FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3947

DATE FILMED 9-15-94 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

March 15, 1994

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REFERRAL MATTER - KERREY FOR PRESIDENT

Attached please find a copy of Finding II.A., entitled Excessive Contributions Resulting from Staff Advances, which in accordance with the Commission approved Materiality Thresholds, is being referred to your office for possible enforcement action.

The Final Audit Report on Kerrey for President was approved by the Commission on March 3, 1994.

Should you have any questions please contact Cornelia Riley or Marty Favin at 219-3720.

Attachment as stated

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A. **Excessive Contributions Resulting from Staff Advances**

Section 441a(a) of Title 2 of the United States Code states, in relevant part, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000.

Section 441a(f) of Title 2 of the United States Code states that no candidate or political committee shall knowingly accept any contributions or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

Section 431(11) of Title 2 of the United States Code states that the term "Person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of Persons, but such term does not include the Federal Government or any authority of the Federal Government.

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

Section 116.5(b) of Title 11 of the Code of Federal Regulations states that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 C.F.R. §100.7(b)(8). If the payment is not exempted under 11 C.F.R. 100.7(b)(8), it shall be considered a contribution by the individual unless the payment is for the individual's transportation expenses incurred while traveling on behalf of a candidate or political committee of a political party or for usual and normal subsistence expenses incurred by an individual other than a volunteer, while traveling on behalf of a candidate or political committee of a political party; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. For purposes of this section, the closing date shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement. In addition, "subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

During our review of the Committee's expense reimbursements to campaign staff, and of the Committee's contributions received from campaign staff, we noted that one individual advanced funds on behalf of the Committee in excess of the $1,000 limitation. The excessive portions of contributions and advanced funds totaled $6,238. The expenses were incurred for travel occurring between October 8, 1991 and February 23, 1992. This individual also contributed $1,000 on October 28, 1991. As of October 19, 1992, the excessive portion in the amount of $6,238 remained outstanding.

The Committee Counsel provided written comments and documentation subsequent to the Exit Conference relevant to this finding. He stated that the Committee distributed to each employee a written policy that stated that staff were not to advance their personal funds to purchase goods or services on behalf of the Committee. The Counsel also maintained that time frames allowed for reimbursements of staff advances should be consistent with the time limits imposed upon refunds of excessive contributions. Counsel further contended that the section of the regulations that provide that the obligation arising from a staff advance shall be treated as an outstanding debt until reimbursed "...should be construed to mean that the Committee may have a reasonable period of time in which to 'retire' the debt by making the appropriate reimbursements to staff, or by settling the debt with the staff."

With regard to the resolution of the advance noted above, the Committee presented a debt settlement statement that shows that an obligation of $8,162 to this individual was settled on November 21, 1992 for $4,081. Finally, the Committee asserted that "...it exercised best efforts to minimize the frequency of staff advances, that it reimbursed or settled such advances within a reasonable time and that therefore no excess contributions were accepted that require any repayment or penalty, or other further action by the Commission."

In the interim audit report the Audit staff recommended that the Committee provide evidence that the staff advances are not excessive contributions and any additional comments.

The Committee responded to the interim audit report with narrative arguments and comments which asserted that the Committee had acted reasonably to comply with the regulations governing staff advances.

The Committee restated its advance policy, as discussed above, and noted that the "...interim audit report raises but a single example of a breach of this policy."

Further the Committee stated that once it became aware of the advances which led to the excessive contribution cited in the interim audit report, the Committee treated this advance as an outstanding debt pursuant to 11 CFR 116.5(c). The Committee construes this section of the regulation "...to mean that the Committee may have a reasonable period of time in which to 'retire' the debt..." and that "...[i]f the debt arising from an advance is properly settled, then it too, like vendor debt, should not be considered to be an excess contribution."

Finally the Committee contends that the individual is "...entitled to a $1,000 travel exemption, as provided in 11 CFR 100.7(b)(8)...".

The Audit staff is of the opinion that the travel exemption does not apply to these expenses submitted for reimbursement.

With respect to the arguments and other comments as presented above, it is the opinion of the Audit staff that the Committee has provided no evidence or additional information that demonstrates that the staff advances do not constitute excessive contributions.

The Commission disagreed with the Audit Division's conclusion that the Committee is not entitled to the $1,000 travel exemption. The Commission believes that pursuant to 11 C.F.R. §100.7(b)(8), any unreimbursed payment for transportation expenses incurred by an individual on behalf of the candidate is not a contribution, if within the $1,000 aggregated individual exemption. In this case, Mr. Westbrook submitted a request for his travel expenses and he was reimbursed a portion of the costs through a debt settlement between himself and the Committee. The regulations do not address the issue of whether the Committee is required to demonstrate Mr. Westbrook's "intent" to have the travel exemption apply or not apply to his reimbursement request. Therefore, it is the position of the Commission that the portion of his travel expenses, up to $1,000, that remains unreimbursed by the Committee is not a contribution. See 11 C.F.R. §100.7(b)(8) and 11 C.F.R §116.5(b).

Accordingly, the excessive portion is reduced to $5,238.

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

FIRST GENERAL COUNSEL'S REPORT

MUR 3947
STAFF MEMBER: Abel Móntez

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Kerrey for President, Inc. and Hugh Westbrook, as Treasurer

Hugh Westbrook, Individually
Barry Diller

RELEVANT STATUTES/REGULATIONS:

2 U.S.C. § 441a(a)(1)(A)
11 C.F.R. § 100.7(b)(8)
2 U.S.C. § 441a(f)
11 C.F.R. § 116.5(b)

INTERNAL REPORTS CHECKED: Audit Documents and Debt Settlement Plan

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by an audit of the Kerrey for President, Inc. ("the Committee") and Hugh Westbrook, as treasurer, undertaken in accordance with 26 U.S.C. § 9038(a). This matter was also generated by a debt settlement plan that was filed with the Commission on February 2, 1993.1/ The Committee registered with the Commission on September 18, 1991, as the principal campaign committee of Senator J. Robert Kerrey, a candidate for the 1992 Democratic presidential

1/ The debt settlement plan has been reviewed by the Office of General Counsel and is being presented to the Commission concurrent with this matter.

nomination.[2] The Audit Division's referral materials and relevant portions of the debt settlement plan are attached. *See* Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

Individuals are prohibited from making contributions to candidates, their authorized committees or agents with respect to any election for federal office which, in the aggregate, exceed $1,000. No candidate or political committee shall knowingly accept any contribution which exceeds the contribution limitations. 2 U.S.C. § 441a(f). Moreover, no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures. *Id*.

Under 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions. 11 C.F.R. § 116.5(b). However, two exemptions exist. First, if an individual has expended amounts for transportation expenses on behalf of a candidate, any unreimbursed payment, not exceeding $1,000 with respect to a single election, will not be considered a contribution. 11 C.F.R. § 100.7(b)(8); *see also* 11 C.F.R. § 116.5(b). Second, these advances will not be considered

2/ The Commission determined the candidate eligible for matching funds on November 27, 1991, and determined that his date of ineligibility was March 5, 1992.

contributions if they are for an individual's personal transportation expenses, and for the usual and normal subsistence expenses of an individual who is not a volunteer, where such expenses are incurred while the individual is traveling on behalf of a candidate or party committee. 11 C.F.R. § 116.5(b); see also Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed. Reg. 26383 (June 27, 1989). However, this exemption only applies if the individual's transportation and subsistence expenses, paid for by credit card, are reimbursed within 60 days after the closing date of the billing statement on which the charges first appeared. 11 C.F.R. § 116.5(b)(2). If the individual does not use a credit card, the committee must make the reimbursement within 30 days after the date on which the expenses were incurred. Id.

The committee shall treat such obligations as an outstanding debt until reimbursed. 11 C.F.R. § 116.5(c). However, the individual and the committee may agree to the total forgiveness of the debt or a settlement of the debt for less than the entire amount owed. 11 C.F.R. § 116.5(d).

From October 8, 1991 to February 19, 1992, the Committee's treasurer, Hugh Westbrook, incurred $6,238 in airfare for 16 trips on behalf of the Committee. See Attachment 2. However, Mr. Westbrook apparently did not submit reimbursements after each trip. Instead, sometime after the date of his last trip, Mr. Westbrook submitted one request for reimbursement. Id. This request detailed all of his airfare expenses for the 16 trips. Id.

The Committee submitted a debt settlement plan, which includes a proposed settlement of the $6,238 debt owed to Mr. Westbrook. According to the debt settlement plan, Mr. Westbrook apparently incurred additional expenses in the amount of $1,923.50 on behalf of the Committee; the exact nature of these expenses and dates these expenses were incurred are unknown. The debt settlement plan shows that he used March 20, 1992 as the date when all of the $8,161.52 ($6,238.02 + $1,923.50) in expenses were incurred. See Attachment 3.

Although the record does not reflect Mr. Westbrook's method of payment for his $6,238.02 in airfare expenses, the Committee failed to reimburse him within the regulatory time limits of either 60 or 30 days. 11 C.F.R. § 116.5(b)(2). His unreimbursed transportation expenses of up to $1,000 are not a contribution to the Committee. 11 C.F.R. §§ 116.5(b) and 100.7(b)(8). However, the remaining $5,238.02 in transportation expenses and $1,923.50 in unspecified expenses incurred on behalf of the Committee result in a contribution to the Committee. 11 C.F.R. § 116.5. Mr. Westbrook made a direct contribution to the Committee of $1,000. Therefore, this Office recommends that the Commission find reason to believe that Hugh Westbrook, as an individual, violated 2 U.S.C. § 441a(a)(1)(A) by making a $7,161.52 contribution in excess of his individual contribution limitation. We also recommend that the Commission find reason to believe that Kerrey for President, Inc., and Hugh Westbrook, as treasurer, knowingly accepted the contribution in violation of 2 U.S.C. § 441a(f).

The Committee's debt settlement plan also shows that Barry Diller incurred $8,977.65 for fundraising event expenses. See Attachment 5. These expenses were contributions to the Committee at the time they were incurred. 11 C.F.R. § 116.5(b). Disclosure reports show that Mr. Diller made a $1,000 direct contribution to the Committee. The Committee did not refund, redesignate, or reattribute the excessive portion. 11 C.F.R. § 103.3(b)(3). Therefore, this Office recommends that the Commission find reason to believe that Mr. Diller violated 2 U.S.C. § 441a(a)(1)(A) by making a $8,977.65 contribution in excess of his individual contribution limitation. This Office also recommends that the Commission find reason to believe that the Kerrey for President, Inc., and Hugh Westbrook, as treasurer, knowingly accepted the contribution in violation of 2 U.S.C. § 441a(f).

However, based on the circumstances of this case, we recommend that the Commission take no further action with respect to this matter. See Heckler v. Chaney, 470 U.S. 821 (1985); see generally MUR 3789 (Commission found reason to believe that the Agran for President '92 Committee, its treasurer, and an individual violated 2 U.S.C. §§ 441a(1)(A) and (f) through staff advances, but took no further action on apparent excessive contributions varying from $6,419 to $3,832 that had been reimbursed by the time of the audit). In the present case, the Committee and the individuals agreed to settle their debts through the debt settlement process.[3] In the settlement, the Committee paid Mr. Westbrook $4,081.76 of the $8,161.52 owed to him. After applying the $1,000 transportation expenses exemption, Mr. Westbrook's unresolved excessive contribution is $3,079.76. The Committee paid Mr. Diller $5,386.59 of the $8,977.65 that is owed to him. Mr. Diller's unresolved excessive contribution is $3,591.06.

Although the advances from Mr. Diller were not referred from the audit process, the unresolved excessive contribution is comparable to Mr. Westbrook's unresolved contribution.[4] Therefore, the

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3/ Although Mr. Westbrook and Mr. Diller exceeded their contribution limitation, this Office acknowledges that the Commission's regulations do not prohibit Mr. Westbrook and Mr. Diller from agreeing to settle the debt. However, the regulations raise the issue of whether the Committee should have attempted to settle Mr. Westbrook's debt within the regulatory time limit of 30 or 60 days. See 11 C.F.R. § 116.5(b). Since there is no indication that Mr. Diller's advances were for his transportation expenses, the excessive portion of his contribution should have been refunded, reattributed, or redesignated within 60 days. 11 C.F.R. § 103.3(b)(3). This Office is not suggesting that a debt settlement plan or a letter of debt forgiveness should have been submitted to the Commission before the expiration of the 30 or 60 days, but there should have been some indication of the Committee's bona fide attempt to settle the debts if it could not resolve the matter within the prescribed time periods.

4/ Mr. Diller's expenses were not identified during the audit and examination of the Committee's records. A possible explanation for this could be that Mr. Diller did not seek reimbursement for the expenses immediately after the November 20, 1991 fundraising event, and thus the auditors were unable

Office of General Counsel recommends that the Commission take no further action in this matter. Since the debts were a part of the Committee's debt settlement plan and the file will be closed in this enforcement matter, we recommend that the Commission instruct Kerrey for President, Inc. to no longer report the debts. If the Commission adopts these recommendations, we will send an admonishment letter to the Respondents emphasizing the importance of complying with the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations at 11 C.F.R. § 116.5.

III. RECOMMENDATIONS

1. Open a MUR.

2. Find reason to believe that Hugh Westbrook, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

3. Find reason to believe that Barry Diller violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

4. Find reason to believe that Kerrey for President, Inc., and Hugh Westbrook, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.

5. Instruct Kerrey for President Inc. to no longer report the debts owed to Hugh Westbrook and Barry Diller.

6. Approve the appropriate letters.

(Footnote 4 continued from previous page)
during fieldwork to locate his invoices or reimbursement request in the Committee's files. It is possible that Mr. Diller may have waited until the debt settlement plan was being prepared by the Committee to submit his reimbursement request.

7. Close the file.

Lawrence M. Noble
General Counsel

7/27/94 BY: Kim Bright-Coleman
Date

Kim Bright-Coleman
Associate General Counsel

Attachments:
1. Referral Materials
2. Mr. Westbrook's Reimbursement Request
3. Westbrook Debt Settlement Agreement
4. Check issued to Mr. Westbrook
5. Diller Debt Settlement Agreement

94043584263

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Kerrey for President, Inc. and	)	MUR 3947
Hugh Westbrook, as treasurer;	)	
Hugh Westbrook, Individually;	)	
Barry Diller.	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on August 2, 1994, the Commission decided by a vote of 5-1 to take the following actions in MUR 3947:

1. Open a MUR.

2. Find reason to believe that Hugh Westbrook, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), but take no further action in this matter.

3. Find reason to believe that Barry Diller violated 2 U.S.C. § 441a(a)(1)(A), but take no further action.

4. Find reason to believe that Kerrey for President, Inc., and Hugh Westbrook, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.

(continued)

5. Instruct Kerrey for President Inc. to no longer report the debts owed to Hugh Westbrook and Barry Diller.

6. Approve the appropriate letter, as recommended in the General Counsel's Report dated July 27, 1994.

7. Close the file.

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

Attest:

8-2-94
Date

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

Received in the Secretariat:	Thurs., July 28, 1994	11:50 A.M.
Circulated to the Commission:	Thurs., July 28, 1994	4:00 P.M.
Deadline for vote:	Tues., Aug. 02, 1994	4:00 P.M.

mck

94043584265

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 16, 1994

Barry Diller
1940 Coldwater Canyon Dr.
Beverly Hills, CA 90210

RE: DSP #94-02
Kerrey for President, Inc.;
MUR 3947

Dear Mr. Diller:

On August 2, 1994, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended, by making an excessive contribution to Kerrey for President, Inc. ("the Committee"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Commission has instructed the Committee to no longer report its debt to you. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions, including the amount forgiven in the debt settlement, violated the contribution limit at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee are considered contributions. <u>See</u> 11 C.F.R. § 116.5(b). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

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

94043584266

If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

For the Commission,

Danny L. McDonald
Vice Chairman

Enclosure
GC Report

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 16, 1994

Hugh Westbrook
100 S. Biscayne Blvd.
Miami, FL 33131

RE: DSP #94-02
Kerrey for President, Inc.;
MUR 3947

Dear Mr. Westbrook:

On August 2, 1994, the Federal Election Commission found reason to believe that you, as an individual, violated 2 U.S.C. § 441a(a)(1)(A), a provision of the Federal Election Campaign Act of 1971, as amended by making an excessive contribution to Kerrey for President, Inc. ("the Committee). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Commission has instructed the Committee to no longer report its debt to you. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that your total amount of contributions, including the amount forgiven in the debt settlement, violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds you that "advances" for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee are considered contributions. See 11 C.F.R. § 116.5(b). However, generally an "advance" for an individual's transportation expenses or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee of a political party is not a contribution, if the parties abide by the regulatory time limits. Id. If the individual uses a personal credit card, the Committee must reimburse the individual within 60 days after the closing date of the billing statement on which the charges first appear. See 11 C.F.R. § 116.5(b)(2). If the individual does not use a credit card, the Committee must reimburse the individual within 30 days after the date on which the expenses were incurred. Id. A volunteer's usual and normal subsistence expenses are not considered contributions. See 11 C.F.R. § 116.5(b)(1). You should take steps to ensure that you abide by the contribution limitation and this regulation in the future.

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

If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

For the Commission,

Danny L. McDonald
Vice Chairman

Enclosure
GC Report

94043584269

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUGUST 16, 1994

Hugh Westbrook, Treasurer
Kerrey for President, Inc.
100 S. Biscayne Blvd.
Miami, FL 33131

RE: DSP #94-02
Kerrey for President, Inc.;
MUR 3947

Dear Mr. Westbrook:

On August 2, 1994, the Federal Election Commission found reason to believe that Kerrey for President, Inc. (the 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"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Commission also considered the Committee's debt settlement with Hugh Westbrook and Barry Diller and the Commission instructs the Committee to no longer report the debts owed to these individuals. The General Counsel's Report, which formed a basis for the Commission's finding, is attached for your information.

Please be advised that each of these individual's contributions to the Committee violated the contribution limitation at 2 U.S.C. § 441a(a)(1)(A). The Commission reminds the Committee that "advances" by committee staff and other individuals for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee are considered contributions. See 11 C.F.R. § 116.5(b). However, generally an "advance" for an individual's transportation expenses or usual and normal subsistence expenses incurred while traveling on behalf of a candidate or political committee of a political party is not a contribution, if the parties abide by the regulatory time limits. Id. If the individual uses a personal credit card, the Committee must reimburse the individual within 60 days after the closing date of the billing statement on which the charges first appear. See 11 C.F.R. § 116.5(b)(2). If the individual does not use a credit card, the Committee must reimburse the individual within 30 days after the date on which the expenses were incurred. Id. A volunteer's usual and normal subsistence expenses are not considered contributions. See 11 C.F.R. § 116.5(b)(1). The Committee should take steps to ensure that it abides by the contribution limit and this regulation in the future.

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

If you have any questions, please contact Abel Móntez, the attorney assigned to this matter, at (202) 219-3690 or (800) 424-9530.

For the Commission,

Danny L. McDonald
Vice Chairman

Enclosure
GC Report

94043584271

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3947

DATE FILMED 9-19-94 CAMERA NO. 2

CAMERAMAN JMH

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FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

Date: 9/20/94

✓ Microfilm

______ Public Records

______ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 3947

94043585070

1880 Century Park East
Century City
West Los Angeles, CA 90067

Telephone 310 553 6030

Price Waterhouse LLP

September 16, 1994

Federal Election Commission
Washington, D.C. 20463

RE: DSP #94-02
Kerrey For President, Inc.
MUR 3947

Dear sirs:

On behalf of our client, Barry Diller, we would like to include the following facts as part of the public record with regard to the findings in the above referenced Federal Election Committee First General Counsel's report.

On November 20, 1991, Mr. Diller hosted a fundraising event at his home to support the Kerrey For President, Inc. campaign. In hosting the event, Mr. Diller used several of his long-standing vendors and suppliers to meet the various needs of the event (i.e., catering, parking, etc.). When, after many weeks, the Kerrey committee did not pay the outstanding charges for the event, Mr. Diller paid them directly. At the time of payment, he was informed by the Kerrey committee that these advances would be completely reimbursed by the committee.

It was not until some time later that Mr. Diller was informed that the committee did not have the financial means to fully reimburse these advances but, with FEC approval, would provide a partial reimbursement of 60% of the amount advanced. With no other options, Mr. Diller agreed to the partial reimbursement. The remaining unreimbursed advances were recharacterized as contributions to the campaign and, as a result of this recharacterization, Mr. Diller found himself in violation of the contribution limit.

Given the above facts, we maintain, and would like the public record to reflect, that Mr. Diller had no intention of violating any law with regard to contribution limits, and that the payments made were not actually direct contributions. He was placed in this position through unfortunate circumstances beyond his control.

Sincerely,

Bret Magpiong

Bret Magpiong

cc. Barry Diller