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Audit Referral 99-08

**MEMORANDUM**

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JAMES A. PEHRKON  
STAFF DIRECTOR

**FROM:** ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** CLINTON/GORE '96 GENERAL COMMITTEE, INC.  
AND CLINTON/GORE '96 GENERAL ELECTION LEGAL  
AND ACCOUNTING COMPLIANCE FUND - REFERRAL  
MATTERS

On June 3, 1999, the Commission approved the audit report on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund. In accordance with the Commission approved materiality thresholds, the attached findings from the audit report are being referred to your office.

- Finding II.A.1 - World Wide Travel Services, Inc.
- Finding II.A.2 - A&T Uniplan Services
- Finding II.A.3 - Excelsior Hotel

If you have any questions or wish to review any referenced agenda documents or workpapers please contact Leroy Clay or Thomas Nurthen at 694-1200.

Attachments as stated

Finding II.A. - Apparent Prohibited Contributions Resulting From  
Extensions of Credit By A Commercial Vendor

**II.A. APPARENT PROHIBITED CONTRIBUTIONS RESULTING FROM  
EXTENSION OF CREDIT BY A COMMERCIAL VENDOR**

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any election at which presidential and vice presidential electors are to be voted for, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Sections 116.3(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Finally, 11 CFR §116.3(c) of Title 11 of the Code of Federal Regulations states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

1. Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;
2. Whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and,
3. Whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry.

**II.A.1. World Wide Travel Services, Inc.**

During the course of fieldwork, the Audit staff reviewed a reconciling invoice from World Wide Travel Services, Inc. (WWT),<sup>1</sup> dated January 23, 1997, which reflected the General Committee had incurred travel expenses between August 9, 1996 and November 8, 1996<sup>2</sup> totaling \$1,620,521. The total due as of January 23, 1997 was \$775,876.

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<sup>1</sup> WWT was incorporated on November 30, 1979 and remains incorporated as of April 1998.

<sup>2</sup> The majority of the travel was charged during this time period, with the exception of 3 charges totaling \$696 that occurred subsequent to November 8, 1996; most of the charges involved the purchase of airline tickets.

On March 31, 1997, the General Committee forwarded for payment to the Democratic National Committee the total outstanding balance of \$775,876 (see 2 U.S.C. § 441a(d)(2)).<sup>3</sup> At the time, it appeared that approximately \$775,180 of the \$775,876 had been outstanding for no less than 143 days (November 8, 1996 through March 31, 1997).

In response to the Audit staff's request for documentation which detailed the airfare costs incurred, the General Committee provided an invoice from WWT, dated May 31, 1997, which listed charges made to the General Committee's account from September 18, 1996 through January 29, 1997 and a separate schedule from WWT entitled "Customer Activity Report, Receivables and Checks Combined" (Customer Activity Report), dated January 20, 1997, which detailed all airfare charges between August 9, 1996 and January 10, 1997. During audit fieldwork, the Audit staff noted an invoice, dated October 13, 1996, in the General Committee records from WWT; the ending balance on that invoice did not agree with the beginning balance on the May 31, 1997 invoice. During fieldwork a request was made to the General Committee for all invoices received from WWT between October 13, 1996, and May 31, 1997, and/or evidence that WWT attempted to collect the debt due during that period. Other than the aforementioned documents, the General Committee did not provide any additional invoices or evidence responsive to the Audit staff's request.

As can be noted from the above invoices, no records made available by the General Committee provided a regularly scheduled (e.g., at the end of each month), continuous and consistent billing of charges.<sup>4</sup>

The Audit staff reviewed a Travel Agent Agreement dated August 30, 1996 between the General Committee and WWT which stated, in part, "cash settlement will occur no later than thirty (30) days after receipt of invoice. Each invoice paid more than thirty (30) days past date of receipt will be charged a late fee of 10% per annum (.833% per month) of the outstanding balance".<sup>5</sup>

The Audit staff discussed this matter with General Committee representatives at a conference held at the end of fieldwork and provided a schedule pertaining to the disbursements made to WWT. General Committee officials

<sup>3</sup> Based on our review of DNC reports filed, as of 9/30/98, the DNC reported \$845,461 in 2 U.S.C. 441a(d) payments on behalf of the General Committee to WWT.

<sup>4</sup> There was no regularly scheduled billing for airfare costs only. There appeared to be separate, monthly invoices for lump sum interest charges and transaction fees.

<sup>5</sup> The reconciling invoice dated January 23, 1997 detailed an application of accrued interest through January 3, 1997 at .8333 monthly. There was no evidence presented which reflected interest was billed on outstanding balances prior to January 3, 1997. The General Committee did provide invoices for August 1996, September 1996 and October 1996 pertaining to transaction fees, (also referred to as client handling fees and/or general handling fees), but the invoices were not specific concerning how those fees were calculated.

acknowledged receipt of the schedule, and on April 8, 1998, provided an affidavit from the General Committee Treasurer which stated, in relevant part:

"On September 30, 1996, after reviewing current bills and anticipating future ones, the Committee made the decision that all bills from WWT for expenses incurred after October 1, 1996, would be paid for by the Democratic National Committee (DNC) from §441a(d) funds. This decision was communicated about the same time to WWT.

After the General Election was over and the bill was assembled, on January 23, 1997, the Committee received WWT invoice #999999 totaling \$761,650.70 for air and rail travel that occurred after October 1, 1996.

Once the Committee reconciled the bill to its own accounting records and verified that the charges were correct, on March 31, 1997, the Committee forwarded WWT's revised invoice for \$775,876.39 to the DNC for payment."<sup>6</sup>

It was noted that no evidence or documentation, other than the aforementioned affidavit, was provided with which to verify that (a) WWT invoiced the General Committee (or the DNC) on a monthly basis for airfare costs, (b) the General Committee informed WWT that the DNC would be paying for all expenses incurred by the General Committee after October 1, 1996,<sup>7</sup> or (c) any agreement was reached between WWT and the General Committee or WWT and the DNC regarding the payment by the DNC of travel expenses incurred by the General Committee after October 1, 1996.

In the Memorandum the Audit staff recommended the General Committee provide additional documentation, to include statements from WWT that demonstrated that the credit extended was in the normal course of the vendor's business and did not represent a contribution by WWT. The Memorandum advised the General Committee the information provided from WWT should include examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements had been used. Also, information from WWT concerning its billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles were to be included.

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<sup>6</sup> The General Committee did not provide a copy of the original invoice totaling \$761,651. It was noted the revised January 23, 1997 invoice reflected a balance due of \$1,025,393. After the payments made on February 5, 1997 totaling \$249,517 were applied, the total balance due was \$775,876 (\$1,025,393 - \$249,517). The Audit staff noted, however, that the May 31, 1997 invoice reflected a balance due of \$761,651. There was no information which detailed a \$14,000 adjustment to the May 31, 1997 invoice. The General Committee did not provide an explanation concerning this discrepancy.

<sup>7</sup> Between 10/1/96 and 3/31/97, the General Committee itemized debts incurred totaling \$553,200. As of 3/31/97, the General Committee's report reflected \$0 owed to WWT.

In response to the Memorandum, the General Committee provided a duplicate copy of the previously discussed Travel Agent Agreement, dated August 30, 1996, along with an affidavit from Mr. Steve Davison, Vice President of Marketing and Client Services at WWT. Mr. Davison stated the General Committee advised WWT in September 1996 that it intended to forward invoices for travel to the Democratic National Committee (DNC) for payment from 441a(d) funds and that staff travel could accumulate to as much as \$700,000; WWT sought and received an increase in transaction fees to cover the additional accounting expenses and, in addition, an agreement whereby WWT would charge interest on an unpaid balance forwarded to the DNC.

Mr. Davison further stated "the volume of travel that occurred during the last weeks of the general election period was greater and more erratic than expected, causing a large volume of unused tickets to be reconciled with actual tickets used," and due to the extra effort required to reconcile the amount due, WWT did not issue the Committee a final invoice until January 23, 1997. With respect to collection of debt, Mr. Davison related WWT treated each client on an individual basis, and after January 1997 applied pressure on the General Committee and the DNC to pay and had even gone so far as to consult an attorney on how to proceed.

Lastly, Mr. Davison stated since WWT received large monthly payments from the General Committee during the months of August through December 1996, and then again in February 1997,<sup>8</sup> including interest during those months; it did not extend credit to the General Committee outside the normal course of business; and, there was no intention on the part of WWT to make a contribution to the General Committee. WWT cited similar billing experience with clients of similar size through its provision of services to the DNC, the Clinton For President Committee and the Clinton/Gore '92 Committee.

The General Committee also provided an affidavit from its Chief Accountant, who stated that after receiving the final invoice from WWT in January 1997, the General Committee began the necessary reconciliation and verification process and on February 7, 1997 made a payment of \$249,517 to WWT for the outstanding balance owed by the General Committee; the General Committee continued reconciling and verifying the final invoice, until March 31, 1997, when the \$775,876 was forwarded to the DNC for payment; and, after the \$775,876 was forwarded to the DNC, received "several telephone calls a month" from WWT regarding the amount owed by the DNC, and continued to receive these telephone calls in a regular and persistent manner for over a year.

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<sup>8</sup> The General Committee made the following payments to WWT: September 30, 1996 - \$45; October 16, 1996 - \$3,278; November 7, 1996 - \$300,000; November 15, 1996 - \$405; December 11, 1996 \$100,000; and, February 5, 1997 - \$249,517. In addition, between August 31, 1996 and October 15, 1996, the General Committee made payments totaling \$325,029 directly to Transworld Airlines (TWA), which were booked by and through WWT using a General Committee credit card.

The General Committee also stated in its response that the Audit staff overlooked binders which contained September through December 1996 invoices, and at no time did WWT bill the General Committee less than every 30 days. The response continued that the General Committee made large monthly payments to WWT between August and October 1996,<sup>9</sup> and when it became apparent that General Committee travel would exceed \$700,000, the General Committee made large payments in November and December 1996 to pay the additional charges.

The General Committee's assertion that the Audit staff overlooked binders which contained September through December 1996 invoices is not correct. The Audit staff did, in fact, note that the General Committee received monthly invoices for lump sum transaction fees and interest charges; but these invoices did not detail the actual travel expenses. Based upon the documentation provided by the General Committee in response to the Memorandum, it still appeared WWT issued 3 invoices to the General Committee which covered travel costs incurred, dated October 13, 1996, January 23, 1997 and May 31, 1997. The October 13, 1996 invoice detailed all travel charges incurred by the General Committee through October 10, 1996, and reflected an ending balance or amount owed WWT of \$497,016. The reconciling invoice, dated January 23, 1997, was apparently supported by a Customer Activity Report dated January 20, 1997, that consisted of a computerized listing of all charges incurred (including those charges paid directly to TWA) between August 9, 1996 and January 10, 1997. This Customer Activity Report reflected that the General Committee incurred total airfare expenses of \$1,620,521 which corresponded to the total travel costs listed on the January 23, 1997 invoice.

Finally, an invoice dated May 31, 1997, detailed all travel charges incurred by the General Committee between October 18, 1996 and May 9, 1997. In light of the information reviewed to date, it appears this invoice reflected travel costs to be assumed by the DNC and paid pursuant to 2 U.S.C. §441a(d). This May 31, 1997 invoice did not reflect any carryover balance from October 17, 1996; however, it did indicate an ending balance of \$761,651. Although requested, the General Committee, as of September 1, 1998, has not yet provided any additional detail or reconciliation pertaining to the November and December 1996 invoices.<sup>10</sup>

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<sup>9</sup> Between August 1996 and October 1996, the General Committee made 2 payments to WWT totaling \$3,323 (September 30, 1996 - \$45 and October 16, 1996 - \$3,278); also during this period the General Committee made payments totaling \$325,029 directly to Transworld Airlines (TWA), which were booked by and through WWT using a General Committee credit card.

<sup>10</sup> In their response, the General Committee referred to a weekly trip report, and stated the Audit staff should not have relied on these unreconciled, unverified reports to develop the dates when travel costs were incurred. The Audit staff did not use any documents entitled "weekly trip reports" during its testing to develop the dates when travel was incurred, and it was unclear why the General Committee made this statement in its response. It is possible the General Committee confused the weekly trip reports with the Customer Activity Report, however, this report was an accumulation of all travel expenses incurred by the Committee between August 9, 1996 and January 10, 1997, and the total travel costs incurred according to this report could be traced to the reconciling invoice dated January 23, 1997.

WWT's explanation that the agreement to transfer the travel billings after September 1996 (or after October 1, 1996 according to the General Committee) in exchange for increased transaction fees and interest charges is not borne out by the evidence presented. Specifically, the Travel Agent Agreement, although signed October 11, 1996 and October 14, 1996 by the parties involved, was in effect as of August 30, 1996, at least 1 month before WWT was advised of the proposed DNC transfer arrangements. It appears WWT was already receiving the increased transaction fees and interest charges prior to the September 30, 1996 discussion concerning the transfer to the DNC.

The General Committee response did not contain documentation to demonstrate the credit extended by WWT to the General Committee was similar to credit WWT extended to other nonpolitical debtors of similar size and risk<sup>11</sup> especially regarding the approximate \$775,000 in travel services received prior to the date of the general election and for which assignment to the DNC did not occur until 4 ½ months later with payments by the DNC occurring later still. WWT also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

In view of the above, it is the Audit staff's opinion that the General Committee did not demonstrate that the extension of credit by WWT conformed to the usual and normal practice in its business or in its industry as required by 11 CFR §116.3. As a result, the amount of the contribution made by WWT was at least \$775,180.<sup>12</sup> This amount was outstanding from November 8, 1996 to, at a minimum, March 31, 1997, the date on which the General Committee forwarded WWT's revised invoice for \$775,876 to the DNC for payment.<sup>13</sup>

The Commission voted to receive this finding, without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

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<sup>11</sup> As previously stated, WWT did cite similar billing experience with clients of similar size: the DNC, Clinton for President, and Clinton/Gore '92 Committee. Documentation in support of the above was not made available. However, based on our review of workpapers relative to WWT and the Clinton 1992 audits, it appeared that WWT billed and the Clinton 1992 Committees paid in a timely manner.

<sup>12</sup> Since a description of WWT's normal billing practice has not been made available, this amount is subject to increase. WWT may have extended credit, not in the normal course of its business, with respect to travel costs incurred relevant to the General Committee's payments totaling \$249,517 on February 5, 1997.

<sup>13</sup> The question of whether WWT may have extended credit to the DNC outside its normal course of business is not within the scope of this audit.

## II.A.2 AT&T Uniplan Services

During the course of fieldwork, the Audit staff reviewed a copy of a letter apparently faxed by the AT&T Accounts Payable department, dated March 4, 1997, which stated that the General Committee owed AT&T a total of \$342,515, apparently for telephone usage expenses. The letter stated "after your (sic) make a payment of \$30,000 today, check #: \_\_\_\_\_, the new balance will be: \$312,515.27." The General Committee subsequently issued a check to AT&T Uniplan Services (AT&T), dated March 4, 1997, in the amount of \$30,000.

During fieldwork, the Audit staff requested copies of contracts between all vendors and the General Committee. There was no contract pertaining to AT&T made available to the Audit staff. The Audit staff also could not identify any deposits made to this vendor prior to services being rendered, nor did there appear to be any Letters of Credit issued by the General Committee to secure these services.

Between October 16, 1996 and April 16, 1997, the General Committee made a total of seven payments to this vendor, totaling \$189,267; there was no evidence of payments being made between April 17, 1997 and September 30, 1997.

The Audit staff could not locate any additional invoice(s) from AT&T which would identify the dates the General Committee incurred the telephone charges totaling \$342,515 mentioned in the letter. However, a copy of an invoice from AT&T, dated October 16, 1996, attached to two check tissue copies dated subsequent to the March 4, 1997 (\$30,000) payment, indicated that the General Committee had an outstanding balance of \$204,408. It should be noted that the General Committee paid the vendor \$50,314 (October 16, 1996) which was not reflected on the October 16, 1996 invoice. Therefore, it appeared that the General Committee had an outstanding balance of at least \$154,094 (\$204,408 - \$50,314) between October 16, 1996 and March 4, 1997 (the date of the letter), or 139 days.

The Audit staff discussed this matter with General Committee representatives at a conference held at the end of fieldwork and provided a schedule pertaining to the disbursements made to AT&T. General Committee officials acknowledged receipt of the schedule and on April 8, 1998, provided documentation and a written response in which the General Committee stated that AT&T and itself were involved in a long-running dispute regarding the telephone bills and were in constant contact by both letter and telephone trying to resolve numerous billing questions. In addition, the General Committee noted that a disputed debt owed to AT&T was disclosed on its Schedule D-P filed for the period ending December 31, 1997. A chronology of events which detailed the telephonic and written contact between the General Committee and AT&T was also provided, including documentation in support thereof. One document was a letter from AT&T Claims Recovery Division dated November 17, 1997, which advised the General Committee that its delinquent account balance of \$86,632 was in a collection status. Another piece of correspondence from AT&T, dated February 18,



1998, related that the General Committee still owed \$36,651 and if not paid immediately, the account would be referred to an outside collection agency. In addition, the General Committee provided a copy of part of the contract between the Clinton/Gore '96 Primary Committee and AT&T, dated September 26, 1995, which covered a 12 month term and detailed the schedule of fees AT&T would charge for long distance services. This portion of the contract did not appear to specify that AT&T required a deposit or other form of security such as a Letter of Credit prior to establishing service. Further, that portion of the contract made available did not address provisions regarding late payments or disputed charges. There was no evidence or documentation provided that indicated this contract was extended and/or assumed by the General Committee. The General Committee also related in its written response that the contract provided no provisions regarding late payments or disputed charges.

It was the opinion of the Audit staff that the explanation and documentation provided by the General Committee did not support the General Committee's contention that AT&T's extension of credit was within the normal course of AT&T's business. In September 1996, the outstanding balance on this account was \$88,154. By October 16, 1996, the balance had increased to \$204,408. At this point, it appeared the 12 month contract between the Primary Committee and AT&T had expired, however, AT&T allowed additional charges to be incurred against this account, increasing the total due to \$330,187 as of November 16, 1996. As of February 27, 1997, the total due on this account was \$342,515, with the last payment (\$50,314) being credited by AT&T on its November 16, 1996 invoice.<sup>14</sup>

In the Memorandum the Audit staff recommended the General Committee provide additional documentation, to include statements from AT&T that demonstrated that the credit extended was in the normal course of the vendor's business and did not represent a contribution by the vendor. The Memorandum advised the General Committee the information provided should include examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements that had been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles should have been included.

In response to the Memorandum, the General Committee provided the same documentation provided on April 8, 1998 which detailed the telephonic and written contact between the General Committee and AT&T, including collection action initiated by AT&T. The General Committee also provided an affidavit from Ms. Kristina Womack, manager of the General Committee's Accounting Department. Ms. Womack stated it took a substantial amount of time over a 10 month period to reconcile the AT&T bills as numerous errors had to be corrected; was in frequent contact with AT&T; and, the General Committee made "good faith" payments as they were trying to reconcile the bill.

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<sup>14</sup> Based on documentation made available and disclosure reports filed by the General Committee, it appears that AT&T received payment in full in May 1998.

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In addition, the General Committee provided an affidavit from Carol Ford, a Political Markets Manager at AT&T, who stated "[I]n the ordinary course of its business, after election day AT&T will discuss billing detail with campaign accounting staff." Ms. Ford further related AT&T was in periodic telephone communication with the Committee in the immediate months following the election and stated "AT&T received a total of \$138,953.55 from the Committee during the months of March and April 1997. This was approximately 42% of the total amount owed to AT&T" and "[d]uring the remainder of 1997, AT&T and the Committee were in regular telephonic and written communication regarding charges on the final Uniplan service bill." In addition, Ms. Ford stated "[d]espite AT&T's diligent efforts to receive prompt payment, it is our experience, that it often takes more than a year to settle accounts for presidential campaigns." Lastly, the General Committee's response conveyed that the AT&T affidavit stated "any high volume customer with a good payment record would have been accorded the same treatment as the [General] Committee."

It should be noted that the General Committee's assertion that the AT&T affidavit stated "any high volume customer with a good payment record would have been accorded the same treatment as the Committee" is not accurate. The affidavit contained no such language. Further, the General Committee stated that significant portions of the bill were disputed, however, a review of the documentation made available indicates that only \$7,274 in charges was disputed.

AT&T has documented its efforts to attempt to collect the amount owed. However, documentation which demonstrates the credit extended the General Committee, as being similar to credit extended to other nonpolitical debtors of similar size and risk was not made available. In fact, AT&T specifically addressed its practices with respect to political campaigns: "In the ordinary course of its business, after election day, AT&T will discuss billing detail with campaign accounting staff." The vendor also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

Based upon the above, it is the Audit staff's opinion that the General Committee did not demonstrate that the extension of credit by AT&T conformed to the usual and normal practice in its business or in its industry as required by 11 CFR §116.3. As a result, the amount of the contribution made by AT&T remains at \$154,094.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

### II.A.3 Excelsior Hotel

Lastly, the Audit staff reviewed documentation which indicated the General Committee incurred expenses totaling \$157,209 at the Excelsior Hotel<sup>15</sup> for an election night event (\$89,763), election night rooms (\$54,165) and room service, including reception, food and beverages (\$13,281). These expenses were incurred November 5, 1996 through November 7, 1996.

On August 19, 1997, the General Committee made the first payment of \$4,500 towards the election night event expenses (\$89,763). This payment was applied to an invoice dated November 6, 1996. As of September 30, 1997, the General Committee had made payments totaling \$44,500. A debt identified as disputed with Excelsior Hotel for \$45,353 was itemized on the General Committee's Schedule D-P filed for the period July 1, 1997 to September 30, 1997. In response to a request by the Audit staff during fieldwork, the General Committee offered the following concerning the debt with the Excelsior Hotel: the "[i]nvoice was originally thought to include expenses not incurred by Committee. Documentation has been furnished and invoice will be paid."

With respect to the election night rooms (\$54,165) and room service (\$13,281), the only invoices made available for review were dated June 19, 1997. The General Committee paid these charges on August 19, 1997 and February 10, 1998 respectively. The General Committee appears to have included these debts on its Schedule D-P covering the period January 1, 1997 through March 31, 1997, indicating the General Committee was aware of this debt prior to receiving the June 19, 1997 invoice.

Although the General Committee considered a certain portion of the amount invoiced by the Excelsior Hotel to represent services it did not receive, no documentation was made available to the Audit staff which indicated the Excelsior Hotel initiated collection procedures or communicated with the Committee concerning payment. The total charges for all expenses were outstanding no less than 287 days (November 5, 1996 through August 19, 1997), prior to any payments being made by the General Committee.

The Audit staff discussed this matter with General Committee representatives at the end of fieldwork and provided schedules pertaining to the disbursements made to Excelsior Hotel. Committee officials acknowledged receipt of the schedules and on April 8, 1998 provided a written response which stated, in part:

"The Committee was billed by and paid Arkansas' Excelsior Hotel within its ordinary course of business for costs incurred and services rendered in

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<sup>15</sup> According to the Arkansas Secretary of State, the Excelsior Hotel is a d.b.a. for M.S. Green - Little Rock Corporation, which was incorporated on December 20, 1988 and remained incorporated as of April 1998.

connection with the official election night party held on November 5, 1996. The Committee disputed being responsible for the total cost of the bill and Excelsior billed and made repeated attempts to collect payment from the Committee. In an attempt to resolve the matter, representatives from the Committee and Excelsior met face-to-face in Little Rock, AR in June 1997. As a result of the meeting, Excelsior re-billed the Committee for its portion of the total cost. Within 60 days, the Committee began making payments.

The Committee disputes the accuracy of the auditors' worksheets detailing review of the Excelsior disbursements. The auditors incorrectly list the date of the invoices as being November 6 and 7, 1996. These dates were listed on the invoices as the dates that the costs were incurred. The correct date on the Committee's invoices is June 19, 1997. This date represents the date that Excelsior re-billed the Committee, two days after the meeting in Little Rock."

In addition, the Committee provided a written affidavit from the General Committee's Treasurer which related, in part, the billing from the Excelsior Hotel was disputed because portions of the total cost were to be paid by other entities, including the Democratic National Committee, the White House, The Democratic Governors' Association and state party committees. In addition, the affidavit related that due to the size of the event, numerous hours were required for the General Committee personnel to determine that they could not identify the General Committee's portion of the total cost based on the invoices provided, and therefore, the meeting between the General Committee and Excelsior Hotel representatives was arranged and conducted on June 17, 1997. As a result of that meeting, the General Committee was subsequently rebilled on June 19, 1997. According to this affidavit, only after this meeting did the General Committee receive the revised invoices, totaling \$157,209; this amount was paid in 15 installments between August 1997 and February 1998.

Although the General Committee's response appeared to indicate that other invoices were issued by the Excelsior Hotel and received relative to election night rooms and room service, albeit for a larger amount, such invoices were not made available for our review. The Audit staff reviewed two different invoices, one dated November 6, 1996 and the other dated June 19, 1997. Both invoices reflected the charges for election night event expenses of \$89,763. Based upon the above, it was the opinion of the Audit staff that the total charges for all expenses (\$157,209) were outstanding no less than 286 days (November 6, 1996 through August 19, 1997), prior to any payments being made by the General Committee. At the close of Audit fieldwork no evidence was made available to show that the Excelsior Hotel attempted to collect the debt totaling \$157,209 in a timely manner. Consequently, the Audit staff considered this extension of credit to be an apparent prohibited contribution of \$157,209.

In the Memorandum, the Audit staff recommended that the General Committee provide additional documentation, to include statements from the Excelsior Hotel, that demonstrated the credit extended was in the normal course of the vendor's business and did not represent a contribution by the vendor. The information provided should have included examples of other customers and clients of similar size and risk for which similar services had been provided and similar billing arrangements that had been used. Also, information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles were also requested.

In addition to the above, the Audit staff recommended the General Committee obtain from the Excelsior Hotel all invoices related to the election night event, including invoices or expenses allocated to other entities. Further, the Audit staff recommended that if any of the costs related to the event in question were apportioned or allocated to the other entities, the General Committee should provide detailed information to establish the basis for such allocation with sufficient information to show how the allocable amounts were derived.

In response to the memorandum, the General Committee, in conjunction with affidavits from its Chief Accountant and the General Manager of the Excelsior Hotel stated that the invoices received subsequent to the event were disputed. Further, it is the ordinary course of business for the Excelsior to expect payment within 30 days of having been billed and if prompt remittance is not the case, then the hotel will follow up with phone calls until full payment is made. Finally, the General Committee stated "[i]n the case of associations or organizations who pay for their guests, Excelsior sends billings within 3 days after the date of the event." The Excelsior Hotel also provided copies of 7 invoices addressed to various representatives of the General Committee, dated November 14, 1996 through June 19, 1997, which reflected its continuous billing pertaining to this matter.<sup>16</sup> In the affidavit of Mr. Linus Raines (General Manager of the Excelsior Hotel) he explained that the "[h]otel experienced having to deal with different and shifting Committee personnel who kept asking the Hotel to resend invoices." In addition to telephone calls, written demands for payment and invoices, Mr. Raines related he also requested assistance from Mike Malone, Deputy Assistant to the President, on this matter.<sup>17</sup> Lastly, Mr. Raines states "the Hotel has employed similar techniques to collect overdue statements from national and regional organizations using the Hotel for special events."

Our analysis of the invoices made available indicated that the Excelsior Hotel billed the General Committee by invoice dated November 14, 1996 for an Election Night Party (\$89,763) and room service and equipment charges (\$9,900). Apparently, the General Committee did not dispute these charges - the final bill, dated

<sup>16</sup> Only the last invoice, dated June 19, 1997, was made available to the Audit staff during the fieldwork phase of the audit.

<sup>17</sup> Although Mr. Raines indicated documentation to support this telephone call was attached in his response, it was not included in the response to the Memorandum.

June 19, 1997, agreed to by the General Committee included the same amount for event expenses (\$89,763) and an increased amount for room service and equipment charges (\$13,281). We also noted there was no evidence made available which indicated the General Committee had been required to make an advance deposit prior to the date of the event (Election Night Party).

Further, based on the invoices made available in response to the Memorandum, it appears that the Excelsior Hotel did not bill the General Committee for room charges (\$66,324) until February 20, 1997, which does not comport with the General Committee assertions that the Excelsior Hotel bills within 3 days of an event. Apparently, the General Committee disputed this bill. The final bill, dated June 19, 1997, included room charges totaling \$54,165.

Even after the General Committee apparently agreed that it owed the vendor \$157,209, it did not start making payments until 60 days later (14 installments between August 1997 and February 1998). In itself, this payment schedule appears to conflict with what the General Committee portrays to be the Excelsior Hotel policy "to expect payment within 30 days of having been billed."<sup>18</sup>

The Excelsior Hotel provided evidence of numerous invoices sent and telephone calls made. However, documentation which demonstrates the credit extended the General Committee, as being similar to credit extended to other nonpolitical debtors of similar size and risk was not made available. The vendor also did not provide any information concerning advance payment policies, debt collection policies or billing cycles as it pertained to other nonpolitical debtors. Such documentation is critical in determining if an extension of credit was made in the ordinary course of business.

Finally, although the General Committee had acknowledged that other entities were to be billed with respect to the cost of the event, no documentation with respect to the allocable costs or method of allocation was made available. Absent such documentation, a determination with respect to the permissibility of other entities sharing in the cost of this event could not be made.

For the reasons cited above, the Audit staff does not consider the General Committee's arguments on this matter to be persuasive. As a result, the amount of the apparent prohibited contribution made by Excelsior remains at \$157,209.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

<sup>18</sup>

In its 1997 October Quarterly report, the General Committee reported beginning cash on hand as of July 1, 1997 totaling \$155,175.