicating that some commercials were produced for the primary campaign only, and not used in the general election campaign. The schedules did not provide the following information necessary to verify the $304,389.50 reimbursement by the GEC or the $162,807 refund:

(1) Verification that some TV spots were produced for the primary campaign only.

(2) Justification for allocating production costs (of spots produced for both campaigns) between the primary and general election campaigns on a 50% basis.

(3) Check copies, paid bills, and invoices to support production costs by commercial as listed on page 3 of Attachment 1.

Furthermore, in addition to paying production costs and the cost of the media time purchased, the Committee also paid the media firm a $1,000,000 consulting fee. In the Audit staff's experience, advertising firms are usually compensated on the basis of a 17.65% markup on the cost of media time purchases. The Committee has indicated that the flat fee it paid to its media firm was in lieu of cost plus 17.65% not only on media time buys but also on production costs and a number of other services and facilities furnished by the firm. According to the Deputy Treasurer, the Committee did not include any portion of the flat fee in the total of allocable production costs. However, it is the Audit staff's opinion that to the extent that a portion of the fee is attributable to the cost of producing advertisements used by the GEC as well as by the Committee, the amount should be included in the total of allocable production costs.

At the February 12, 1985 exit conference, the Treasurer said that with respect to media production costs, the 50% allocation between the primary and general election campaigns was developed in early 1984 based on planning and estimated usage of production pieces. The Treasurer said that documentation for media production costs would be made available to the Audit staff. The only such information received as of March, 1985 was the aforementioned, unverified schedule supplied by the Deputy Treasurer on February 25, 1985 (See Attachment 1).

Interim Report Recommendations and Committee Response

In the interim audit report, the Audit staff recommended that the Committee make available for our review documentation to support the allocation of media production costs to the primary and general election committees. The documentation requested was to include check copies, paid bills, and invoices to support production costs by commercial as listed on Attachment 1; evidence of how the flat consulting fee relates to the total of allocable production costs; justification for the 50% allocation of production costs between the primary campaign and general election campaign for spots aired in both campaigns; and verification for the Committee's contention that certain spots were used in the primary campaign only.

As part of their September 16, 1985 response to the interim audit report, the Committee made available for our review, documentation to support costs for commercials listed on Attachment 1. In addition, the Committee offered a justification for their 50%/50% allocation of production costs with the GEC and an explanation of how the $1,000,000 fee paid to TTI relates to this allocation. The Audit staff performed follow-up fieldwork to review this information.

Follow-up Fieldwork

The first step in the review was to verify total production costs for each commercial as listed on page 3 of Attachment 1. The Audit staff reviewed invoices and other records made available relating to payments made from the TTI Production account. Our review indicated that the distribution of production costs by commercial as listed on page 3 of Attachment 1 was accurate except for the amount associated with the commercial entitled Statue of Liberty. As a result of our review of production account records, we identified $59,563.18 in expenses related to the Statue of Liberty or $29,065.18 more than the amount listed by the Committee. The Deputy Treasurer could not explain the difference.

The next step was to verify which commercials were shared by both the Committee and the GEC. The Committee could not supply the Audit staff with traffic reports or other documentation which could be used to measure frequency of commercial use by each campaign. However, the Committee did maintain invoices paid to vendors for residual fees to musicians and other performers. These invoices did not list frequency of commercial use but did contain dates indicating when a spot was shown or a time period in which the spot was to be aired. Using these invoices, the Audit staff determined that the ads entitled Statue of Liberty, Spring of '84:60, Prouder, Stronger, Better:30, Prouder, Stronger, Better:60, were shown during both the primary and general election campaigns. The ad entitled The Bear was shown during the general election only. Spring of 84:30, America's Back:30 and America's Back:60 were shown during the primary campaign only, according to the invoices reviewed. These results conflict with the Committee's assertions (detailed on Attachment 1) that The Bear was shared by both campaigns and Prouder, Stronger, Better:30 was only used in the primary campaign.

The Audit staff then totaled production costs for the 4 commercials shared by the two campaigns (we did not include $4,806.43 in Statue of Liberty production costs related to the Hispanic radio version which was used in the primary campaign only). The result was then multiplied by the 50% allocation rate used by the Committee to compute the amount of reimbursement required by the GEC.(The Audit staff could not verify that this rate was reasonable because we did not have access to records sufficient to verify frequency of commercial use by the two campaigns. For a more detailed discussion of the 50% allocation rate, see page 5.) Production costs for The Bear (shown in the general election campaign only) were then added to the "shared commercial" amount of $172,357.59. Based on our review of records made available, it is the Audit staff's opinion that the GEC's share (assuming the 50% rate) of production costs paid by the Committee relative to the 8 commercials listed on Attachment 1 is $226,111.59.

In addition, the Audit staff determined that the Committee paid $20,100.21 for production of a spot entitled Ronald Reagan 5 min #1 for which performance fees were paid for the period August 6 through November 4, 1984. Again, records were unavailable to determine the exact date(s) this ad was run. Further, the period of use does not clearly indicate whether the cost of this commercial was a GEC expense, primary expense, or an expense which should be shared between the Committee and the GEC. For the purpose of this discussion, it is assumed that the commercial entitled Ronald Reagan 5 min #1 was used solely during the general election campaign, hence all expenses paid by the Committee would require reimbursement by the GEC. This amount is partially offset by $9,893.13 in production costs paid by the GEC for the America's Back spots which were shown during the primary campaign only. The resulting net total production costs paid by the Committee for GEC ads is $236,318.67 given the 50% allocation rate for shared commercials is reasonable and the assumption with respect to the Ronald Reagan 5 min #1 commercial. A recap of the allocable costs as submitted by the Committee as well as allocable costs as calculated by the Audit staff is included at Attachment 2.

In the interim report the Audit staff recommended that the Committee supply evidence of how the $1,000,000 flat consulting fee relates to the total of allocable production costs. In response to a question raised in the February 12 exit conference, the Committee's attorney supplied the Audit staff with documentation indicating that the flat consulting fee was paid in lieu of a 17.65% markup on media time buys and production costs.

In its September 16, 1985 response to the Interim Audit Report, the Committee offered a different explanation regarding the media consulting fee. The Committee asserts that at the time the fee amount was determined, the appropriate allocation of the fee between the primary and general election campaign was made that took into account the anticipated use by the GEC of primary produced commercials. The Committee's response admitted however, that the relative levels of production by the 2 campaigns were not known at the time the fee was determined except they did anticipate that the level of production for the GEC would exceed production for the primary campaign.

After reviewing the Committee comments on this matter, it is the Audit staff's opinion that the most reasonable method to allocate the portion of production costs attributable to the consulting fee which benefits the GEC is the application of the 17.65% markup. This approach is analogous to the requirement that the commissions charged by media firms for placement of advertisements be included in the allocable portion of broadcast media buys in accordance with 11 C.F.R. § 106.2(b)(2)(i)(B).

Given that the Committee has stated that a flat fee was paid in lieu of a 17.65% markup, the Audit staff added 17.65% of $236,318.67 or $41,710.25 for the markup on production costs attributable to the fee paid the media consulting firm. Since the Committee is to be reimbursed for production costs by the GEC, the Committee must also must reimbursed for the related portion of the consultant fee.

<u>Audit Analysis of Committee's Allocation Ratio</u>

The resulting total of $278,028.92 is $135,594.92 more than the net reimbursements already made by the GEC to the Committee. Therefore, the Committee is due $135,594.92 from the GEC contingent upon an analysis of the reasonableness of the 50% allocation rate for shared commercials. During the follow-up fieldwork completed October 18, 1985, the Audit staff attempted to obtain traffic reports or other documentation necessary to verify the reasonableness of the rate. The Deputy Treasurer responded that the Committee could not locate these records, if they [indeed] existed. Therefore, the Audit staff could not verify that the 50% allocation rate is reasonable.

We have reviewed the justification supplied by the Committee's accounting firm which was included as part of the Committee's response to the Commission approved interim audit report. The accounting firm, in a letter to Committee Counsel, stated that " No basis other than a systematic and rational approach <u>seems</u> appropriate in the circumstances. The cause and effect relationships necessary for attaching cost to specific activities or services in a non-business environment on a usage basis <u>do not appear</u> to exist at the point of cost incurrence." (Emphasis not in original). The accounting firm cites representations made by the Committee in support of the above opinion. Specifically, the letter states " The Committee has indicated that no specific program was or could have been established in advance for the use of the commercials, nor was any history available which would have provided a reasonable basis for establishing an allocation plan for the cost." It is the opinion of the Audit staff that the Committee's representations (accepted by the accounting firm in its analysis and application of the appropriate accounting standards) are incorrect.

At the time the Committee made the reallocation noted on page 2 of Attachment 1, information was available (or could have been obtained from TTI) indicating the actual usage of the shared commercials in the primary campaign. Information necessary to estimate the anticipated usage for the shared commercials in the general election campaign should also have been available. It should be noted that the Deputy Treasurer of the Committee advised that this reallocation was made in September 1984 when the primary campaign was over and after a determination was made as to which primary produced commercials were to be used in the general election campaign. In point of fact, a statement in the firm's letter clearly shows that the Committee had re-evaluated its general election media plan with respect to the primary-produced commercials: "In August 1984, at the end of the primary campaign, it was determined that only four commercials would be used in the general election along with a large number of additional commercials produced only for the general election." Further, it is reasonable to conclude that the GEC was in a position to estimate the usage for the primary-produced commercials selected for general election usage in August/ September 1984.

With time as the only basis for considering an appropriate allocation, the accounting firm properly used accounting principles for depreciation of fixed assets in justifying the Committee's allocations. In the case of most fixed assets, the only systematic and rational allocation of costs is over time.

<u>Conclusion</u>

The Audit staff is of the opinion that relative usage is the appropriate method of allocating production costs between the two campaigns. The Committee, however, has not made available for our review traffic reports or other documents that would permit us to calculate the relative usage. As noted above, The Deputy Treasurer stated that he did not know where these records were, or if they exist.

<u>Recommendation</u>

Since the Committee has not supplied adequate documentation to support their allocation of production costs, the Audit staff recommends that this matter be referred to the Office of General Counsel.

REAGAN-BUSH '84

The President's Authorized Campaign Committee

Reagan-Bush '84 Final Audit Report
Attachment 1 to Exhibit A
Page 1 of 3

MEMORANDUM

February 25, 1985

TO: BAY BUCHANAN

FROM: SCOTT MACKENZIE

SUBJECT: ALLOCATION OF CAMPAIGN COSTS

Attached is a copy of the Tuesday Team's "Allocable" Production Costs expended in the Primary Campaign. Originally, it was anticipated that the General Election Committee would use all of the commercials except "The Bear". Therefore, the following allocation was computed:

Total Allocable Production Costs	$	662,533
Less: "The Bear"		<53,754>
Production Cost to be split	$	608,779
Allocation Percentage		50%
Allocation to the GEC	$	304,389

However, prior to the start of the General Election Campaign a decision was made to utilize only the following commercials in the General Election:

(1) "The Bear"

(2) The Statue of Liberty

(3) Spring of '84: 60

(4) Prouder, Stronger, Better: 60

Therefore, our allocations should have been adjusted as follows:

Total Allocable Productions Costs		$ 662,533
Less: "Primary Only" Commercials		
Spring of '84 : 30	$ 49,206	
America is Back: 60	146,354	
America is Back: 30	97,569	
Prouder, Stronger, Better: 30	84,537	
Non-Allocable Commercials		<377,666>
Production Costs to be split		$ 284,867
Allocation Percentage		50%
Allocation to the GEC		$ 142,434

To date, the following has occurred between the Primary and General Election Committees:

	PRIMARY	GENERAL
Allocable Production Costs	$ 662,533	$ -0-
Committee Allocation 9/07	<304,389>	304,389
Allocation Adjustment 2/11	162,807	<162,807>
Current Balance 2/22	$ 520,951	$ 141,582
Required Adjustments	<852>	852
Appropriate Allocations	$ 520,099	$ 142,434

Reagan-Bush '84 Final Audit Report 8/15/84
Attachment 1 to Exhibit A
Page 3 of 3

REAGAN-BUSH '84

THE TUESDAY TEAM, INC.

ALLOCABLE PRODUCTION COSTS

	The Bear	Statue of Liberty	Spring of '84		America Is Back		Prouder, Stronger, Better		Production Totals
			:60	:30	:60	:30	:60	:30	
Producer's Net	$47,855	$18,553	$50,508	$33,672	$117,721	$78,481	$107,136	$71,424	$525,350
Editorial	1,288	3,194	5,441	3,627	5,764	3,843	5,669	3,779	32,605
Talent	289	1,931	6,661	4,440	16,115	10,744	6,251	4,167	50,598
Shipping	58	29	108	72	35	23	64	43	432
Artwork/Stats	886	221	277	185	532	354	618	412	3,485
Travel & Expenses	2,964	-0-	-0-	-0-	1,779	1,185	1,779	1,186	8,893
Misc./Scouting	414	-0-	2,271	1,514	515	344	1,395	930	7,383
Music	-0-	6,570	4,344	2,896	3,893	2,595	3,893	2,596	26,787
Grand Canyon Footage	-0-	-0-	4,200	2,800	-0-	-0-	-0-	-0-	7,000
TV COMMERICIAL TOTALS	$53,754	$30,498	$73,810	$49,206	$146,354	$97,569	$126,805	$84,537	$662,533
TV Commercial Totals			123,016		243,923		211,342		÷ 2 331,266 50

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Reagan-Bush '84

Calculation of Allocable Production Costs Receivable from GEC

	Committee	Audit
Total Allocable Production Costs	$662,533	$691,598.18
Less: Primary Only Commercials -		
Spring of 84:30	(49,206)	(49,206.00)
America's Back:60	(146,354)	(146,354.00)
America's Back:30	(97,569)	(97,569.00)
Prouder Stronger Better:30	(84,537)	-0-
Less: General Only Commercials (The Bear)	-0-	(53,754.00)
Net (Production Costs to be Split)	284,867	344,715.18
50% Allocation to the GEC 1/	142,434	172,357.59
Add: General only commercial (The Bear)	-0-	53,754.00
Subtotal	142,434	226,111.59
Add: Audit Adjustments:		
Ronald Reagan 5 min #1 2/	-0-	20,100.21
Less: Audit Adjustments: General Payments for Primary only commercials		
America's Back:30	-0-	(7,012.10)
America's Back:60	-0	(2,881.03)
Net Amount Allocable	142,434	236,318.67
Add: 17.65% markup 3/	-0-	41,710.25
Gross Amount Allocable 4/	$142,434	$278,028.92

1/ Assumes 50/50% allocation rate is reasonable. See discussion page 5.

2/ Assumes Commercial was used by GEC only. See discussion page 4.

3/ Assumes 17.65% markup is reasonable. See discussion pages 5-6.

4/ Since the Committee already received $142,434 (net) from the GEC, $135,594.92 is still due based on our analysis. However, for purposes of the NOCO Statement contained in the proposed final report, no recognition is made of this analysis and the Committee's estimate is used.

Receipt of Excessive Contributions

Under 2 U.S.C. § 441a(a)(1) a person is prohibited from making contributions to a candidate and his authorized political committee with respect to any election for Federal office which in the aggregate, exceed $1,000. In accordance with 11 C.F.R. § 103.3(b)(1), contributions which appear to be illegal shall be within 10 days, either returned to the contributor or deposited. If deposited, the treasurer shall make and retain a written record noting the basis for the appearance of illegality and shall make best efforts to determine the legality of the contribution.

The Audit staff's review of contributions revealed that the Committee received amounts totaling $193,674.43 from 285 individuals which were in excess of the contribution limitations. As detailed below, the Committee attempted to resolve these excessive contributions by (A) making refunds, (B) transferring the excessive portion to the Reagan-Bush '84 General Election Compliance Fund ("Compliance Fund")*, or (C) attributing the excessive portion to the contributor's spouse.

A. Failure to Refund in a Timely Manner

The Committee refunded $16,050.00 representing the excessive portion of contributions from 18 contributors. However, the refunds were not made within a reasonable period of time.

B. Transfer of Excessive Portion to General Election Compliance Fund

The Committee attempted to resolve most of the excessive contributions received by allocating up to $1,000 of the excessive portion to the Compliance Fund. A letter was sent to the individual informing him/her that the excessive portion of the contribution up to $1,000 was being transferred to the Compliance Fund. The letter did not advise the contributor that he/she was entitled to a refund, nor did it request that the contributor make any response as to whether he/she wanted the contribution transferred to the Compliance Fund. Based on these letters, the Committee transferred to the Compliance Fund $172,624.43 representing the excessive portion (up to $1,000) of the contributions received from 285 contributors. In many instances the transfers occurred 5 to 10 weeks after receipt of the excessive contribution. However, in some cases, the lag was as long as several months.

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* In accordance with 11 C.F.R. § 9003.3(a) this fund was established by the candidate to accept contributions used to defray general election legal and accounting expenses, the sole purpose of which was to insure compliance with the Act.

C. <u>Attribution of Excessive Portion of Contributions to Spouses</u>

On January 11, 1985, the Audit staff presented the Committee a list of apparent excessive contribution portions which, according to Committee records, had been reattributed to the contributor's spouse. The excessive portions ($5,000) of contributions from 6 individuals were attributed to the contributors' spouses when the contributions were received in February and March, 1984. However, the Committee had not attempted to obtain the signature of the spouse in order to verify the attribution. On January 16, 1985, the Committee sent letters to the contributors and their spouses requesting signatures to verify the attribution.

On February 20, 1985, the Committee's attorney supplied copies of responses from 4 of these individuals' spouses verifying the reattribution for $3,500 of the $5,000 in excessive contributions.

At the February 12, 1985 exit conference, the Treasurer said that the letters which were sent to verify reattributions of excessive contributions to spouses would show that these contributions had been properly reattributed and reported. The Audit staff requested that Committee officials supply copies of the remaining contributors' responses upon receipt.

Subsequent to the exit conference, the Committee submitted a memorandum which included a proposed resolution to the apparent excessive contributions transferred to the Compliance Fund. The Committee cites General Election Regulations to support their contention that their procedures "were precisely the same as those expressly authorized by the Commission in a closely analogous situation." However, the Committee proposes to resolve the excessive contributions by sending a FEC approved negative confirmation letter to each contributor and refunding any amounts requested by contributors. Should the Committee elect to send letters to the contributors, the letter at a minimum should contain the following statements:

1) The Committee may receive only $1,000 from each individual per election.

2) Because the contribution was received during the pre-nomination period and contained no indication that it was intended to be used for the general election, it is deemed to be intended only for the primary.

3) Accordingly, if the contributor wishes his/her contribution to be used for the Compliance Fund, he/she must sign and return a written response so indicating.

4) If a contributor does not wish the excessive portion to be used for the Compliance Fund, a refund will be made.

In the Commission approved interim audit report, the Audit staff recommended that within 30 days of receipt of the report, the Committee submit evidence demonstrating that the $193,674.43 in apparent excessive contributions were not excessive or issue refund checks and provide copies (both front and back) of the negotiated refund checks to the Audit staff.

For contributions transferred to the Compliance Fund, the Audit staff alternatively recommended that within 30 days of receipt of the report, the Committee provide evidence that affirmative response letters reviewed by Commission staff have been distributed to the individuals making the contributions, and where indication is not received from a contributor that he or she wishes to have the excessive portion of his/her contribution used by the Compliance Fund, the Committee refund the excessive portions and provide copies (both front and back) of the negotiated refund checks to the Audit staff.

In its response to the interim audit report, the Committee did not address the issue of its failure to refund excessive contributions in a timely manner (Section A. above). With respect to Section C., Attribution of Excessive Portion of Contributions to Spouses, the Committee provided one of the two remaining attribution letters and explained that "no documentation can be obtained for the other contribution, which will be refunded." It should be noted that no evidence of the refund was provided.

The remainder of the Committee's response concerning the receipt of excessive contributions dealt with Section B., Transfer of Excessive Portion to the General Election Compliance Fund. The Committee, in its response, presents several reasons in support of its position not to follow the recommendation contained in the interim report (i.e., return the excessive portions ($172,624.43) to the 285 contributors or submit for each contributor an affirmative response approving the transfer of the excessive portion of their contribution to the Compliance Fund).

First, the Committee notes that the report did not cite any Commission precedent to support the recommendation, nor was the Committee aware of any such regulation or Advisory Opinion that would have required the Committee to obtain the affirmative consent of the contributor before transferring the excessive portion of his/her contribution to its Compliance Fund. The Committee further cites several Advisory Opinions*/ as well as a reference to the Commission's <u>Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing</u> (Revised July, 1984). The issue of whether a transfer of

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*/ Advisory Opinions 1978-37; 1979-51; 1982-39.

excessive contributions to a candidate's general election legal and accounting compliance fund may occur and, if so, under what circumstances, was raised in the Manual. The discussion in the Manual concluded by informing the reader that "Upon the Commission's determination of the matter all recipients of this manual will be notified.*/

Second, the Committee asserts that even if the contributor's consent had been required, it would have been reasonable to presume consent since persons who contribute to a presidential primary campaign committee do so to advance the candidate's election to the office of President; they do not contribute to a primary campaign as an end in itself. Rather, contributors who gave the primary committee more money than could be retained would presumably have no objection to the transfer of the excessive portions of their contributions to the Compliance Fund to aid the compliance function in the general election campaign.

Finally, the Committee states that "Even if the Commission were to conclude now that the affirmative consent of contributors should be obtained by a committee prior to the transfer of excess contributions to its compliance fund, this decision should not be applied retroactively to the Committee."

With respect to the Committee's first point concerning the seeming lack of Commission precedent in this area, the Audit staff notes that 11 C.F.R. § 110.1(a)(2)(ii)(A) provides that in the case of a contribution not designated in writing (by the donor) for a particular election such contribution is attributable to the primary election if made on or before the date of the primary election.**/

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*/ As of this date, no supplement to the Manual has been published.

**/ Even though the contributions at issue were received, for the most part, in response to solicitations by the primary committee and as such should be considered for the primary campaign, the application of 11 C.F.R. § 110.1(a)(2)(ii)(A) regarding undesignated contributions reaches the same conclusion.

Thus, without a designation in writing by the donor, the contribution must be considered as having been made with respect to the primary election only.*/ The Committee may not "redesignate" a contribution (or portion thereof) to a different election campaign; only the contributor may designate to which election(s) his/her contribution is made.

The second point raised by the Committee relating to the "reasonable presumption" that contributors would have no objection to a transfer of the excessive portions of their contributions to the general election Compliance Fund fails to recognize the requirement of 11 C.F.R. 110.1(a)(2)(i) that election designations must be in writing and made by the donor. The only presumption in the regulations on this point is with respect to contributions not designated in writing for a particular election (see 11 C.F.R. § 110.1(a)(2)(ii).

In the same vein, the Committee's statement regarding a retroactive application is not persuasive since 11 C.F.R. § 110.1(a) was in place prior to the events at issue.

In summary, it is the opinion of the Audit staff, that the Committee's response does not support its position that it has no obligation to return to the contributors the portions of the 285 contributions that were transferred to the Compliance Fund or to obtain the affirmative consent of those contributors to the transfer of those portions of their contributions to the Compliance Fund.

Recommendation

It is recommended that this matter be referred to the Office of General Counsel pursuant to the Commission-approved Materiality Thresholds.

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*/ The Committee did not cite 11 C.F.R. § 102.9(e) in support of its position regarding the transfer of excessive contributions.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1986

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Charles N. Steele
General Counsel

SUBJECT: Comments on Proposed Final Audit Report on the Reagan-Bush '84 Committee (Primary)

The Office of the General Counsel has reviewed the proposed final audit report on the Reagan-Bush '84 Primary Committee ("Committee" or "Primary Committee"), the accompanying memorandum dated October 31, 1985, and the attached exhibits A and B, and has discussed at length with Audit Division staff the issues raised. We have also discussed with Audit staff a change in one of the findings the Audit Division intends to make as a result of its referencing of the report after it was forwarded to this Office for review.

I. SUNSHINE RECOMMENDATION

The body of the proposed audit report contains a finding of non-qualified campaign expenses and a finding relating to the Committee's NOCO statement. These findings are not proposed to be referred to this Office for compliance action and will not likely involve discussions about compliance, 11 C.F.R. § 2.4(a), or materiality thresholds, § 2.4(b)(5). Rather, they involve potential repayment determinations pursuant to 26 U.S.C. § 9038, which provides no specific exemption from the Sunshine Act. Furthermore, it does not appear that an open session discussion of the report could hinder Commission implementation of the findings in the report, § 2.4(b)(6). Accordingly, we agree with the Audit staff's suggestion that the Commission must consider the report in open session.1/

1/ As noted in our Sunshine comments on the Hollings interim addendum, Memorandum to Marjorie W. Emmons, dated November 18, 1985, any implication from section 9038.1(e)(3) of the

The Audit staff recommends that the two matters attached as Exhibits A and B to the report be discussed in closed session and as the basis, cite statutory confidentiality, § 2.4(a)(1) & (2), and the "premature disclosure" exception, § 2.4(b)(6).

The first exhibit is a finding relating to allocation of media production costs, and indicates that the Committee may be owed additional amounts by the Reagan-Bush '84 General Election Committee ("GEC") for production costs it paid for advertisements used in the general election campaign. If so, the Committee's surplus would increase, generating an additional surplus repayment pursuant to 28 U.S.C. § 9038(b)(3). The Audit staff concludes that the Committee has not provided sufficient documentation to support the allocation of the production costs and seeks to refer the matter to this Office. Since our comments below suggest that the Commission consider judicial enforcement of the candidate agreements entered into pursuant to 26 U.S.C. § 9033, this discussion should be exempt from open session under the § 2.4(b)(7) exemption for discussion of litigation decisions and tactics.

The second exhibit is a finding relating to the Committee's receipt of excessive contributions. Since this matter plainly involves the compliance process and also could involve discussion of the Commission's audit program and materiality thresholds, it may be discussed in closed session under § 2.4(a)(1), (2) and § 2.4(b)(5).

II. MATTERS PROPOSED TO BE REFERRED

A. Redesignation of Excessive Contributions

The Committee received $193,000 in excessive contributions from 285 individuals. The bulk of these excessives were transferred to the General Election Committee's Legal and Accounting Compliance Fund ("LAC"), and the contributors were informed by letter that the excessive portion of their contributions was so transferred. The Commission-approved interim report stated that the Committee could send "positive" letters to the contributors soliciting an affirmative indication that the contributors wished their contributions used by the Compliance Fund. However, the Committee has elected not to send such letters and has not refunded the excessive contributions.

Candidates and their authorized committees are prohibited from accepting more than $1,000 in contributions from individuals per election. 2 U.S.C. §§ 441a(a)(1)(A), 441a(f). Further,

1/ (continued)
regulations that the draft report should be confidential before the Committee receives a copy of the final report is not a basis for its exemption from open session consideration under the Sunshine regulations.

primary elections and general elections each have separate contribution limitations under the Act. 2 U.S.C. § 441a(a)(6). In addition, the regulations provide that where a contributor designates in writing that the contribution is intended for a particular election, the amount is attributable to the election (and to the contributor's limitation for the election) so designated. 11 C.F.R. § 110.1(a)(2)(i). However, if the contributor does not so designate, the regulations dictate that a contribution is for the primary election if made prior to the primary, and for the general election if made after the date of the primary. 11 C.F.R. § 110.1(a)(2)(ii). Thus, the Commission has not permitted authorized committees that receive contributions to freely designate portions of contributions between the primary and general elections to obviate receipt of otherwise excessive contributions; the Commission instead has required such committees to abide by the contributor's designation or, lacking one, by the prescription in the regulations that a contribution received during the primary period is <u>in toto</u> applicable to the primary election. <u>See</u> Memorandum to the Commission dated November 26, 1984, adopted December 4, 1984 ("the December 4 Statement") at p. 4. Based on the foregoing discussion, it appears that the Committee's action transferring excessive primary contributions to the General Election Compliance Fund is inconsistent with the Commission's regulations and its consistent interpretation of the Act, including decisions specifically to bring enforcement actions in court. December 4, 1984 Statement.[2/] Accordingly, we agree that the matter should be referred to this Office for further action.

2/ Commission regulations allow the transfer, after notice to the contributor, of contributions received <u>after</u> the primary period to the General Election LAC under certain circumstances. 11 C.F.R. § 9003.3(a)(1)(iii). Contrary to counsel's argument (Response p. 3), however, the Commission has not previously permitted the transfer to the LAC of contributions received during the primary campaign in violation of the contribution limitations. The Financial Control and Compliance Manual for General Election Candidates at page I-8 stated that the issue was under consideration by the Commission, and the Committee argues that it acted appropriately in view of the absence of direct guidance. However, the <u>Manual's</u> statement did not set forth a rule permitting such transfers, and certainly did not serve as an approval of the Committee's actions. Both prior to and subsequent to the <u>Manual's</u> release, the Commission has consistently taken the position in its enforcement actions that authorized committees receiving contributions are not free to designate for what election the contribution was intended. This course of action was affirmed with the approval of the December 4, 1984 Statement.

B. Allocation of Media Production Costs Between Primary & GEC

The Committee paid for the production of advertisements, some of which were used also by the GEC and one of which apparently was used only by the GEC. The Audit staff recommends the matter be omitted from the report and instead referred to this Office, on the basis that the Committee has failed to provide information sufficient for a calculation of how the costs should be allocated between the Committee and the GEC. The discussion below analyzes the finding, describes the problem raised by the Audit staff, explores the possible alternative courses of action, and concludes that the Commission should seek judicial enforcement of the candidate agreements if necessary to secure the missing documentation.

The Committee sought reimbursement from the GEC of 50% of the costs of the shared commercials. The GEC originally reimbursed the Committee $304,389.50 as its share; in February 1985, however, on a new calculation of which advertisements were actually shared, the Committee returned to the GEC $162,807, leaving the amount paid by the GEC for the advertisements at $142,434. The interim report questioned three aspects of the allocation. First, it sought to verify the costs of producing each commercial. Second, it sought verification of which commercials actually were used by the GEC, and third, it requested support for the allocation of the costs on a 50/50 basis.

1. Verification of Production Costs

Upon review of the Committee's response, and completion of follow-up field work conducted pursuant to 11 C.F.R. § 9038.1(b)(3), the Audit Division verified the direct costs of producing the advertisements, except that it found one shared ad cost about $29,000 more than indicated by the Committee.3/ In addition, the Audit Division concluded, as described below, that a small portion of the flat $1 million consulting fee paid to the media firm which produced the advertisements should be added to the advertisements' direct production costs.

We understand that production and placement of media for the Reagan-Bush '84 primary and general election committees was provided by a media consultant firm (the Tuesday Team, Inc., "TTI"), organized (according to an accountant of the firm) for the purpose of providing such services to Reagan-Bush '84. According to Audit Division staff, the Committee's payments to

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3/ We suggest the finding list in a schedule the additional costs found, and if this information has been provided to the Committee, also specifically describe the form of it and the date it was provided.

the firm were segregated into three separate accounts maintained by the firm: a production account to reimburse the firm for the costs of producing the advertisements; a media account to reimburse it for for actual purchases of advertising time (i.e. time buys); and the firm's general account into which were deposited installment payments toward a $1 million consulting fee. Apparently, the large consulting fee was paid to TTI in lieu of a percentage of certain costs (ordinarily of media time buys), and according to the Audit Division appeared to be more than twice the industry average. The Committee argued the fee was reasonable, stating that the flat fee was paid in lieu of markup on production costs in addition to the standard markup based on time buys and also on a number of other items in the "creative area" for which TTI itself was responsible out of the flat fee. Memorandum dated February 19, 1985 from the Committee to the Audit staff, p. 1. Since markups based on production costs and "creative" costs are attributable to the making of the advertisements and are not general administrative overhead, the Audit staff determined that a portion of the flat fee paid in lieu of such direct costs should be added to the total production costs to be split between the Committee and the GEC.

In its response to the Interim Audit Report, the Committee argues that no portion should be added, since it had initially allocated the total Tuesday Team flat fee between the Committee and the GEC and had already considered the costs attributable to the shared advertisements in so allocating (Response pp. 21-22). However, when the Audit Division first observed that the flat fee paid by the Committee seemed much too high, the Committee contended that it was in lieu of a number of costs and that the GEC's contract was separately negotiated on the same basis. <u>See</u> Memorandum dated February 19, 1985 from the Committee, p. 2. In fact, the Committee's contract containing the $ 1 million fee was dated as of April 17, 1984, while the GEC's contract providing for a roughly $1.3 million payment was dated as of July 3, 1984, 2-1/2 months later. Thus, the Committee's new contention in response to the interim report's findings is in conflict with its earlier contention on a closely related point.4/ We therefore agree with the Audit Division's addition of a portion of the $1 million fee to the costs required to be split. According to the finding, Audit staff calculated the portion by applying the standard markup (17.65%) to the total production costs of the shared advertisements, resulting in the addition of $41,710.25.5/

4/ If credited, this contention concedes that the Committee manipulated the media costs between the two campaigns, possibly to shift expenditures from the GEC.

5/ This calculation may be a conservative one, since the Committee stated the flat fee was in lieu of markup on a number of "creative" costs, as well as on production costs and time buys, while Audit's calculation of the portion of the flat fee to be added is based only on a markup on production costs.

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2. Verification of the Advertisements' Use

Secondly, the Audit staff verified which primary-produced advertisements were in fact used by the GEC. Through examination of invoices of residual fees paid to performers upon each media placement, the Audit staff concluded that three advertisements were used only in the primary, that four additional advertisements were used in the primary and also in the general, and that one was used only in the general. However, due to the referencing of the audit report after its forwarding to this Office for review, we understand that the Audit Division intends to revise the finding regarding when commercials were used. We recommend the report explain the basis for the Audit Division's factual conclusion as to each commercial, especially those in which there is a disagreement between Audit and the Committee, and set out the disagreement in chart form for ease of understanding. With the calculation of the total production costs and verification of the primary-produced advertisements used by the GEC, the Audit Division calculated the amount which required allocation between the Commmittee and the GEC.6/ Left was the third area addressed in the interim audit report, the question of how the amount should be allocated.

3. Allocation of Costs Based on the Extent of Use

According to the Audit staff, the Committee spent about $2 million running television advertisements in the primary, while the GEC spent more than $20 million placing this media in the general election campaign.7/ Nonetheless, the Committee had allocated the costs of the shared advertisements between the two campaigns on a 50/50 basis, and in response to repeated auditor requests for justification asserted simply that the advertisements were used in two election campaigns. In response to the interim audit report, the Committee's accounting firm

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6/ The auditors discovered that "The Bear" advertisement made by the Committee was not a "shared" advertisement, but was used only by the GEC. Accordingly, the report notes that the GEC must pay the entire cost of this commercial; no allocation method need be applied.

7/ According to the audit staff, this difference may be partly due to the fact that the GEC used approximately five (5) times more advertisements than did the Committee. Even correcting for the greater number of advertisements, however, the GEC obviously expended much more in placing media than did the Primary Committee. In view of the much larger scope of the general election campaign, where publicly funded candidates in 1984 could spend $40 million (versus $20 million in the primary), such a contrast is predictable; probably, the difference here is especially marked because the Committee was running in what was effectively an uncontested primary campaign.

attempted to justify a 50/50 allocation on the basis that the advertisements were run over the approximately same span of time in the primary and general election campaigns. The Audit staff concludes that the most reasonable method of gauging the benefit to the two campaigns is on the basis of relative usage of the shared advertisements between the two campaigns. While documentation containing such information is ordinarily kept by the firm responsible for placing the advertisements, the Committee has failed to provide it in response to repeated requests by the Audit Division. As described below, we agree that usage of the advertisements is a reasonable allocation method and that the Audit Division properly sought to verify the Committee's allocation on this basis. Further, in view of the Committee's failure to produce the requested documentation, we suggest that the Commission seek judicial enforcement if necessary to secure the documentation.

The Commission has permitted the allocation of shared expenses between a presidential candidate's primary committee and general election committee, so long as they are allocated to each committee "in proportion to...the benefit reasonably expected to be derived." 11 C.F.R. § 106.1(a); see Financial Control and Compliance Manual for General Election Candidates, pp. IV-51,52. Thus, the fact that the advertisements were used both by the Committee and by the GEC is the beginning of the inquiry, and not its end as suggested by the Committee's first justification for the 50/50 allocation. The duration of time over which the advertisements were run could bear some relationship to the benefit; however, if the Committee used the advertisements only rarely over the several month primary period, and the GEC used them heavily but over the shorter general election campaign, it is patent that an allocation based on the proportionate time span over which the advertisements were run would bear little relationship to the benefit to each campaign. On the other hand, as illustrated by the above example comparative usage of the advertisements appears to be a reasonable way of gauging the benefit to each campaign and hence the proportionate amount each should pay. For this reason, we agree with the Audit Division's attempt to measure the propriety of the Committee's allocation by determining the comparative usage.

We understand that the Audit Division was able to determine which advertisements were used in the primary and in the general through invoices of residual fees paid to actors. These invoices, however, did not always reveal how many times the advertisements were run.8/ The Audit Division therefore sought

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8/ According to the Audit Division, the invoices showed how many times the advertisements were run on national network television. However, for the "spot buys" on local television, comprising a substantial portion of the media placements, the residual invoices indicated only that an advertisement would be used in a certain market within a 13 week period and did not reveal how many times the advertisement ran during the period.

additional documentation, the "traffic reports" ordinarily kept by media firms to document each advertisement placement, but according to the finding, the Committee has failed to provide the documentation.9/

a. enforcement of the candidate agreements

The Presidential Primary Matching Payment Account Act broadly requires the candidate to agree, in return for accepting public funds, to provide the Commission with "any evidence it may request" regarding the campaign's disbursements, 26 U.S.C. § 9033(a)(1), (2).10/ In fact, the statute attaches criminal sanctions to any person who willfully fails to provide the Commission with any information it seeks in performing its statutory duties. 26 U.S.C. § 9042(c)(1)(B).11/

The regulations at 11 C.F.R. § 9033.1(b) further flesh out the candidate agreements, see 11 C.F.R. §§ 9033.1(b)(5), (6).12/

9/ In response to the auditors' request, the Committee apparently has not contended that the documentation was thrown away after its use or that the media firm refuses to make it available; it could hardly make the latter claim since the media firm was formed expressly to provide services to the candidate, and the contract provides that the firm would make available to the Committee all records relating to it, ¶¶ 3(I),(O), 4(A). Rather, the Committee's Deputy Treasurer apparently stated that the Committee could not locate the records, although it is unclear what level of effort was made to find them.

10/ Section 9033(a) requires that the candidate:
(1) agree to obtain and furnish to the Commission any evidence it may request of qualified campaign expenses,
(2) agree to keep and furnish to the Commission any records, books, and other information it may request....

11/ Section 9042(c)(1)(B) prohibits "any person [from] knowingly and willfully. . . fail[ing] to furnish to the Commission any records, books, or information requested by it for purposes of this chapter."

12/ 11 C.F.R. § 9033.1(b)(5) provides:

> (5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 C.F.R. § 9033.11, and other information that the Commission may request.

President Reagan signed a letter containing such agreements in order to receive public funds and the Committee has received the maximum entitlement of $10.1 million. Since the Commission's audit staff has specifically asked for the documentation and the Committee has failed to provide it, the Committee may be in breach of the candidate agreements. In such a case, the regulations state that the Commission may seek judicial enforcement of the agreements, section 9038.1(b)(iii), and provide that prior to such action the Commission must first notify the Committee and afford it 10 days to remedy such failure, id. 13/

Thus, if the documentation is vital to completion of the audit, the course of action anticipated by the regulations would be to send the Committee a letter separate from the audit report advising the Committee that it would be in breach of the letter of agreements unless providing the documentation within 10 days. Accordingly, we recommend that the proposed letter to the Committee's counsel attached as Exhibit 1 to our comments be included in the closed session agenda document for the Commission's consideration.

b. allocation of burden of proof to the Committee

Although we recommend that the Commission enforce the candidate agreements in order to obtain the necessary information, as discussed below, the Commission could effectively require production of the documentation by allocating the burden of proof to the Committee.

The candidate and the Committee have assumed the burden of proving the campaign's disbursements are qualified campaign expenses. 11 C.F.R. §§ 9033.1(b)(1), 9033.11(a). This allocation of the burden of proof comports with "the traditional approach that this burden normally falls on the party having knowledge of the facts involved." Environmental Defense Fund v. EPA, 548 F.2d 998, 1004 (D.C. Cir. 1976), aff'd on rehearing, 548 F.2d 1012 (D.C. Cir. 1977). Otherwise, publicly funded

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13/ Apparently, the Committee has pointed out that the Commission-approved interim audit report asked that the Committee inter alia justify the 50% allocation, but did not specifically ask for the documentation which would indicate how often the advertisements were used. However, as noted, the Audit staff has specifically sought the documentation, and the regulations expressly provide that a committee may dispute a staff request for documentation by writing to the Commission within 10 days after the request is made to which it objects. 11 C.F.R. § 9038.1(b)(iv). Since the Committee has not disputed the Audit Division's request, but has simply failed to provide the documentation, the Committee would appear to have breached the requirements noted supra, notwithstanding the interim report's general request for justification.

committees could frustrate or at least hinder the statutory audit and repayment process by failing to provide information required for a Commission repayment determination. Further, since disbursements by the (primary) Committee in connection with the general election campaign are not qualified campaign expenses, 26 U.S.C. § 9032(9)(A), see pp. 11-12, infra, the Committee as well has the burden of proving that it has allocated in a reasonable way the expenses of producing advertisements benefitting the GEC. Cf. OGC Comments to Cranston Final Audit Report, July 3, 1985, at 6 (Committee has burden of proving it has reasonably allocated its disbursements among the states so as not to exceed the state spending limits, since disbursements allocable to a state beyond the state's spending limit are non-qualified campaign expenses).

Here, the Committee failed to adequately support its 50/50 allocation of production costs, in response to numerous early requests by the Audit staff, and in its response to the interim audit report. Further, the Committee has failed to provide the documentation on the extent of the advertisements' usage by which the Audit staff, if not the Committee, could accurately verify the allocation. Thus, the Committee has not met its burden of showing that its allocation is reasonable. Indeed, the Committee's very failure to produce the relevant documentation gives rise to an inference that such documentation, if produced, would demonstrate the Committee's 50/50 allocation is not reasonable, and the courts have not only affirmed agencies' use of such a negative inference, but have actually reversed an agency for failing to draw the inference from a party's failure to produce relevant documents. See Atlantic Richfield Co. v. Department of Energy, 769 F.2d 771, 794 (D.C. Cir. 1985); International Union (UAW) v. NLRB, 459 F.2d 1329, 1342-43, 1346 (D.C. Cir. 1972).[14]

Since the Committee has not met its burden, we believe the Commission would be justified in allocating the expenses of the shared advertisements 100% to the GEC and making an initial repayment determination on that basis in the final audit report. The report would make clear that usage is the appropriate basis for verification of the Committee's allocation and that the Commission's determination resulted from the Committee's failure to provide evidence showing the actual usage of the shared advertisements. The regulations permit the Committee to respond to the initial determination, 11 C.F.R. § 9038.2(c)(2), and such

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14/ In UAW v. NLRB, 459 F.2d at 1338, 1343-44, the court noted that an agency's application of this adverse inference rule "in no way depends on the existence of a subpoena compelling production of the evidence in question," since in contrast to "cumbersome and time-consuming" enforcement proceedings, use of the inference is a quick and fair way of encouraging parties to come forward with all relevant materials.

a determination may encourage the Committee to come forward with the information as part of this process.15/

III. COMMENTS ON THE PROPOSED FINAL AUDIT REPORT

Non-Qualified Campaign Expenses: Voter Registration Campaign After State Primaries

The report notes more than $2 million in expenditures allegedly made not in connection with President Reagan's campaign for the nomination, 26 U.S.C. § 9032(9) (definition of qualified campaign expense), but to advance his general election campaign. These expenditures are comprised of approximately $1.8 million in voter registration expenses in states after the states' primaries or caucuses, and about $290,000 in polling and consulting expenses paid for by the Committee in states subsequent to the primaries or caucuses. For the reasons stated below, this Office agrees with the Audit Division that the final audit report should make an initial determination that these expenses are non-qualified campaign expenses and that the Committee should repay the public portion pursuant to 26 U.S.C. § 9038(b)(2).

Candidates for their party's presidential nomination who receive matching funds pursuant to the Presidential Primary Matching Payment Account Act must repay amounts not used to defray qualified campaign expenses. 26 U.S.C. § 9038(b)(2). Qualified campaign expense is defined to mean an expense "incurred by a candidate . . . in connection with his campaign for nomination for election. . . ." 26 U.S.C. § 9032(2). Thus, to be qualified, an eligible primary candidate's campaign expenses must be in connection with his/her nomination campaign. The Commission ordinarily accords discretion to committee decisions regarding how the candidate's publicly-funded campaign

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15/ Another possible course of action under the principles discussed above would be for the Commission to itself estimate, resolving any factual inferences against the Committee, a reasonable allocation from information the Committee has so far been willing to provide. For example, Audit staff have discussed with OGC staff the possibility of using the number of commercials used by each committee and the total amount of money expended placing commercials by each committee to calculate the average amounts spent running each advertisement by the two campaigns; the production costs could then be allocated by a ratio based on this rough estimate of the comparative usage. Because the GEC spent roughly four times as much running advertisements as did the Committee even after correction for the greater number of advertisements used, such a ratio would result in the GEC's share of the production costs being more than the 50% used by the Committee. It is the position of this Office, however, that Commission staff should not be required to go through a laborious and uncertain process to reasonably estimate an allocation when we have the alternatives of enforcing the agreement or allocating the full 100%.

for the presidential nomination should be run and, therefore, to what expenses the committee asserts are in connection with that campaign. Additionally, expenditures advancing a candidate's prospect for nomination doubtless often benefit too the successful candidate's general election chances. However, expenses paid during the primary period which further only the candidate's general election effort are not qualified campaign expenses of the candidate's primary campaign. If the Commission could not so conclude, the general election campaign could evade the expenditure limit of 2 U.S.C. § 441a(b)(1)(B) (agreed to in return for full public funding) by having its general election campaign expenses paid by the candidate's primary committee.16/

In this case, the Audit staff discovered substantial expenditures to vendors such as computer telemarketing companies unmistakeably made as part of a comprehensive voter-registration campaign.17/ Some of these expenditures were for voter registration services in states prior to that state's presidential primary, but many were for such services provided long after the primary had taken place; the proposed report includes only the latter. For example, we understand that the Committee paid more than $200,000 to three vendors, two telemarketing companies to identify prospective voters who supported the candidate and one direct mail firm to conduct follow-up mailing, which provided voter registration services from May-July of 1984 in Florida, although that state's presidential primary took place March 13, 1984. Thus, these expenditures appear to have been for the purpose of identifying and registering voters in a state where the primary election was long past and the next election was the general election. These circumstances provided a reasonable basis for the finding in the interim report.18/

16/ It could also have the benefit of campaign expenses otherwise prohibited. This is because expenses incurred prior to the beginning of the general election campaign (i.e. the post-nomination period) and not for property, services, or facilities to be used during such campaign are not qualified campaign expenses of the general election committee. 26 U.S.C. §§ 9002(11)(B), 9002(12)(A), 9012(c)(1).

17/ According to the schedule of the expenses by state, approximately twenty states were the targets of this campaign, most in the southern and western regions.

18/ According to the schedules (Attachment 1, pp. 3, 5), the GEC actually reimbursed the Committee for some $63,000 of the payments to the vendors involved. These reimbursements possibly amount to a Committee concession that at least some of the expenses were unrelated to the nomination campaign. Also, at least one series of payments by the Committee were for voter registration services in September and October of 1984. Such
(footnote continued)

In response to the interim report, the Committee does not offer additional factual evidence, but rather makes several legal arguments. The Committee contends first that the Commission owes complete deference to the Committee's spending decisions and beyond determining that the expense is incurred prior to the candidate's nomination may not inquire as to the nexus between the expense and the candidate's campaign. 19/ As noted above, however, the statute expressly defines the term "qualified campaign expense" to include only those expenses incurred in connection with the candidate's nomination and the Committee has assumed the burden of proving that its disbursements are qualified campaign expenses. In fact, in exchange for entitlement to public funds, the candidate agreed to "supply an explanation of the connection between any disbursement made by . . . my authorized committee and the campaign . . . ." Letter of Agreements and Certifications, March 5, 1984. Thus, the Committee's argument overlooks the operative phrase of the statutory definition as well as the candidate's agreement. The Committee's view that the Commission's examination is no more than ministerial also is inconsistent with the statute's mandate that the Commission "conduct a thorough examination and audit of the qualified campaign expenses of every candidate," 26 U.S.C. § 9038(a). Last, as noted above, it could permit a primary committee to pay in advance expenses of the candidate's general election campaign and thereby evade the expenditure limitations imposed on the fully publicly funded general election campaign.

The Committee also argues that in the past the Commission has questioned only "unusual expenditures" distinguishable from those at issue here. However, the Commission has not set forth a standard of whether an expenditure was "unusual" in its repayment determinations; rather, it has determined in some instances that certain expenditures were not made in connection with the campaign. For example, in the 1984 presidential election cycle,

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18/ Continued
expenses, apparently incurred after President Reagan's August 22, 1984 date of ineligibility, would be non-qualified campaign expenses in any event, since not includible as winding down costs under the regulations. We recommend that the report's text identify these expenditures with specificity and state that they would be non-qualified for this reason also, under 11 C.F.R. § 9034.4(b)(3).

19/ The Committee quotes the definition of qualified campaign expense at 26 U.S.C. § 9032(9) and states "[n]othing in this language suggests that Congress intended to require more than that the expense be incurred prior to the date of nomination or . . . to authorize the Commission to evaluate the nexus between the expenses and the campaign for nomination." (Response, p. 9).

the Commission has determined that amounts paid as salary to a candidate are not qualified campaign expenses, Final Repayment Determination, Friends of George McGovern; and that amounts paid to banks as penalties resulting from a pattern of issuance of insufficient funds checks are not qualified campaign expenses, Final Audit Report, Cranston For President Committee, Inc. (Final Repayment Determination made upon failure of committee to respond to initial determination). In any event, the expenditures at issue here can be viewed as unusual in that the Committee expended a large amount of primary campaign funds for a voter registration drive in states where the primary elections had already been held.

Finally, the Committee maintains that the interim report erroneously attaches significance to the dates of the primary or caucus in states where the expenditures were made. However, the interim report's distinction between expenses incurred before or after states' primaries or caucuses is reasonable under the circumstances of the expenses at issue and also is consistent with previous Commission action. First, the Commission has not concluded that expenses are per se non-qualified if incurred in a state after the state's primary; rather, it has approved an interim audit report's finding that a large-scale partisan voter registration campaign in targeted states central to the candidate's general election strategy, and after the particular states' primaries, appears to be connected not with the candidate's nomination campaign but instead with the general election campaign. Second, the Commission previously has attached significance to states primary dates in a similar inquiry; specifically, in the 1980 audit of Citizens For LaRouche, the Commission found that expenses in a state subsequent to the primary ballot access date by a candidate not on the primary ballot are not qualified campaign expenses attributable to that state. Final Repayment Determination, Statement of Reasons, Citizens for LaRouche, pp. 3-10, (citing Udall for President Committee Final Audit Report), aff'd, 725 F.2d 125 (D.C. Cir. 1984) (table). Here, the expenses were by a candidate already victorious in the state's primary or caucus, and apparently unrelated to the state's delegate selection process. 20/

20/ The Committee recognizes that this Office also addressed post-primary expenditures in MUR 1236. There, a complaint was filed alleging that Citizens For LaRouche, the principal campaign committee of Lyndon LaRouche's 1980 candidacy for the Democratic presidential nomination, had expended funds on non-qualified campaign expenses. The General Counsel found that the expense, $70 for a leaflet attacking an incumbent congressman, was apparently incurred prior to the Wisconsin primary in which Mr. LaRouche was on the ballot, and credited the Committee's factual explanation of the connection between the leaflet and the candidate's campaign. General Counsel's Report, August 19, 1981, pp. 1, 3. The General Counsel observed that the result might well have been different if the expense were incurred after the primary because of "the attenuated nature of the expenditure." Id. at 3.

Under the circumstances, we concur in the Audit staff's recommendation that the final audit report find these expenditures to be non-qualified campaign expenses and include an initial determination of repayment of the public funds' portion.

EXHIBIT 1 to OGC Comments

Dear Mr. Duffy:

On behalf of the Reagan-Bush '84 Committee, you submitted a response to the Commission-approved Interim Audit Report by letter dated September 16, 1985. Thereafter, the audit staff engaged in follow-up fieldwork pursuant to 11 C.F.R. 9038.1(b)(3), particularly relating to the Committee's production of several television advertisements used also by Reagan-Bush '84 (General) ("GEC"). The audit staff made several requests for documentation showing the extent of the shared advertisements' usage by both committees, in order to verify the reasonableness of the Committee's allocation of the production costs. To date, however, the Committee has failed to provide such documentation.

The Presidential Primary Matching Payment Account Act and the Commission's regulations require that in order to receive public funds, the candidate and the candidate's committee agree to, inter alia, provide to the Commission "any evidence it may request" of the campaign's qualified campaign expenses. 26 U.S.C. § 9033(a)(1). President Reagan signed the letter of agreements required under the statute and the regulations, and in return was determined eligible to receive public funds. By its failure to provide the requested documentation, however, it appears the candidate's Committee is in breach of the letter of agreements. Accordingly, you should provide the requested documentation immediately. If no satisfactory response is received within 10 days of your receipt of this notice, the Commission may seek judicial enforcement of the agreements pursuant to 11 C.F.R. § 9038.1(b)(1)(iii).

Sincerely,

Joan D. Aikens
Chairman

OGC Docket

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MAR 7 P12: 15

March 6, 1986

SENSITIVE

EXECUTIVE SESSION

MAR 18 1986

MEMORANDUM:

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REAGAN-BUSH '84 (PRIMARY): MATTER REFERRABLE TO OFFICE OF GENERAL COUNSEL AND POSSIBLE ENFORCEMENT CONSIDERATIONS CONCERNING ALLOCATION OF MEDIA PRODUCTION COSTS

Attached please find a matter concerning the transfer of the excessive portions of contributions received by the Primary Committee to the Reagan-Bush '84 Compliance Fund which was contained in the Commission approved interim audit report on the Primary Committee. It is recommended that this matter be referred to the Office of General Counsel (see Exhibit A). Also attached is the relevant section of the OGC's comments (comments at pps 2-3). Both offices agree that the matter should be referred for additional review and consideration.

The proposed final report on the Primary Committee will be circulated for open session agenda placement and will include, if this referral is approved, the standard language that a referral has been made in the public release version of the report.

The second matter, attached at Exhibit B, relates to suggestions made by the OGC in its comments on the proposed final audit report. Specifically the OGC has suggested an alternative to the approach taken at the initial repayment determination stage regarding the Primary Committee's allocation of media production costs relative to commercials used both in the primary and general election campaign. The Counsel's comments at pages 8-11 offer two approaches as discussed below.

1. **Enforcement of the Candidate Agreements**

The Counsel recommends that the Commission enforce the candidate agreements in order to obtain the necessary information with which to verify the reasonableness of the Primary Committee's 50/50 allocation of production costs for shared commercials. Such an approach would include notifying the Primary Committee prior to seeking judicial enforcement and affording it 10 days to remedy its failure to provide the information requested. (The proposed letter is attached at Exhibit 1 to OGC's comments). The Audit staff believes that this approach would result in securing the necessary information; however, such action would, of necessity, delay the public issuance of the final report by at least 2 to 3 months. Because of the anticipated amount of delay (even assuming no litigation), the Audit staff does not believe that this approach should be adopted.

2. **Allocation of Burden of Proof to the Committee**

Here the Counsel suggests that, since the Primary Committee has not met its burden of showing that the allocation is reasonable, "we believe the Commission would be justified in allocating the expenses of the shared advertisements 100% to the GEC and making an initial repayment determination on that basis in the final audit report." As the Counsel states, "such a determination may encourage the Committee to come forward with the information as part of this process." (footnote excluded).

The Audit staff believes this approach is optimal, especially in view of the fact that the records in question have been located, apparently placed in storage by a media buying firm under contract to TTI. The final report could then be processed for public release in a shorter time span than in 1. above and the Audit Division's review of the records in question would occur and any findings thereon detailed in an Addendum to the Final Audit Report.

Obviously, if the burden of proof approach is adopted, certain adjustments to figures calculated on the 50/50 basis will be required. For comparison purposes, Attachment 3 depicts both the 50/50 Primary Committee allocation, 50/50 Audit allocation, and the 100% proposed allocation. The text of the finding contains the 50/50 allocation figures; revisions to the text to incorporate the 100% proposal's figures and appropriate language will be made upon approval of the recommendation.

Recommendation

The Audit staff recommends the Commission adopt the "burden of proof" approach discussed in Counsel's comments. The final audit report for public release on the Primary Committee would contain this finding under the NOCO section of the report. The direct result of adopting the 100% figure is to set up an accounts receivable in the amount of $220,346.71, which flows through the NOCO causing a calculated surplus approximately $220,000 higher than that proposed by the Primary Committee. This increase combined with the increase ($792,066.60) caused by inclusion of the account receivable for the allocation of the TTI fee results in a calculated 26 U.S.C. § 9038(b)(3) repayment amount of $651,046.62. This amount less the repayment made by the Primary Committee in September 1984, results in an amount of $306,153.38 requiring repayment.

This matter is being circulated for placement on the next regularly scheduled Executive Session meeting in accordance with OGC's comments at page 2 of the analysis. Should you have any questions, please contact Steve Sanford, Ray Lisi or Rick Halter at 376-5320.

Attachments as stated

AR-86-12
NRN

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 19, 1986

MEMORANDUM

TO: CHARLES N. STEELE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REAGAN-BUSH '84 (PRIMARY) - REFERRAL
OF EXCESSIVE CONTRIBUTIONS RECEIVED

On March 18, 1986, the Commission voted to refer the matter of excessive contributions received by Reagan-Bush '84 (Primary) to your office for compliance action. The referral is attached at Exhibit A.

If you have any questions regarding the matter, please contact Steve Sanford or Ray Lisi at 376-5320.

Attachment as stated

Receipt of Excessive Contributions

Under 2 U.S.C. § 441a(a)(1) a person is prohibited from making contributions to a candidate and his authorized political committee with respect to any election for Federal office which in the aggregate, exceed $1,000. In accordance with 11 C.F.R. § 103.3(b)(1), contributions which appear to be illegal shall be within 10 days, either returned to the contributor or deposited. If deposited, the treasurer shall make and retain a written record noting the basis for the appearance of illegality and shall make best efforts to determine the legality of the contribution.

The Audit staff's review of contributions revealed that the Committee received amounts totaling $193,674.43 from 285 individuals which were in excess of the contribution limitations. As detailed below, the Committee attempted to resolve these excessive contributions by (A) making refunds, (B) transferring the excessive portion to the Reagan-Bush General Election Compliance Fund ("Compliance Fund")*, or (C) attributing the excessive portion to the contributor's spouse.

A. Failure to Refund in a Timely Manner

The Committee refunded $16,050.00 representing the excessive portion of contributions from 18 contributors. However, the refunds were not made within a reasonable period of time.

B. Transfer of Excessive Portion to General Election Compliance Fund

The Committee attempted to resolve most of the excessive contributions received by allocating up to $1,000 of the excessive portion to the Compliance Fund. A letter was sent to the individual informing him/her that the excessive portion of the contribution up to $1,000 was being transferred to the Compliance Fund. The letter did not advise the contributor that he/she was entitled to a refund, nor did it request that the contributor make any response as to whether he/she wanted the contribution transferred to the Compliance Fund. Based on these letters, the Committee transferred to the Compliance Fund $172,624.43 representing the excessive portion (up to $1,000) of the contributions received from 285 contributors. In many instances the transfers occurred 5 to 10 weeks after receipt of the excessive contribution. However, in some cases, the lag was as long as several months.

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* In accordance with 11 C.F.R. § 9003.3(a) this fund was established by the candidate to accept contributions used to defray general election legal and accounting expenses, the sole purpose of which was to insure compliance with the Act.

C. <u>Attribution of Excessive Portion of Contributions to Spouses</u>

On January 11, 1985, the Audit staff presented the Committee a list of apparent excessive contributions, portions of which, according to Committee records, had been reattributed to the contributor's spouse. The excessive portions ($5,000) of contributions from 6 individuals were attributed to the contributors' spouses when the contributions were received in February and March, 1984. However, the Committee had not attempted to obtain the signature of the spouse in order to verify the attribution. On January 16, 1985, the Committee sent letters to the contributors and their spouses requesting signatures to verify the attribution.

On February 20, 1985, the Committee's attorney supplied copies of responses from 4 of these individuals' spouses verifying the reattribution for $3,500 of the $5,000 in excessive contributions.

At the February 12, 1985 exit conference, the Treasurer said that the letters which were sent to verify reattributions of excessive contributions to spouses would show that these contributions had been properly reattributed and reported. The Audit staff requested that Committee officials supply copies of the remaining contributors' responses upon receipt.

Subsequent to the exit conference, the Committee submitted a memorandum which included a proposed resolution to the apparent excessive contributions transferred to the Compliance Fund. The Committee cites General Election Regulations to support their contention that their procedures "were precisely the same as those expressly authorized by the Commission in a closely analogous situation." However, the Committee proposes to resolve the excessive contributions by sending a FEC approved negative confirmation letter to each contributor and refunding any amounts requested by contributors. Should the Committee elect to send letters to the contributors, the letter at a minimum should contain the following statements:

1) The Committee may receive only $1,000 from each individual per election.

2) Because the contribution was received during the pre-nomination period and contained no indication that it was intended to be used for the general election, it is deemed to be intended only for the primary.

3) Accordingly, if the contributor wishes his/her contribution to be used for the Compliance Fund, he/she must sign and return a written response so indicating.

4) If a contributor does not wish the excessive portion to be used for the Compliance Fund, a refund will be made.

In the Commission approved interim audit report, the Audit staff recommended that within 30 days of receipt of the report, the Committee submit evidence demonstrating that the $193,674.43 in apparent excessive contributions were not excessive or issue refund checks and provide copies (both front and back) of the negotiated refund checks to the Audit staff.

For contributions transferred to the Compliance Fund, the Audit staff alternatively recommended that within 30 days of receipt of the report, the Committee provide evidence that affirmative response letters, reviewed by Commission staff, have been distributed to the individuals making the contributions, and where indication is not received from a contributor that he or she wishes to have the excessive portion of his/her contribution used by the Compliance Fund, the Committee refund the excessive portions and provide copies (both front and back) of the negotiated refund checks to the Audit staff.

In its response to the interim audit report, the Committee did not address the issue of its failure to refund excessive contributions in a timely manner (Section A. above). With respect to Section C., Attribution of Excessive Portion of Contributions to Spouses, the Committee provided one of the two remaining attribution letters and explained that "No documentation can be obtained for the other contribution, which will be refunded." It should be noted that no evidence of the refund was provided.

The remainder of the Committee's response concerning the receipt of excessive contributions dealt with Section B., Transfer of Excessive Portion to the General Election Compliance Fund. The Committee, in its response, presents several reasons in support of its position not to follow the recommendation contained in the interim report (i.e., return the excessive portions ($172,624.43) to the 285 contributors or submit for each contributor an affirmative response approving the transfer of the excessive portion of their contribution to the Compliance Fund).

First, the Committee notes that the report did not cite any Commission precedent to support the recommendation, nor was the Committee aware of any such regulation or Advisory Opinion that would have required the Committee to obtain the affirmative consent of the contributor before transferring the excessive portion of his/her contribution to its Compliance Fund. The Committee further cites several Advisory Opinions*/ as well as a reference to the Commission's <u>Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing</u> (Revised July, 1984). The issue of whether a transfer of

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*/ Advisory Opinions 1978-37; 1979-51; 1982-39.

excessive contributions to a candidate's general election legal and accounting compliance fund may occur and, if so, under what circumstances, was raised in the Manual. The discussion in the Manual concluded by informing the reader that "Upon the Commission's determination of the matter all recipients of this manual will be notified.*/

Second, the Committee asserts that even if the contributor's consent had been required, it would have been reasonable to presume consent since persons who contribute to a presidential primary campaign committee do so to advance the candidate's election to the office of President; they do not contribute to a primary campaign as an end in itself. Rather, contributors who gave the primary committee more money than could be retained would presumably have no objection to the transfer of the excessive portions of their contributions to the Compliance Fund to aid the compliance function in the general election campaign.

Finally, the Committee states that "Even if the Commission were to conclude now that the affirmative consent of contributors should be obtained by a committee prior to the transfer of excess contributions to its compliance fund, this decision should not be applied retroactively to the Reagan-Bush."

With respect to the Committee's first point concerning the seeming lack of Commission precedent in this area, the Audit staff notes that 11 C.F.R. § 110.1(a)(2)(ii)(A) provides that in the case of a contribution not designated in writing [by the donor] for a particular election such contribution is attributable to the primary election if made on or before the date of the primary election.**/

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*/ As of this date, no supplement to the Manual has been published.

**/ Even though the contributions at issue were received, for the most part, in response to solicitations by the primary committee and as such should be considered for the primary campaign, the application of 11 C.F.R. § 110.1(a)(2)(ii)(A) regarding undesignated contributions reaches the same conclusion.

Thus, without a designation in writing by the donor, the contribution must be considered as having been made with respect to the primary election only.*/ The Committee may not "redesignate" a contribution (or portion thereof) to a different election campaign; only the contributor may designate to which election(s) his/her contribution is made.

The second point raised by the Committee relating to the "reasonable presumption" that contributors would have no objection to a transfer of the excessive portions of their contributions to the general election Compliance Fund fails to recognize the requirement of 11 C.F.R. 110.1(a)(2)(i) that election designations must be in writing and made by the donor. The only presumption in the regulations on this point is with respect to contributions not designated in writing for a particular election (see 11 C.F.R. § 110.1(a)(2)(ii).

In the same vein, the Committee's statement regarding a retroactive application is not persuasive since 11 C.F.R. § 110.1(a) was in place prior to the events at issue.

In summary, it is the opinion of the Audit staff, that the Committee's response does not support its position that it has no obligation to return to the contributors the portions of the 285 contributions that were transferred to the Compliance Fund or to obtain the affirmative consent of those contributors to the transfer of those portions of their contributions to the Compliance Fund.

Recommendation

It is recommended that this matter be referred to the Office of General Counsel pursuant to the Commission-approved Materiality Thresholds.

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*/ The Committee did not cite 11 C.F.R. § 102.9(e) in support of its position regarding the transfer of excessive contributions.

M 2154

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	Agenda Document #X86-023
Audit - Reagan-Bush '84 (Primary)	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of March 18, 1986, do hereby certify that the Commission took the following actions with respect to the above-captioned matter:

1. Decided by a vote of 6-0 to refer to the Office of General Counsel the matters detailed in Exhibit A attached to the March 6, 1986 report from the Audit Division.

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

2. Failed in a vote of 3-3 to pass a motion to approve allocating the expenses of the shared advertisements 100% to the GEC, as recommended by the Audit Division in Agenda Document #X86-023.

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

(continued)

3. <u>Decided by a vote of 5-1</u> to direct the staff of the Audit Division to prepare a letter, in consultation with the Office of General Counsel, asking the Reagan-Bush '84 (Primary) Committee for specific as well as general information on the Spot Television Scheduling Instructions, in order for the Commission to verify the reasonableness of the Primary Committee's 50/50 allocation of production costs for shared commercials.

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

Attest:

3-19-86
Date

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

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan - Bush '84 (Primary)	)	MUR 2154
and Angela M. Buchanan Jackson	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of June 24, 1986, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2154:

1. Continue consideration of the matter at the next executive session of the Commission.

2. Direct the Audit staff to circulate, on an expedited basis, the entire response received from the Reagan - Bush '84 (Primary) Committee to the FEC approved Interim Audit Report.

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

Attest:

6-24-86
Date

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

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

FIRST GENERAL COUNSEL'S REPORT

DATE AND TIME OF TRANSMITTAL BY OGC TO THE COMMISSION: ____________________

MUR #2154
STAFF MEMBER: Snyder

SOURCE OF MUR: INTERNALLY GENERATED

RESPONDENTS' NAMES: Reagan - Bush '84 (Primary) and Angela M. Buchanan Jackson as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a(a)(1); 11 C.F.R. §§ 103.3(b)(1) and (2) 110.1(a)(2)(ii)(A), 110.1(a)(2)(i), 102.9(a), 104.8, 9003.3(a)

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

86 JUL 2 P4:2

GENERATION OF MATTER

This matter was generated by a referral from the Audit Division ("Audit") concerning excessive contributions received by the Reagan - Bush '84 (Primary) Committee ("R-B") and Angela M. Buchanan Jackson, as treasurer.

SUMMARY OF ALLEGATIONS

According to Audit, R-B received $193,674.43 in excessive contributions from 285 individuals, in violation of 2 U.S.C. § 441a(f). Respondents proceeded as follows with respect to these contributions.

1. R-B refunded $16,050 to 18 contributors, but not, according to audit, within a reasonable time after receipt.

8 6 0 4 0 5 3 4 4 3

2. R-B allocated $172,624.43 of the excessives to a general election compliance fund. (No more than $1,000 per individual was thus allocated). Each of the 285 contributors whose contributions were thus reallocated received a letter informing him of the reallocation; but this letter did not seek the contributors' approval of the reallocation, nor did it advise them that they were entitled to a refund.

3. The excessive portion of contributions from six contributors, worth $5,000, was reattributed to the contributors' spouses in February and March, 1984. R-B did not ask for the spouses' signatures to verify the contribution at that time, but made such a request in January, 1985. On February 20, 1985, Audit received from respondents copies of responses from four of these contributors' spouses, verifying the reattribution of $3,500 worth of contributions. In its response to the interim audit report, R-B documented the fifth reattribution, bringing the total to $4,500. R-B has not provided any documentation indicating that it has refunded the remaining $500.

In summary, it is alleged that respondents violated 2 U.S.C. § 441a(f) by accepting excessive contributions; 11 C.F.R. §§ 110.1(a)(2)(ii)(A) by allocating contributions made before the date of a primary election to a general election compliance fund without the approval of the contributors; and 11 C.F.R. § 104.8(d) by failing to obtain authorization for contributions, deemed made by more than one person, from all the contributors.

FACTUAL AND LEGAL ANALYSIS

Under the Federal Election Campaign Act ("the Act"),

> No person shall make contributions -
> (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

2 U.S.C. § 441a(a)(1). The Act further provides that

> No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section.

2 U.S.C. § 441a(f). It is undisputed that R-B did accept $193,674.43 in contributions in excess of the limitations of 2 U.S.C. § 441a. Under the Commission's regulations, whenever a political committee accepts contributions that appear illegal, such contributions,

> (1) shall be, within 10 days either returned to the contributor or deposited into the campaign depository, and reported.... The treasurer shall make his or her best efforts to determine the legality of the contribution.
> (2) When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report noting the change on the committee's next required report.

11 C.F.R. § 103.3(b). Based on the foregoing regulation, respondents were obliged to refund any contribution in excess of the limits of 2 U.S.C. § 441a. The treasurer of R-B had the responsibility, once the committee had deposited contributions that appeared illegal, to make her best efforts to determine the

legality of the contributions. Under certain circumstances, discussed below, this determination may involve a consideration whether some portion of the contributions that appeared excessive might be reallocated or reattributed so that they then could be determined to be legal. However, if respondents retained such contributions for more than a reasonable time and did not properly reallocate or reattribute those which were in excess of the limits of 2 U.S.C. § 441a, they violated the statute. Any disposition of such excessive contributions, other than refunding within a reasonable time, or a proper reallocation or reattribution, could, at best, be considered in mitigation of the offense, but could not be said to eradicate it.

Respondents dealt with the excessive contributions in three ways. Each of these will now be considered in turn.

REFUNDS

The Committee refunded $16,050 worth of the excessive contributions. As noted above, the Commission's regulations require that such refunds be made in a reasonable time. 11 C.F.R. § 103.3(b)(2). In this case, more than 90 days had elapsed between the acceptance and the refunding of any of the aforesaid $16,050 of excessive contributions. While the belated refunding could be viewed as mitigating the offense, this Office recommends that the Commission find reason to believe respondents violated 2 U.S.C. § 441a(f) and with respect to its acceptance of the aforesaid excessive contributions.

REALLOCATION TO COMPLIANCE FUND

As noted already, R-B disposed of most of the excessive contributions it accepted, some $172,624.43, by reallocating them to the Reagan-Bush General Election Compliance Fund ("compliance fund"). Such reallocation does not constitute a timely refund, nor was it effective as a determination that the contributions were not excessive; thus, such reallocation could not negate the violation of the Act that Respondents committed when they accepted the excessive contributions.

Audit advised R-B that it either refund the excessive contributions, or issue letters, subject to review by Commission staff members, stating that "where indication is not received from a contributor that he or she wishes to have the excessive portion of his/her contribution used by the Compliance Fund, the Committee [should] refund the excessive portions and provide copies (both front and back) of the negotiated refund checks to the Audit staff." R-B chose not to follow this course, arguing that there is no precedent for requiring an "affirmative response" letter of this sort, and that contributors may be presumed to wish the money to be transferred to the compliance fund of the campaign they supported.

Thus R-B failed to take advantage of the procedure suggested by Audit to mitigate its violation of 2 U.S.C. § 441a(f).

Moreover, no proper reallocation of these funds was made. It should be noted, with respect to compliance funds in general, that the Commission's regulations provide that

> (i) A major party candidate [for President or Vice President] may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section....

11 C.F.R. § 9003.3(a)(1). The regulation does not provide for the deposit into the compliance fund of contributions made during the primary campaign except under circumstances specified in that regulation.1/

Contributions made before a primary, unless otherwise expressly designated, are deemed rather contributions for the primary:

> (1) No person ... shall make contributions to any candidate, his or her authorized political committee or agents with respect to any election to Federal office which in the aggregate exceed $1,000.
> (2) "With respect to any election" means - ...
> (ii) In the case of a contribution not designated in writing for a particular election,
> (A) For a primary election, caucus or convention, if made on or before the date of the election, caucus or convention....

1/ Respondents have not contended that the contributions could be considered excess primary funds under 11 C.F.R. § 9003.3(a)(1)(ii).

11 C.F.R. § 110.1(a)(2)[2/] Once respondents accepted individual contributions in excess of $1,000 that could only be applied to the primaries, they violated the foregoing regulation and 2 U.S.C. § 441a(f).

Respondents have cited Advisory Opinions 1978-37, 1979-51, and 1982-39 in support of the proposition that they were within their rights to transfer these excessive contributions to the compliance fund. None of these advisory opinions, however, which deal with transfers between affiliated committees, is relevant to the issue before us. R-B's deposit of contributions into the compliance fund cannot expunge the violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a) it committed by accepting excessive contributions in the first place. This Office therefore recommends that the Commission find reason to believe R-B violated 2 U.S.C. § 441(a)(f) and 11 C.F.R. § 110.1(a).

<u>REATTRIBUTION OF EXCESSIVE CONTRIBUTIONS TO SPOUSES</u>

As detailed above, R-B reattributed $5,000 worth of excessive contributions to the spouses of the original contributors, and verification was received from the contributors with respect to $4,500 worth of said contributions.

2/ It should be noted that 11 C.F.R. § 102.9(e) indicates that contributions received before the primary may be designated for the general election. This Office recommends that 11 C.F.R. § 110.1 should govern in this case, as it applies more directly to this factual situation, because 11 C.F.R. § 9003.3 references § 110, and in view of the fact that respondents have not relied upon § 102.9(e).

When a contribution appears illegal, the treasurer of the recipient committee must make his best efforts to determine the legality of the contribution, and if the contribution is deposited and cannot be determined to be legal, it must be refunded within a reasonable time. 11 C.F.R. § 103.3(b). While both spouses may contribute up to the $1,000 maximum to the same candidate for the same election regardless of whether such responses are from a single income family, 11 C.F.R. § 110.1(i)(1), AO 1975-31, the Commission's regulations require that:

> A contribution which represents contributions by more than one person shall indicate on the written instrument, or on an accompanying written statement signed by all contributors, the amount to be attributed to each contributor.

11 C.F.R. § 104.8(d). It follows that, when an authorized political committee receives a contribution in excess of $1,000, and there is a reasonable basis to believe said contribution was made by a married couple, it may provisionally deposit the contribution in its account, pending a determination whether the contribution was made by a married couple, and pending authorization from both spouses for the contribution to be reattributed as separate contributions from both spouses in amounts less than $1,000.

The Commission has specified the circumstances under which a political committee may seek spousal reattribution, and what information the committee must give the contributors when it does so:

> [T]he Commission's approval of [spousal reattribution] is conditioned on all of the following:
> (1) the reattribution process may only be used in those instances where the total contributions, if made by both spouses, would not exceed $2,000 per election; (2) before using the letter and form in any given case the treasurer must have a reasonable basis to conclude that the contribution was likely to have been made by a married couple; and (3) the letter to the contributor should be revised to inform the contributor of the statutory $1,000 limit per election and of his/her alternative to receive a refund of the excessive amount instead of attributing it to both spouses.

AO 1985-25. In this case, the letters R-B sent the contributors in question stated that where a contribution exceeds the statutory limit of $1,000 per individual, and is to be split therefore between two contributors, the signatures of both persons must be obtained. (See Attachment 2). A form was enclosed for the provision of such signatures. To be sure, the letter did not inform the contributors that they were entitled to a refund instead of approving the reattribution. While respondents' letter did not, therefore, provide plenary information, it did comply with the basic requirement for obtaining the authorization of a person making a contribution, as set forth in the Commission's regulations.[3/]

3/ Respondents' letters was sent in January, 1985; AO 1985-25 is dated September 30, 1985.

While the letters may have provided sufficient information, they do not appear to have been timely. The contributions were received in the Spring of 1984; the reattribution letters were not sent until January, 1985. Thus, R-B failed to comply with the requirement of 11 C.F.R. § 103.3(b)(2) that apparently illegal contributions be refunded "within a reasonable time" unless their legality is established. Respondents, by reattributing a portion of these contributions to spouses of the contributor as of February or March, 1984, without obtaining the consent of said spouses until January, 1985, and by failing to document that they refunded those excessive contributions for which they did not receive authorization for reattribution, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 104.8(d). Thus, this Office recommends that the Commission find reason to believe that respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 104.8(d). In summary, this Office recommends that the Commission find reason to believe that respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 104.8(d) and 110.1(a).

RECOMMENDATIONS

1. Find reason to believe that the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a).

2. Approve and send the attached letter and General Counsel's Legal and Factual Analysis.

Charles N. Steele
General Counsel

Date 7/2/86

BY: [signature]
Lawrence M. Noble
Deputy General Counsel

Attachments
1. Referral
2. Spousal reattribution letter
3. Proposed letter to respondents
4. General Counsel's Legal and Factual Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary) and	)	MUR 2154
Angela M. Buchanan Jackson,	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 9, 1986, do hereby certify that the Commission decided by a vote of 6-0 to continue consideration of the above-captioned matter at the next executive session of the Commission.

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

Attest:

7-10-86
Date

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary) and	)	MUR 2154
Angela M. Buchanan Jackson,	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 15, 1986, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2154:

1. Find reason to believe that the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a).

2. Approve and send the letter and Legal and Factual Analysis attached to the General Counsel's report dated July 2, 1986.

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

Attest:

7-15-86
Date

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

permanent

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

July 17, 1986

Angela M. Buchanan Jackson, Treasurer
Reagan-Bush '84 (Primary) Committee
1019 19th Street, N.W. - Suite 1000
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84 (Primary)
Committee

Dear Mrs. Jackson:

On July 15, 1986, the Federal Election Commission determined that there is reason to believe the Reagan-Bush '84 (Primary) Committee and you, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. §§ 104.8(d) and 110.1(a) of the Commission's regulations. The General Counsel's factual and legal analysis, which formed a basis for the Commission's finding, is attached for your information.

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

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

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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

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

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

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Charles Snyder, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

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

CCC# 1091

PIERSON, BALL & DOWD
ATTORNEYS AT LAW
1200 18TH STREET, N.W.
WASHINGTON, D.C. 20036
(202) 331-8566
CABLE ADDRESS "PIERBALL"
TELEX NO. 64711

OKLAHOMA OFFICE
FIRST OKLAHOMA TOWER, SUITE 1310
210 W. PARK AVENUE
OKLAHOMA CITY, OKLA 73102
(405) 235-7686

JOHN J. DUFFY
(202) 457-6616

July 31, 1986

86 JUL 31 P5:29

Charles Steele, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C.

ATTN: Charles Snyder, Esquire

Re: MUR 2154

Dear Mr. Steele:

We request on behalf of Reagan-Bush 84 a ten day extension of time to respond to the Commission's reason-to-believe determination, which was received by the Committee on July 21, 1986. Our response is now due on August 5, 1986. We request that the time to respond be extended up to and including August 15, 1986.

Good cause exists to support the extension requested. Preparation of our response has been delayed by the vacation schedule of the Committee's Treasurer and the illness of its Deputy Treasurer.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD/dlk

Enclosure

relm

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 5, 1986

John J. Duffy
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan - Bush '84

Dear Mr. Duffy:

This is in reference to your letter dated July 31, 1986, requesting an extension of 10 days until August 15, 1986 to respond to the Commission's finding of reason to believe. After considering the circumstances presented in your letter, the Commission has determined to grant you your requested extension. Accordingly, your response will be due on August 15, 1986.

If you have any questions, please contact Charles Snyder, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

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GCC# 1232

PIERSON, BALL & DOWD

ATTORNEYS AT LAW

1200 18TH STREET, N. W.

WASHINGTON, D.C. 20036

(202) 331-8566

CABLE ADDRESS "PIERBALL"

TELEX NO. 64711

OKLAHOMA OFFICE
FIRST OKLAHOMA TOWER, SUITE 1310
210 W PARK AVENUE
OKLAHOMA CITY OKLA 73102
405 235 7686

JOHN J. DUFFY
202 457-8616

HAND DELIVERY

86 AUG 15 P4:45

86 AUG 15 P4:36

August 15, 1986

Ms. Joan D. Aikens, Chairman
Federal Election Commission
1325 K Street, N.W.
Washington, D.C. 20036

Re: MUR 2154

Dear Chairman Aikens:

Pursuant to 11 C.F.R. Section 111.18(d) we request on behalf of Reagan-Bush '84 an opportunity to engage in pre-probable cause conciliation. We submit this request in an effort to expedite resolution of this matter. Our request should not be construed as an indication of our agreement with any portion of the General Counsel's Factual and Legal Analysis. In fact, we disagree with the General Counsel's legal analysis on several points. We believe that these points may be most efficiently resolved, however, by informal discussions during the conciliation process. If we are unable to resolve these issues informally, however, we will be prepared to present our views formally to the Commission.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD/dlk

cc: Charles Steele, Esquire
Charles Snyder, Esquire

SENSITIVE

RECEIVED OFFICE OF THE FEC
86 SEP 19 A10:59

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer	)))))	MUR 2154

GENERAL COUNSEL'S REPORT

I. BACKGROUND AND LEGAL ANALYSIS

On July 15, 1986, the Commission found reason to believe that the Reagan-Bush '84 (Primary) Committee ("R-B") and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a). The basis for these findings was that R-B had accepted $193,674.43 in excessive contributions. Of that amount, $16,050 had been refunded, but not within a reasonable time after acceptance. Another $172,624.43 of the excessive contributions had been deposited in a general election compliance fund, without any affirmative statement from the contributors authorizing such a transfer, in violation of 11 C.F.R. § 110.1(a), nor indeed with any showing that such funds could be deposited into a compliance fund under 11 C.F.R. § 9003.3(a)(1), the regulation governing general election legal and accounting funds in Presidential elections. Finally, some $5,000 in excessive contributions were reattributed to the spouses of the contributors. Such reattribution violated 11 C.F.R. § 104.8(d), in that respondents did not attempt to obtain the approval of the contributors for the reattribution until ten to eleven months after the acceptance of the contributions.

On August 15, 1986, respondents responded to the Commission's finding, by stating their disagreement with the General Counsel's Factual and Legal Analysis "on several points," but providing no specifics. Respondents also requested pre-probable cause conciliation. (Attachment 1).

II. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

Consequently, this Office would propose a civil penalty of $25,000, which it feels is appropriate under all the circumstances of this case.

III. RECOMMENDATIONS

1. Enter into conciliation with the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, prior to a finding of probable cause to believe.

2. Approve and send the attached letter and proposed conciliation agreement.

Charles N. Steele
General Counsel

9/18/86
Date

BY: Lawrence M Noble
Lawrence M. Noble
Deputy General Counsel

Attachments
1. Letter from John J. Duffy
2. Proposed conciliation agreement
3. Proposed letter to John J. Duffy

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO:	CHARLES STEELE, GENERAL COUNSEL
FROM:	MARJORIE W. EMMONS/CHERYL A. FLEMING
DATE:	SEPTEMBER 24, 1986
SUBJECT:	OBJECTION TO MUR 2154 - GENERAL COUNSEL'S REPORT SIGNED SEPTEMBER 18, 1986

The above-named document was circulated to the Commission on Monday, September 22, 1986 at 11:00 A.M.

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

Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	X
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, September 30, 1986.

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

MEMORANDUM TO: CHARLES STEELE, GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/ CHERYL A. FLEMING

DATE: SEPTEMBER 24, 1986

SUBJECT: OBJECTION TO MUR 2154 - GENERAL COUNSEL'S REPORT SIGNED SEPTEMBER 18, 1986

The above-named document was circulated to the Commission on Monday, September 22, 1986 at 11:00 A.M.

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

Commissioner Aikens	
Commissioner Elliott	
Commissioner Harris	X
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	

This matter will be placed on the Executive Session agenda for Tuesday, September 30, 1986.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary) Committee	)	MUR 2154
and Angela M. Buchanan Jackson,	)	
as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of September 30, 1986, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in MUR 2154:

1. Enter into conciliation with the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, prior to a finding of probable cause to believe.

2. Approve and send the letter and proposed conciliation agreement attached to the General Counsel's report dated September 18, 1986,

    a)

    b)

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

Attest:

10-1-86

Date

Marjorie W. Emmons

Marjorie W. Emmons
Secretary of the Commission

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 7, 1986

John J. Duffy, Esquire
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84
(Primary) Committee and
Angela M. Buchanan Jackson, as
treasurer

Dear Mr. Duffy:

On July 15, 1986, the Commission found reason to believe that the Reagan-Bush '84 Primary Committee and Angela M. Buchanan Jackson, as treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a). At your request, the Commission determined on September 30 , 1986, to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If your clients agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible. If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Charles Snyder, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel

BY: Lawrence M. Noble
Deputy General Counsel

Enclosures

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
)
Reagan-Bush '84 (Primary) Committee) MUR 2154
and Angela M. Buchanan Jackson,)
as treasurer)

GENERAL COUNSEL'S REPORT

BACKGROUND

Attached is a draft conciliation agreement which has been offered as a counter proposal by the Reagan-Bush '84 (Primary) Committee ("R-B") and its treasurer in response to the pre-probable cause conciliation agreement proposed by the Commission to the respondents on October 7, 1986.

Since the 30 day period for pre-probable cause conciliation has elapsed, with no immediate prospect of reaching an acceptable agreement, this office recommends that R-B be advised that its

, and that this Office will now proceed to the next step by preparing briefs.

RECOMMENDATIONS

1.

(Primary) Committee and Angela M. Buchanan Jackson, as treasurer.

2. Approve and send the attached letter.

Charles N. Steele
General Counsel

12/3/86
Date

BY: Lawrence M. Noble (LH)
Lawrence M. Noble
Deputy General Counsel

Attachments
1. Letter from John J. Duffy
2. R-B's counter-proposal for conciliation agreement
3. Proposed letter to John J. Duffy

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / CHERYL A. FLEMING

DATE: DECEMBER 5, 1986

SUBJECT: OBJECTION TO MUR 2154 - GENERAL COUNSEL'S REPORT SIGNED DECEMBER 3, 1986

The above-captioned document was circulated to the Commission on Thursday, December 4, 1986 at 4:00 P.M.

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

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the Executive Session agenda for Tuesday, December 16, 1986.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM TO: CHARLES N. STEELE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS / JOSHUA MCFADDEN JM

DATE: DECEMBER 9, 1986

SUBJECT: OBJECTIONS - MUR 2154 - GENERAL COUNSEL'S REPORT SIGNED DECEMBER 3, 1986

The above-captioned document was circulated to the Commission on Thursday, December 4, 1986, 4:00.

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

Commissioner Aikens	
Commissioner Elliott	X
Commissioner Josefiak	X
Commissioner McDonald	
Commissioner McGarry	X
Commissioner Thomas	X

This matter will be placed on the Executive Session agenda for

83040593472

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reagan-Bush '84 (Primary) Committee) MUR 2154
and Angela M. Buchanan Jackson,)
as treasurer)

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 16, 1986, do hereby certify that the Commission took the following actions in MUR 2154:

1. Failed in a vote of 3-3 to pass a motion to

a)

b)

c) send an appropriate letter to the respondents based on the above actions.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

(continued)

2. Decided by a vote of 6-0 to

   a)

   b) send a revised proposed conciliation agreement based on the amended proposal submitted by Commissioner Elliott, and providing for a civil penalty of Ten Thousand Dollars ($10,000.00); and

   c) send an appropriate letter to the respondents based on the above actions.

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

3. Decided by a vote of 6-0 to take no further action with respect to the finding on 11 C.F.R. § 104.8(d), and take out all reference to it in the new conciliation agreement.

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

(continued)

4. <u>Decided by a vote of 6-0</u> to include in the letter to the respondent that conciliation must be achieved by January 12, 1987, or the Commission will proceed to the next stage.

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

Attest:

12-18-86
Date

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

SENSITIVE

87 MAR 30 AM 11:25

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary)	)	MUR 2154
Committee and Angela M.	)	
Buchanan Jackson, as	)	
treasurer	)	

GENERAL COUNSEL'S REPORT

The Office of General Counsel is prepared to close the investigation in this matter as to the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, based on the assessment of the information presently available.

3/27/87
Date

Lawrence M. Noble
Acting General Counsel

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 17, 1987

John J. Duffy, Esquire
Pearson, Ball & Dowd
1200 18th Street, N.W.
Washington, D. C. 20026

RE: MUR 2154
Reagan-Bush '84
(Primary) Committee
and Angela M. Buchanan
Jackson, as treasurer

Dear Mr. Duffy:

On April 13, 1987, this Office sent you a copy of the General Counsel's brief in the above-referenced matter. As the copy sent to you was inadvertently unsigned, we are now sending a signed copy of that brief.

You are reminded that your reply brief is due May 1, 1987.

Sincerely,

Lawrence M. Noble
Acting General Counsel

Enclosure
Brief

SENSITIVE

87 APR 17 P2:23

RECEIVED OFFICE OF THE FEC COMMISSION SECRETARY

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 17, 1987

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
Acting General Counsel

SUBJECT: MUR 2154

Attached for the Commission's review is a brief stating the position of the General Counsel on the legal and factual issues of the above-captioned matter. An unsigned copy of the brief was previously inadvertently circulated to the Commission. A copy of the signed brief has also been sent to respondents.

Attachments
1. Brief
2. Letter to Respondents

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary Committee)	)	MUR 2154
and Angela M. Buchanan Jackson, as	)	
treasurer	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was generated by a referral from the Audit Division ("Audit") concerning excessive contributions received by the Reagan - Bush '84 (Primary) Committee ("R-B") and Angela M. Buchanan Jackson, as treasurer.

According to Audit, R-B received $193,674.43 in excessive contributions from 285 individuals. On July 15, 1986, the Commission found reason to believe R-B and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a). Under 2 U.S.C. § 441a(f), R-B could accept individual contributions only up to $1,000, the limitation established under 2 U.S.C. § 441a(a)(1). It appears that where R-B received contributions from individuals in excess of $1,000, it proceeded as follows:

1. R-B would retain the $1,000 portion of the contribution permitted by law;

2. R-B deposited the excessive portion of the contributions, up to $1,000, in the Reagan-Bush General Election Compliance Fund ("compliance fund"). R-B allocated $172,624.43 of the excessives to the general election compliance fund. Each of the 285 contributors whose contributions were thus reallocated received a letter informing him of the reallocation; but this

letter did not seek the contributors' approval of the reallocation, nor did it advise them that they were entitled to a refund. The transfers were made, in some instances, 5-10 weeks after acceptance; in other cases, the lag was as much as several months.

3. If a contribution were made through a check drawn on a joint checking account apparently maintained by spouses, but only one individual had signed the check, R-B would reattribute the excessive portion of the contribution, up to $1,000, to the spouse of the contributor.

The excessive portion of contributions from six contributors, worth $5,000, was thus reattributed to the contributors' spouses in February and March, 1984. R-B did not ask for the spouses' signatures to verify the contribution at that time, but made such a request in January, 1985. Audit subsequently received from respondents copies of responses from five of these contributors' spouses, verifying the reattribution of $4,500 worth of contributions. R-B apparently refunded the remaining $500.

4. Any remaining portions of the excessive contributions, beyond those reallocated and/or reattributed as herein described, were ultimately refunded to the contributors. R-B refunded $16,050 to 18 contributors, but not, according to audit, within a reasonable time. More than 90 days elapsed between the acceptance and the refunding of any of the aforesaid $16,050 of excessive contributions.

II. LEGAL AND FACTUAL ANALYSIS

Under the Federal Election Campaign Act ("the Act"),

> No person shall make contributions -
> (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

2 U.S.C. § 441a(a)(1). The Act further provides that

> No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section.

2 U.S.C. § 441a(f). It is undisputed that R-B did accept $193,674.43 in contributions in excess of the limitations of 2 U.S.C. § 441a. Under the Commission's regulations, whenever a political committee accepts contributions that appear illegal, such contributions,

> (1) shall be, within 10 days either returned to the contributor or deposited into the campaign depository, and reported.... The treasurer shall make his or her best efforts to determine the legality of the contribution.
> (2) When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report noting the change on the committee's next required report.

11 C.F.R. § 103.3(b). Based on the foregoing regulation, respondents were obliged to refund any contribution in excess of the limits of 2 U.S.C. § 441a. The treasurer of R-B had the responsibility, once the committee had deposited contributions

that appeared illegal, to make her best efforts to determine the legality of the contributions. Under certain circumstances, discussed below, this determination may involve a consideration whether some portion of the contributions that appeared excessive might be reallocated or reattributed so that they then could be determined to be legal. However, if respondents retained such contributions for more than a reasonable time and did not properly reallocate or reattribute those which were in excess of the limits of 2 U.S.C. § 441a, they violated the statute. Any disposition of such excessive contributions, other than refunding within a reasonable time, or a proper reallocation or reattribution, could, at best, be considered in mitigation of the offense, but could not be said to eradicate it.

As discussed above, respondents dealt with the excessive contributions in three ways. Each of these will now be considered in turn.

REFUNDS

The Committee refunded $16,050 worth of the excessive contributions. As noted above, the Commission's regulations require that such refunds be made in a reasonable time. 11 C.F.R. § 103.3(b)(2). In this case, more than 90 days had elapsed between the acceptance and the refunding of any of the aforesaid $16,050 of excessive contributions. While the belated refunding could be viewed as mitigating the offense, this Office recommends that the Commission find probable cause to believe respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a) with respect to its acceptance of the aforesaid excessive contributions.

REALLOCATION TO COMPLIANCE FUND

As noted already, R-B disposed of most of the excessive contributions it accepted, some $172,624.43, by reallocating them to the compliance fund. Such reallocation does not constitute a timely refund, nor was it effective as a determination that the contributions were not excessive; thus, such reallocation could not negate the violation of the Act that Respondents committed when they accepted the excessive contributions.

Moreover, no proper reallocation of these funds was made. It should be noted, with respect to compliance funds in general, that the Commission's regulations provide that

> (i) A major party candidate [for President or Vice President] may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section....

11 C.F.R. § 9003.3(a)(1). The regulation does not provide for the deposit into the compliance fund of contributions made during the primary campaign except under circumstances specified in that regulation. The regulation provides, rather, that deposits may be made into compliance funds under the following circumstances:

> (A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

> (B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 C.F.R. Parts 110, 114, and 115.
> (ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 C.F.R. 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 C.F.R. Part 110 and used for any purpose permitted under this section.
> (iii) Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund....

Id. Thus, it appears that funds solicited by and contributed to a primary campaign committee, such as R-B, before the beginning of the expenditure report period, may not be deposited in a compliance fund. This Office does not however, address the question whether a violation of 11 C.F.R. § 9003.3(a)(1) occurred in this case, as that issue lies outside the scope of the present inquiry into whether R-B accepted excessive campaign contributions.

In the view of this Office, R-B violated 2 U.S.C. § 441a(f) when it accepted individual contributions in excess of $1,000. As noted above, R-B could have obviated this violation, even after depositing the excessive contributions and after its treasurer had made her best efforts to determine the legality of the contributions, by refunding the contributions "within a reasonable time." 11 C.F.R. § 103.3(b)(2). R-B not only failed to refund the contributions in question within a reasonable time, it did not even transfer this money to the compliance fund within a reasonable time (the delay being, as noted above at least 5-10 weeks, and in some cases, several months).

After completing its review of R-B's records, Audit advised R-B that it should either refund the excessive contributions, or issue letters, subject to review by Commission staff members, stating that "where indication is not received from a contributor that he or she wishes to have the excessive portion of his/her contribution used by the Compliance Fund, the Committee [should] refund the excessive portions and provide copies (both front and back) of the negotiated refund checks to the Audit staff." R-B chose not to follow this course, arguing that there is no precedent for requiring an "affirmative response" letter of this sort, and that contributors may be presumed to wish the money to be transferred to the compliance fund of the campaign they supported.

Thus R-B failed to take advantage of the procedure suggested by Audit to mitigate its violation of 2 U.S.C. § 441a(f). Contrary to respondents' assertion, it is well settled under the Commission's regulations that the contributions in question are to be deemed made for the primary campaign, and not the general election compliance fund, unless the contributors themselves expressly state otherwise. Under those regulations, contributions made before a primary, unless otherwise expressly designated, are deemed contributions for the primary:

> (1) No person ... shall make contributions to any candidate, his or her authorized political committee or agents with respect to any election to Federal office which in the aggregate exceed $1,000.
> (2) "With respect to any election" means -
> (i) In the case of a contribution designated in writing for a particular election, the election so designated ....
> (ii) In the case of a contribution not designated in writing for a particular election,
> (A) For a primary election, caucus or convention, if made on or before the date of the election, caucus or convention....

11 C.F.R. § 110.1(a)(2). In this case, all the contributions in question were made before the 1984 Presidential convention. Such contributions were not expressly designated for the compliance fund, and R-B refused even to seek such designation after the fact. Such contributions must be deemed made to R-B for the primary campaign. Once respondents accepted individual contributions in excess of $1,000 that could only be applied to the primaries, they violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

Respondents, in response to Audit, cited Advisory Opinions 1978-37, 1979-51, and 1982-39 in support of the proposition that they were within their rights to transfer these excessive contributions to the compliance fund. None of these advisory opinions, however, which deal with transfers between affiliated committees, is relevant to the issue before us. R-B's deposit of contributions into the compliance fund cannot expunge the violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a) it committed by accepting excessive contributions in the first place. This Office therefore recommends that the Commission find probable cause to believe R-B violated 2 U.S.C. § 441(a)(f) and 11 C.F.R. § 110.1(a) with respect to the acceptance of the aforesaid excessive contributions.

REATTRIBUTION OF EXCESSIVE CONTRIBUTIONS TO SPOUSES

As detailed above, R-B reattributed $5,000 worth of excessive contributions to the spouses of the original contributors, and verification was received from the contributors with respect to $4,500 worth of said contributions. Apparently, the remaining contributions were refunded.

As stated above, when a contribution appears illegal, the treasurer of the recipient committee must make his best efforts to determine the legality of the contribution, and if the contribution is deposited and cannot be determined to be legal, it must be refunded within a reasonable time. 11 C.F.R. § 103.3(b). While both spouses may contribute up to the $1,000 maximum to the same candidate for the same election regardless of whether such responses are from a single income family, 11 C.F.R. § 110.1(i)(1), AO 1975-31, the Commission's regulations require that:

> A contribution which represents contributions by more than one person shall indicate on the written instrument, or on an accompanying written statement signed by all contributors, the amount to be attributed to each contributor.

11 C.F.R. § 104.8(d). It follows that, when an authorized political committee receives a contribution in excess of $1,000, and there is a reasonable basis to believe said contribution was made by a married couple, it may provisionally deposit the contribution in its account, pending a determination whether the contribution was made by a married couple, and pending authorization from both spouses for the contribution to be reattributed as separate contributions from both spouses in amounts not greater than $1,000.

The Commission has specified the circumstances under which a political committee may seek spousal reattribution, and what information the committee must give the contributors when it does so:

> [T]he Commission's approval of [spousal reattribution] is conditioned on all of the following:
> (1) the reattribution process may only be used in those instances where the total contributions, if made by both spouses, would not exceed $2,000 per election; (2) before using the letter and form in any given case the treasurer must have a reasonable basis to conclude that the contribution was likely to have been made by a married couple; and (3) the letter to the contributor should

> be revised to inform the contributor of the statutory $1,000 limit per election and of his/her alternative to receive a refund of the excessive amount instead of attributing it to both spouses.

AO 1985-25. In this case, the letters R-B sent the contributors in question stated that where a contribution exceeds the statutory limit of $1,000 per individual, and is to be split therefore between two contributors, the signatures of both persons must be obtained. A form was enclosed for the provision of such signatures. The letters did not inform the contributors that they were entitled to a refund instead of approving the reattribution, but they did comply with the basic requirement for obtaining the authorization of a person making a contribution, as set forth in the Commission's regulations.*/

Apart from the sufficiency of information, the letters do not appear to have been timely. The contributions were received in the Spring of 1984; the reattribution letters were not sent until January, 1985. Thus, R-B failed to comply with the requirement of 11 C.F.R. § 103.3(b)(2) that apparently illegal contributions be refunded "within a reasonable time" unless their legality is established. Respondents, by

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*/ Respondents' letters were sent in January, 1985; AO 1985-25 is dated September 30, 1985.

reattributing a portion of these contributions to spouses of the contributors as of February or March, 1984, without obtaining the consent of said spouses until January, 1985, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a). Thus, this Office recommends that the Commission find probable cause to believe that respondents violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

4/13/87
Date

Lawrence M. Noble
Acting General Counsel

CCC# 3222

PIERSON, BALL & DOWD

ATTORNEYS AT LAW

1200 18th STREET, N.W.

WASHINGTON, D.C. 20036

(202) 331-8566

CABLE ADDRESS "PIERBALL"

TELEX NO. 64711

OKLAHOMA OFFICE
FIRST OKLAHOMA TOWER, SUITE 1310
210 W PARK AVENUE
OKLAHOMA CITY, OKLA 73102
405 235-7686

JOHN J. DUFFY
(202) 457-8616

87 APR 27 P4:40

April 27, 1987

BY HAND

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

Re: MUR 2154
Reagan-Bush '84 (Primary) Committee and
Angela M. Buchanan Jackson, as treasurer

Dear Mr. Noble:

On behalf of the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, I request an extension of time up to and including May 15, 1987 to respond to your brief in this matter. Since I received your brief, I have been occupied with pre-trial preparation for an FCC hearing, which took place during Tuesday, Wednesday and Thursday of last week. Consequently, I request this short additional extension to enable me to prepare an adequate response.

If you anticipate any problem in granting this request, I would appreciate your giving me a call as soon as possible.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dp

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 1, 1987

John J. Duffy, Esquire
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84 (Primary)
Committee and Angela M.
Buchanan Jackson as
treasurer

Dear Mr. Duffy:

This is in response to your letter dated April 27, 1987, which we received on April 27, 1987, requesting an extension of 14 days until May 15, 1987 to respond to the General Counsel's brief. After considering the circumstances presented in your letter, I have granted the requested extension. Accordingly, your response is due by close of business on May 15, 1987.

If you have any questions, please contact Charles Snyder, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

BY: George F. Rishel
Acting Associate General Counsel

PIERSON, BALL & DOWD
ATTORNEYS AT LAW
1200 18TH STREET, N.W.
WASHINGTON, D.C. 20036
202 331-8566
CABLE ADDRESS "PIERBALL"
TELEX NO 64711

FIRST OKLAHOMA TOWER, SUITE 1310
210 W. PARK AVENUE
OKLAHOMA CITY, OKLA 73102
405 235 7686

JOHN J. DUFFY
(202) 457-8616

May 15, 1987

Honorable Scott E. Thomas
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2154

Dear Chairman Thomas:

We submit herewith the reply of Reagan-Bush '84 to the General Counsel's brief in this proceeding. The primary issue is the effect of the Committee's transfer of certain excess contributions from its account to its general election compliance fund ("Compliance Fund"). The sole legal question presented is whether the Committee can be held to have violated §441a(f) even though the monies in question were timely removed from its account.

The General Counsel contends that the removal of these funds from the Committee's account, even though timely, did not prevent a violation of §441a(f) because, under his construction of §9003.3(a)(1)(iii) and §110.1(a)(2), the money was not properly received by the Compliance Fund.

To be frank, we are unable to understand the General Counsel's concern here. By removing the funds from its account, the Committee acted to satisfy its obligation under §441a(f) and §103.3(b)(2) to make the excess contributions unavailable for use in the primary campaign. Whether or not the Committee erred in depositing the money into the Compliance Fund, and we believe it did not, the removal of the money from the Committee's account prevented a §441a(f) violation.

We wish to take this opportunity to bring to your attention two other points. The General Counsel alleges in his brief for the first time in this proceeding that the transfers to the Compliance Fund were not timely. This allegation was not made in his original Legal and Factual Analysis and was not a basis for the Commission's reason to believe finding in this case. Consequently, we believe it cannot be raised now at this late stage in the proceeding.

In addition, the General Counsel states that the question of whether the Committee violated §9003.3(a)(1) when it deposited the excess contributions in the Compliance Fund lies outside of the scope of this proceeding. While we agree that the Commission has made no reason to believe finding on this point, the issue of the propriety of the Committee's deposit of these contributions in the Compliance Fund is at the heart of the General Counsel's case here. We object strongly to the piecemeal treatment of these issues, and we request the Commission to confirm that MUR 2154 is the only enforcement action that will be taken with respect to these matters.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dp
cc: Lawrence M. Noble, Esq.
Charles Snyder, Esq.
Commissioner Thomas J. Josefiak
Commissioner Joan D. Aikens
Commissioner Lee Ann Elliott
Commissioner John W. McGarry
Commissioner Danny L. McDonald

FEDERAL ELECTION COMMISSION

In the Matter of Reagan-Bush '84 (Primary Committee) and Angela M. Buchanan Jackson, as Treasurer	)))))	MUR 2154

RESPONDENT'S BRIEF

The Reagan-Bush '84 ("Committee") submits this reply to the General Counsel's Brief.

STATEMENT OF THE ISSUES

During the primary campaign, the Committee received and deposited into its account excess contributions in the amount of $193,674.43 from 285 individuals. Upon discovering that the aggregate contributions submitted by these individuals exceeded the contribution limit, the Committee took one or more of the following steps: (1) it transferred the contribution, or some portion of the contribution, to the general election compliance fund ("Compliance Fund"); (2) it reattributed the contribution, or some portion of the contribution, to the contributor's spouse, provided the contribution was received by check drawn on a joint checking account; or (3) it returned the contribution, or some portion of the contribution, to the contributor. In all, $172,624.43 was transferred to the Compliance Fund, $5,000 was reattributed, and $16,050 was refunded.

The General Counsel recognizes, as he must, the propriety of depositing these contributions into the Committee's account. See 11 CFR §103.3(b)(1). The General Counsel contends, however, that with respect to the $172,000, the removal of the money from the Committee's account and its deposit in the Compliance Fund did not satisfy the Committee's obligation under §441a(f) and §103.3(b)(2) because the Committee did not obtain the affirmative consent of the contributor to the transfer.1/

With respect to the contributions that the Committee refunded or reattributed, the General Counsel contends that the Committee failed to satisfy the requirement of 2 U.S.C. §441a(f) and 11 CFR §103.3(b)(2), because in the case of the refunds more than ninety days elapsed between the deposit of the contributions and the refunds, and because in the case of the reattributions the signatures of the spouses verifying the reattributions were not received until after the campaign had ended.

ARGUMENT

A. The Removal Of Funds From The Committee's Account And Their Deposit In The Compliance Fund Was Sufficient To Satisfy The Requirements Of §441a(f) And §103.3(b)(2).

The General Counsel contends that the Committee failed to comply with the requirements of §441a(f) and §103.3(b)(2). Subsection (b)(2) requires that "[w]hen a contribution cannot be determined to be legal, refunds shall be made within a reasonable

---

1/ The General Counsel also contends (Brief at 7) that the transfers to the Compliance Fund were not made within a reasonable time, stating that they were made within 5-10 weeks and that some were not made for several months. This contention was not made in the General Counsel's Factual and Legal Analysis in support of his recommendation that the Commission find reason to believe a violation had occurred and was not, therefore, a part of the reason to believe finding. Consequently, it is the Committee's position that the timeliness of the transfers to the Compliance Fund cannot be raised at this time.

time . . . ." According to the General Counsel, the Committee's transfer of excessive contributions to the Compliance Fund was not "effective as a determination that the contributions were not excessive," and did not "constitute a timely refund." (Brief at 5). While it is obvious that the transfer of contributions to the Compliance Fund did not act as a "determination of their legality" as a contribution to the primary campaign, no such determination was necessary because the contributions were removed from the Committee's account. Although the General Counsel refers to the transfer of funds as a "reallocation," his use of this term is misleading. When a committee "reallocates" an excess contribution to another individual, such as the contributor's spouse, the excess contribution remains in the committee's account and is available for use in the campaign. Reagan-Bush '84 did not reallocate these contributions, it transferred them to the Compliance Fund. The money was removed from the Committee's account and was not available for use in the campaign. It was the removal of the funds from the Committee's account that satisfied the requirement of §441a(f) and §103.3(b)(2).

The General Counsel also contends that the transfer of excess contributions to the Compliance Fund does not constitute a "refund," as that term is used in §103.3(b)(2), and consequently, does not satisfy the requirements of §103.3(b)(2). The General Counsel cites no authority to support his construction of the term refund, and, indeed, both the General Counsel and the Audit

Staff have taken the position on other occasions that a transfer of excess contributions to the Compliance Fund would satisfy the refund requirement of §103.3(b)(2). As the General Counsel notes (Brief at 7), the Audit Staff recommended in the Interim Audit Report that the Committee mitigate its alleged violation of §441a(f) by obtaining the affirmative consent of the contributor to the transfer. Obviously, the Audit Staff must have concluded that a transfer to the Compliance Fund could constitute a "refund" for purposes of §103.3(b)(2), otherwise the transfer with the contributor's affirmative consent would have had no mitigating effect.

Similarly, when the Commission proposed recently to amend §9003.3(a)(b)(iii) to authorize explicitly the deposit into the Compliance Fund of excess contributions received in the primary, it did not also amend §103.3(b)(2) to provide explicitly that such a transfer satisfied the refund requirement of that section. It assumed, and correctly, that a transfer to the Compliance Fund would constitute a "refund."

The General Counsel further argues (Brief at 5) that the Committee's transfer of excess contributions to the Compliance Fund was not effective to satisfy the requirements of §103.3(b)(2), because at the time §9003.3(a)(1) did not authorize explicitly the acceptance of such funds by the Compliance Fund. Assuming for the moment that the deposit of these funds was a violation of §9003.3(a)(1), their removal from the Committee's account was nevertheless sufficient to satisfy the requirement of

§103.3(b)(2). Whether or not their deposit into the Compliance Fund was proper, the funds were removed from the Committee's account and were not available for use during the primary campaign.

Moreover, the General Counsel's argument is illogical in light of the Audit Division's recommendation that the Committee "mitigate" its violation by adopting a procedure -- solicitation of an affirmative response -- that was itself not authorized explicitly by §9003.3(a)(1). If the Committee's transfer of excess contributions to the Compliance Fund was ineffective under §103.3(b)(2) because the transfer was not authorized explicitly by §9003.3(a)(1), then the Audit Division's proposed transfer would have been equally ineffective, since it was also not authorized explicitly by §9003.3(a)(1).

Finally, we submit that the Committee's conclusion that the excess contributions could be deposited into the Compliance Fund was reasonable and consistent with the provisions of §9003.3(a)(1)(iii). At the time these transfers occurred, §9003.3(a)(1)(iii) provided for the deposit into the compliance fund of contributions that were designated by the contributor for the primary, but that could not be deposited in the primary account because the committee had no net debts outstanding. The sole procedural requirement was that the committee notify the contributor of the deposit. The Committee reasoned that the circumstances addressed by §9003.3(a)(1)(iii) were sufficiently analogous to the circumstances of its situation to authorize it to deposit the excess contributions received during the primary into the Compliance Fund, provided that it adopted the procedure mandated by §9003.3(a)(1)(iii). We believe that the Committee's conclusion was correct.

As the Commission has recognized recently, the same policy considerations govern both situations. Although the Commission may have decided now to impose greater obligations on committees with respect to the deposit of such contributions in the Compliance Fund, it has recognized that both situations should be treated similarly. What is true now was true then, and the Committee's deposit of excess contributions in the Compliance Fund should be considered authorized by §9003.3(a)(1)(iii).

The General Counsel's final argument in favor of a finding of probable cause with respect to the transfer to the Compliance Fund is (Brief at 7-8):

> Contrary to respondents' assertion, it is well settled under the Commission's regulations that the contributions in question are to be deemed made for the primary campaign, and not the general election compliance fund, unless the contributors themselves expressly state otherwise. . . .

As with his argument concerning §9003.3(a)(1), the issue raised here goes to the question of whether the Committee properly deposited the contributions into the Compliance Fund, not whether the removal of these funds from the Committee's account satisfied the requirements of §103.3(b)(2). Again we are unable to understand the General Counsel's insistence that the Committee's removal of funds from its account should not be recognized for purposes of §441a(f) and §103.3(b)(2), merely because the Committee's "redesignation" of those monies to the Compliance Fund contravened, in his opinion, 11 CFR §110.1(a)(2)(ii).

Moreover, the Committee had a reasonable belief that §110.1(a)(2)(ii) did not constitute a bar to the transfer of excess contributions to the Compliance Fund. The Committee based this belief on §9003.3(a)(1)(iii), which permitted contributions explicitly designated for the primary election to be deposited in the legal and account compliance fund, provided that the candidate notified the contributor that his or her contribution would be deposited in that fund. The Committee noted that this provision was in direct conflict with §110.1(a)(2)(i), which provided that a contribution designated in writing for the primary had to be considered a primary contribution. The Committee reasoned that in §9003.3(a)(1)(iii) the Commission had ignored the mandate of §110.1(a)(2)(i) in circumstances directly analogous to the circumstances in its case. In the situation contemplated in §9003.(3)(a)(iii), the contribution was a primary contribution under §110.1(a)(2)(i), because it was designated in a written document as a primary contribution. Nevertheless, the Commission permitted its deposit in the legal and accounting compliance fund without an affirmative written redesignation, but merely with a notification to the contributor. In the Committee's case, the contribution was a primary contribution under §110.1(a)(2)(ii) because it was received during the primary. The Committee reasoned that the deposit of these contributions in the legal and accounting compliance fund would likewise be permissible despite the requirements of §110.1(a)(2), if it followed the procedure outlined in §9003.3(a)(1)(iii).

The Committee's conclusion that contributions received in the circumstances contemplated by §9003.3(a)(1)(iii) and the circumstances presented by its case should be treated alike gains support from the Commission's similar treatment of such contributions in its proposed regulations. In these regulations, the Commission proposes to permit the transfer of contributions made during the primary and contributions designated in writing for the primary using the same procedure, an affirmative redesignation. Although the Commission has now decided to adopt a different procedure for both types of contributions than was in effect during the 1984 campaign cycle, its decision to change the procedure with respect to contributions designated in writing for the primary supports the reasonableness of the Committee's conclusion that these situations were similar from a policy point of view.

B. <u>The Other Alleged Violations Must Be Viewed In Context</u>

The General Counsel's contention with respect to the other excess contributions are presented out of their appropriate context. Frankly, we do not consider the refund of 16 excess contributions within ninety days unreasonable. During its period of operation, the Committee received contributions from more than 275,940 contributors. The 16 persons whose contributions the General Counsel contends were not refunded promptly constituted less than .006% of the total contributors to the campaign. Moreover, during the period October, 1983 through August, 1984, Reagan-Bush '84 refunded individual contributions in excess of $115,000. Thus, almost 90% of the Committee's refunds were made in a manner to which no objection has been raised. Similarly, the reattribution of the six contributions were done promptly, and documentation, although delayed, was received eventually for all, but one.

CONCLUSION

For the reasons given above, we urge the Commission to find no probable cause to believe that the Committee violated §441a(f).

Respectfully submitted,

REAGAN-BUSH '84

By ______________________________
John J. Duffy

PIERSON, BALL & DOWD
1200 18th Street, N.W.
Washington, D.C. 20036
(202) 331-8566

May 15, 1987

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reagan-Bush '84 (Primary))
Committee and Angela M. Buchanan)
Jackson, as Treasurer)
)

EXECUTIVE SESSION

MUR 2154

JUL 21 1987

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 15, 1986, the Commission found reason to believe that the Reagan-Bush '84 (Primary) Committee (the "Committee") and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 104.8(d) and 110.1(a).

On September 30, 1986, the Commission voted to authorize conciliation with respondents prior to a finding of probable cause to believe, and issued a proposed conciliation agreement to respondents.

. On that same date, the Commission also voted to take no further action on the violation of 11 C.F.R. § 104.8(d).

This Office then prepared a brief recommending that the Commission find probable cause to believe the Committee and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

II. ANALYSIS

(See OGC brief signed April 13, 1987).

The allegations of violations of the Federal Election Campaign Act ("the Act") and the Commission's regulations, set forth in the OGC brief, were based on findings made through an audit of the Committee conducted by the Commission's Audit Division.

Respondents belatedly submitted a reply brief on May 18, 1987. The arguments contained in that reply brief will now be summarized and analyzed.

Respondents do not dispute the findings mad: by the Audit Division. They acknowledge in their brief, rather, that they accepted from 285 individuals some $193,674 in campaign contributions in excess of the limitations set forth in 2 U.S.C. § 441a. They further acknowledge that they deposited these excessive contributions in their account.

Respondents contend, however, that they complied with the requirement of the Commission's regulations that, where a committee deposits an excessive contribution into its campaign depository and such "a contribution cannot be determined to be legal, refunds shall be made within a reasonable time...." 11 C.F.R. § 103.3(b)(2). Respondents acknowledge that, as alleged, they transferred $172,624.43 of the excessive contributions to the Reagan-Bush General Election Compliance Fund ("compliance fund"). They argue, however, that said transfer to the compliance fund constituted a "refund" as that term is used in 11 C.F.R. § 103.3.

The regulation in question, as we have already noted, also requires that such refunds be made within a reasonable time. In our brief, this Office contended that these tranfers to the compliance fund, regardless of whatever legal significance may otherwise be attributed to them, were not made within a reasonable time, since such transfers were made after a delay lasting at least 5-10 weeks and, in some cases, several months. Respondents did not deny the <u>fact</u> that the transfers were not made within a reasonable time, but argue instead that the Commission should not take that delay into account, on the grounds that a statement that the transfers were not timely

> was not made in the General Counsel's Factual and Legal Analysis in support of his recommendation that the Commission find reason to believe a violation had occurred and was not, therefore, a part of the reason to believe finding. Consequently, it is the Committee's position that the timeliness of the transfers to the compliance fund cannot be raised at this time.

Committee's Brief, at P.2 n.1.

Respondents cite no authority in support of their proposition that the Commission, in considering the issue of probable cause, may take into account only facts recited in the Legal and Factual Analysis at the time of the finding of reason to believe. The purposes of the reason to believe finding are to notify respondents of the alleged violations and the factual basis thereof, and to authorize an investigation. 2 U.S.C. § 437g(a)(2). Under the Committee's theory, such investigation would be futile, since the Commission could only consider facts included in the Legal and Factual Analysis at the time of the reason to believe finding. In any event, respondents were not prejudiced by the fact that the duration of their delay in making the transfers to the compliance fund was not specified in the Legal and Factual Analysis, because the Committee itself knew that it had made the transfers belatedly, and because the Interim Audit Report, issued to the Committee on July 17, 1985, stated that the transfers to the compliance fund were made after a lag of 5-10 weeks or, in some cases, several months. It should be noted that Respondents had the opportunity to respond to that aspect of the Interim Audit Report in its responsive brief, but chose not to do so. It is apparent that there is no reason for the Commission to accept respondents' argument that it should ignore the undisputed fact that respondents failed to transfer the excessive contributions to the compliance fund within a reasonable time.

We turn next to the question of whether the transfers to the compliance fund constituted "refunds" under 11 C.F.R. § 103.3, as respondents have contended. In the view of this Office, such transfers do not constitute refunds, based on the plain meaning of the word, and the manifest intent of the regulation. The word "refund" means "to give or put back," or "to return (money) in restitution, repayment, or balancing of accounts." WEBSTER'S Ninth New Collegiate Dictionary (1985). Clearly, to "give back" or "return" contributions involves giving the money back to the contributor. To claim that contributions may be "refunded" to a third party, particularly to a compliance fund established by the same candidate that established the recipient committee, goes against the intent of the regulations. The regulation itself makes the meaning of the term refund clear in this context: "(1) Contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository, and reported.... (2) When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time...." 11 C.F.R. § 103.3(b) (emphasis added). Therefore, a treasurer, who deposited a campaign contribution whose legality cannot be established, must return it to the contributor. As was stated in the Explanation and Justification for 11 C.F.R. § 103.3, "Contributions of questionable legality shall either be returned to the contributor or deposited while the treasurer determines the validity of the contribution." H.R. Doc. No. 95-44, 95th Cong., 1st Sess, 45 (1977). In the view of this Office, therefore, the Committee did not "refund" the $172,624.43 it transferred to the compliance fund.[1/]

Respondents also stated that this Office and the Audit Division have on other occasions taken the position that a transfer of excessive contributions to a compliance fund "would satisfy the refund requirement of § 103.3(b)(2)." Committee's brief, P.4. Respondents cite no authority in support of this

1/ The recently revised version of 11 C.F.R. § 103.3 states that, if excessive contributions are deposited, a redesignation or reattribution may be requested. "If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor." 11 C.F.R. § 103.3(b)(3).

proposition. This Office notes that, contrary to respondents' assertion, the Mondale for President Committee ("MPC") paid a substantial civil penalty in MUR 2241 for a violation of 2 U.S.C. § 441a(f), on the grounds that it had accepted $102,853 in excessive contributions. MPC had transferred $51,034 to its compliance fund ("Mondale Compliance Fund"). Unlike the Committee in the present matter, which merely informed the contributors of the transfers to the compliance fund without seeking or obtaining their consent, MPC only transferred its excessive contributions to the Mondale Compliance Fund after receiving express, written authorization from the contributors concerned. The MPC contributors redesignated their contributions so as to make them, in effect, not to MPC, but to the Mondale Compliance Fund. Nonetheless, the Commission found reason to believe MPC violated 2 U.S.C. § 441a(f) on the grounds that it failed to obtain the contributors' consent and to transfer out the funds within a reasonable time. Respondents in the present matter, in contrast, not only failed to make the transfers in a reasonable time, they did not attempt to gain the contributors' consent for the transfers.

It is paradoxical, therefore, that respondents cite the Commission's proposed amendment of 11 C.F.R. § 9003.3(a)(1)(iii) in support of their position. That amendment would provide that, in addition to the ways in which contributions may be deposited into the compliance fund that are specified in the existing regulation, "contributions that exceed the contributor's limit for the primary election, may be deposited in the legal and accounting compliance fund *if the candidate obtains the contributor's redesignation*, or a reattribution to a joint contributor, in accordance with 11 C.F.R. § 110.1." (Emphasis added.) Accordingly, even had this regulation been in effect in 1984 when the alleged violation occurred, respondents would still have failed to comply with it, as they did not obtain the contributors' redesignations.

Respondents argue that their transfer to the compliance fund was a "refund" under 11 C.F.R. § 103.3 because, when the Commission proposed the aforesaid amendment of 11 C.F.R. § 9003.3(a)(1)(iii), "it did not also amend § 103.3(b)(2) to provide explicitly that such a transfer satisfied the refund requirement of that section. It assumed, and correctly, that a transfer to the compliance fund would constitute a 'refund.'" Committee's brief, at P. 4. Respondents overlook the fact that the Commission *has* amended 11 C.F.R. § 103.3(b)(3). That regulation now provides that, when a committee chooses to deposit excessive contributions, "the treasurer may request redesignation or reattribution of the contribution by the contributor...." If such redesignation or reattribution is not received, the treasurer, within 60 days of receipt, must "refund the contribution to the contributor." 11 C.F.R. § 103.3(b)(3). The procedure set forth in this regulation for reattribution or redesignation dovetails with the proposed amendment of 11 C.F.R. § 9003.3(a)(1)(iii) providing for deposit in a compliance fund of excessive contributions for the primary election "if the candidate obtains redesignation, or a reattribution...." Therefore, respondents' argument that the Commission "assumed" such transfers constituted "refunds" under the former 11 C.F.R. § 103.3(b)(2) is completely without foundation.

Respondents recognize that the regulations that existed at the time of the events in question are controlling in this case. To justify the transfers into the compliance fund, therefore, they cite the regulation that states:

> (iii) Contributions which are made after the beginning of the expenditure report period but which are designated for the primary election may be deposited in the legal and accounting compliance fund: Provided, that the candidate already has sufficient funds to pay any outstanding campaign obligations incurred during the primary campaign; and the candidate notifies the contributor that his or her contribution will be deposited in the compliance fund. If after such notification the contributor objects to the funds being so used, the contribution shall be returned.

11 C.F.R. § 9003.3(a)(1). Respondents recognize that their transfers to the compliance fund do not meet the foregoing criteria. (The contributions in question were made long before the beginning of the expenditure report period.) Yet they argue that they can follow the procedure set forth in the regulation on the grounds that the circumstances described in the regulation

"were sufficiently analagous" to those facing the Committee. In the view of this Office, this argument is unsound. The regulation in question, 11 C.F.R. § 9003.3(a)(1), sets forth a complete statement of the means by which contributions could be placed in a compliance fund. Respondents may not in effect amend that regulation by spinning off by "analogy" other means of placing contributions in the compliance fund. Nothing in 11 C.F.R. § 9003.3(a)(1) authorizes the procedures they followed, and they cannot therefore use that regulation to justify their actions.

Next, respondents argue that the Committee had a "reasonable belief that § 110.1(a)(2)(ii) did not constitute a bar to the transfer of excess contributions to the compliance fund." The basis for this "reasonable belief" once again was an "analogy" to 11 C.F.R. § 9003.3(a)(1)(iii), which permitted, under very specific, limited circumstances, supra, the transfer of funds designated for the primary to the compliance fund. As already noted, the Committee's attempt to rewrite the regulation by "analogy" is unsound. The Commission's regulations make it clear that contributions made during a primary campaign cannot be attributed to the general election campaign, absent a written designation by the contributor. 11 C.F.R. § 110.1(a).

This Office would emphasize that the issue in this matter is not whether respondents could deposit the excessive contributions into the compliance fund, since no allegation of a violation of 11 C.F.R. § 9003.3(a)(1) has been made in this case. The issue is whether respondents accepted contributions in excess of the limits of 2 U.S.C. § 441a, and whether they followed the procedures set forth in 11 C.F.R. § 103.3 by which a violation of 2 U.S.C. § 441a(f) could be avoided despite the receipt and deposit of excessive contributions. Respondents have admitted that the legality of the contributions could not be established; moreover, they did not refund the $172,624.43 of contributions under discussion, and instead transferred those contributions to the compliance fund. Thus, respondents did not avail themselves of the procedures of 11 C.F.R. § 103.3 for avoiding a violation of 2 U.S.C. § 441a(f).

The final point raised in respondents' brief concerns the 18 contributions, worth $16,050, that respondents did refund, but not within a reasonable time. Respondents first argue that "Frankly, we do not consider the refund of 16 [sic] excess contributions within ninety days unreasonable." Committee brief, P. 8. Respondents argument is totally without merit since the refunds were not made until over 90 days had passed; respondents themselves had previously noted in the same brief (P.2) that this Office contended that "more than ninety days elapsed between the deposit of the contributions and the refunds...." Respondents' second point is that other excessive contributions were refunded in a timely manner, and, presumably, respondents should receive some credit for those timely refunds. In response, this Office states that this violation only involves the refunds that were not made in a timely manner.

In conclusion, for the reasons stated above and in our brief, this Office recommends that the Commission find probable cause to believe the Committee and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).2/

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find probable cause to believe that the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

2. Approve the attached conciliation agreement and letter.

7/10/87
Date

Lawrence M. Noble
Acting General Counsel

Attachments
1. Respondents' brief
2. Proposed Conciliation Agreement
3. Letter

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary)	)	MUR 2154
Committee and Angela M.	)	
Buchanan Jackson, as	)	
Treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of July 21, 1987, do hereby certify that the Commission took the following actions in MUR 2154:

1. Decided by a vote of 6-0 to find probable cause to believe that the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a).

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

(continued)

Federal Election Commission
Certification for MUR 2154
July 21, 1987

2. Decided by a vote of 5-1 to approve the conciliation agreement and letter attached to the General Counsel's report dated July 10, 1987.

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

Attest:

July 21, 1987
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

July 23, 1987

John J. Duffy, Esquire
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84 (Primary)
Committee and Angela M.
Buchanan Jackson

Dear Mr. Duffy:

On July 21, 1987, the Federal Election Commission found that there is probable cause to believe your client, the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 110.1(a) of the Commission's regulations in connection with their acceptance of excessive campaign contributions.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within 10 days. I will then recommend that the Commission approve the agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Charles Snyder, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

Enclosure
Conciliation Agreement

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

August 31, 1987

John J. Duffy, Esquire
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84 (Primary)
Committee and Angela M.
Buchanan Jackson, as
treasurer

Dear Mr. Duffy:

On July 23, 1987, you were notified that the Federal Election Commission found probable cause to believe that your clients, the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f). On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. Insofar as more than 30 days have elapsed without a response from you, a recommendation concerning the filing of civil suit will be made to the Commission by the Office of General Counsel unless we receive a response from you within 7 days.

Should you have any questions, please contact Charles Snyder, the attorney assigned to this matter, at (202) 376-8200.

Sincerely,

Lawrence M. Noble
Acting General Counsel

Lois G. Lerner

By: Lois G. Lerner
Associate General Counsel

RECEIVED
FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

87 NOV 20 PM 3:25

In the Matter of	)	
	)	
Reagan-Bush '84	)	MUR 2154
(Primary) Committee and	)	
Angela M. Buchanan	)	
Jackson, as treasurer	)	

SENSITIVE
EXECUTIVE SESSION
DEC 01 1987

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On July 21, 1987, the Commission found probable cause to believe that the Reagan-Bush '84 (Primary) Committee ("the Committee") and Angela M. Buchanan Jackson, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a)

Respondents did not reply to this proposal during the thirty day period mandated for conciliation by statute. 2 U.S.C. § 437g(a)(4)(A)(i). On August 31, 1987, this Office advised respondents by mail that over 30 days had elapsed since the finding of probable cause, and solicited a response to the Commission's finding within 7 days, failing which we would make a recommendation to the Commission concerning the filing of a civil suit for enforcement. (Attachment 1.)

II. RECOMMENDATIONS

1. Approve the attached revised proposed conciliation agreement and letter.

2. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, if the attached proposed conciliation agreement is not accepted within ten days.

11/20/87
Date

Lawrence M. Noble
General Counsel

Attachments
1. Letter to John Duffy, August 31, 1987
2. Letter from John Duffy, September 1, 1987
3. Letter from John Duffy, September 4, 1987
4. Letter to John Duffy, September 16, 1987
5. Proposed conciliation agreement and letter

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary) Committee	)	MUR 2154
and Angela M. Buchanan Jackson, as	)	
treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session of December 1, 1987, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 2154:

1. Approve the revised proposed conciliation agreement attached to the General Counsel's report dated November 20, 1987.

(continued)

Federal Election Commission
Certification for MUR 2154
December 1, 1987

2. Authorize the Office of the General Counsel to file a civil suit for relief in the United States District Court against the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, if the proposed conciliation agreement is not accepted within thirty days.

3. Send an appropriate letter to the respondent pursuant to the above-noted actions.

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

Attest:

12-2-87
Date

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

OCC# 5110

PIERSON, BALL & DOWD

ATTORNEYS AT LAW

1200 18TH STREET, N.W.

WASHINGTON, D.C. 20036

(202) 331-8566

CABLE ADDRESS "PIERBALL"

TELEX NO. 64711

OKLAHOMA OFFICE
FIRST OKLAHOMA TOWER, SUITE 1310
210 W. PARK AVENUE
OKLAHOMA CITY, OKLA 73102
(405) 235-7686

JOHN J. DUFFY
(202) 457-8616

January 6, 1988

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
RECEIVED
88 JAN 12 PM 12:29

By Hand

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

Re: MUR 2154

Dear Larry:

We submit herewith, on behalf of Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, a signed copy of the Conciliation Agreement proposed by the Commission, along with a check from the Committee made payable to the U.S. Treasury in the amount of $10,000.

Please execute a copy of this Agreement and return a signed copy to us for our files.

Sincerely,

PIERSON, BALL & DOWD

John J. Duffy

JJD:dp

8 8 0 4 0 3 5 3 5 2 7

REAGAN - BUSH '84 1674

15-3/540

January 5 19 87

PAY TO THE ORDER OF U.S. Treasury $ 10,000 00/100

Ten Thousand Dollars 00/100 DOLLARS

The RIGGS NATIONAL BANK
of WASHINGTON D.C.
MAIN OFFICE
1503 PENNSYLVANIA AVENUE, N.W.

FOR MUR 2154 (PRIMARY) Bay Buchanan Jackson

⑈001674⑈ ⑆054000030⑆ 01⑈08485022⑈

OCC # 5110

88 JAN 12 PM 12:28

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO:	DEBRA A. TRIMIEW	TO:	CECILIA LIEBER
FROM:	CECILIA LIEBER	FROM:	DEBRA A. TRIMIEW

CHECK NO. 1674 { A COPY OF WHICH IS ATTACHED } RELATING TO

MUR 2154 (Dymersky) AND NAME Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treas.

WAS RECIEVED ON 1/12/88. PLEASE INDICATE THE ACCOUNT INTO WHICH IT SHOULD BE DEPOSITED:

/ / BUDGET CLEARING ACCOUNT { 95F3875.16 }

/ ✓ / CIVIL PENALTIES ACCOUNT { 95-1099.160 }

/ / OTHER ____________

SIGNATURE Debra A. Trimiew DATE 1/12/88

8 3 0 4 0 4 3 5 2 9

SENSITIVE

FEDERAL ELECTION COMMISSION
RECEIVED
88 JAN 21 AM 11:47

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer	)))))	MUR 2154

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement which has been signed by Angela Buchanan Jackson, the treasurer of the Reagan-Bush '84 Primary Committee.

The attached agreement contains no changes from the agreement approved by the Commission on December 1, 1987. A check for the civil penalty has been received.

II. RECOMMENDATIONS

1. Accept the attached conciliation agreement with the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer.

2. Close the file.

3. Approve the attached letter.

1/21/88
Date

Lawrence M. Noble
General Counsel

Attachments
1. Conciliation Agreement
2. Photocopy of civil penalty check
3. Letter to Respondent

Staff Person: Charles Snyder

8 8 0 4 0 3 3 5 2 7

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer	)))))	MUR 2154

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on January 25, 1988, the Commission decided by a vote of 6-0 to take the following actions in MUR 2154:

1. Accept the conciliation agreement with the Reagan-Bush '84 (Primary) Committee and Angela M. Buchanan Jackson, as treasurer, as recommended in the General Counsel's report signed January 21, 1988.

2. Close the file

3. Approve the letter, as recommended in the General Counsel's report signed January 21, 1988.

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

Attest:

Jan. 26, 1988
Date

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

Received in the Office of Commission Secretary:	Thurs.,	1-21-88,	11:47
Circulated on 48 hour tally basis:	Thurs.,	1-21-88,	4:00
Deadline for vote:	Mon.,	1-25-88,	4:00

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

January 29, 1988

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John J. Duffy, Esquire
Pierson, Ball & Dowd
1200 18th Street, N.W.
Washington, D.C. 20036

RE: MUR 2154
Reagan-Bush '84 (Primary)
Committee and Angela M.
Buchanan Jackson, as
treasurer

Dear Mr. Duffy:

On January 26, 1988, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your client's behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter. This matter will become a part of the public record within 30 days. If you wish to submit any factual or legal materials to appear on the public record, please do so within ten days. Such materials should be sent to the Office of the General Counsel.

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

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact Charles Snyder, the attorney assigned to this matter at (202) 376-8200.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Reagan-Bush '84 (Primary) Committee	)	MUR 2154
and Angela M. Buchanan Jackson,	)	
as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission (hereinafter "the Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that the Reagan-Bush '86 (Primary) Committee and Angela M. Buchanan Jackson ("Respondents") violated 2 U.S.C. § 441a(f) and 11 C.F.R. §110.1(a) by accepting excessive contributions and failing to refund or reattribute them within a reasonable time.

NOW THEREFORE, the Commission and Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i) do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents, and the subject matter of this proceeding.

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

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

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

1. Respondent Reagan-Bush '84 (Primary) Committee was an authorized campaign committee of Ronald Reagan and George Bush during the primary phase of their 1984 presidential re-election

campaign, and respondent Angela M. Buchanan Jackson was the treasurer of that committee.

2. Respondents accepted contributions from 285 individuals that exceeded the limits on individual contributions to authorized committees as set forth in 2 U.S.C. § 441a(a)(1)(A). The excessive portion of these contributions totalled $193,674.43.

3. Respondents transferred $172,624.43 of excessive contributions into the Reagan-Bush General Election Compliance Fund ("general election compliance fund"), that had been deposited into the account of the Reagan-Bush '84 (Primary) committee.

4. Respondents also reattributed $5,000 of the excessive contributions to the spouses of the original contributors, but they did not obtain a written authorization from the contributors and their spouses for the reattribution within a reasonable time.

5. Respondents refunded the remainder of the excessive contributions to the contributors, although not within a reasonable time.

V. Respondents' acceptance of contributions in excess of the limits of 2 U.S.C. § 441a(a)(1) and their failure to transfer, reattribute or refund the excessive portion of these contributions within a reasonable time was in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.1(a)(1).

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Ten Thousand dollars ($10,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. Respondents agree to amend their reports to identify correctly all the refunds made in this case.

VIII. The Commission shall not internally generate any further enforcement action against Respondents or the general election compliance fund in connection with the transfer of $172,624.43 of excessive contributions by the Respondents into the general election compliance fund that had been deposited into the account of the Reagan-Bush '84 (Primary) Committee.

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

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

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

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

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

Date 1/29/88

FOR THE RESPONDENTS:

Angela Buchanan Jackson
(Name)
(Position)

Date January 5, 1987.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 2154

DATE FILMED 4/15/88 CAMERA NO. 2

CAMERAMAN GPC